

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
MAYOR'S OFFICE OF ENVIRONMENTAL REMEDIATION
REQUEST FOR PROPOSALS
FOR THE PROVISION OF ON-CALL ENVIRONMENTAL
CONSULTING AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 3692XXXX
PROJECT CODE NO. 3692**

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**PART I
INTRODUCTION**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
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NYCEDC CONTRACT NO. TBD
PROJECT CODE NO. 3692XXXX**

**PART I
INTRODUCTION**

1. INVITATION TO SUBMIT PROPOSAL

NYCEDC, in consultation with The City of New York (the "City"), is seeking to procure and invites you to submit a proposal in response to this Request for Proposals ("RFP") for one or more consultants to provide on-call environmental consulting services (collectively, "Environmental Consulting Services") to be retained to assist in the assessment, remediation and redevelopment of Brownfields in New York City (the "Project Goals"). It is anticipated that the on-call Environmental Consulting Services will include, without limitation, the following:

- Environmental Assessments
- Environmental and/or Vacant or Under-utilized Land Planning
- GIS-Based Analyses
- Environmental Remediation
- Environmental Remediation Regulatory Oversight
- Monitoring
- BOA and/or Other Community Planning Services
- Project Management
- Community Outreach
- General and Advanced Information Technology ("IT") Services
- IT Maintenance
- Study and Reporting Services
- Grant Writing Services
- Environment-Related and Other Real Estate Advisory Services
- any other related Services necessary to achieve the Project Goals including, but not limited to, the types of Services listed in Part I, Section 2.2.1.3 below, as further detailed in the Scope of Services (Appendix B) appended to the Contract Draft annexed as Exhibit 5 to this RFP.

The Services to be performed, the Project and the Project Site are outlined in the RFP Summary below (Part I, Section 2), along with such other information as the anticipated dates for the execution of a Contract with the Consultant(s), if one or more are selected pursuant to this RFP, and the anticipated Contract Term. All undefined capitalized terms set forth in this RFP shall have the same definitions as set forth in Appendix A and Appendix B to Part III of the draft

Contract (the “Contract Draft”) annexed to this RFP as Exhibit 5.

The City has assembled a project team (the “Project Team”) to implement the Project Goals that are being led by the Mayor’s Office of Environmental Remediation (“OER”). The City has asked NYCEDC to serve as a member of the Project Team. NYCEDC has agreed to do so, and is issuing this RFP, in consultation with OER, to retain one or more on-call Consultants to assist in the ongoing operations of OER and the Project Goals.

Subject to the availability of funds and the responses to this RFP, NYCEDC will select one or more Consultants to provide the Services on an on-call basis during the Contract Term. It is anticipated that the selected Consultant(s) will be called on from time to time to undertake Project Assignments, to be procured from among the selected Consultant(s) by methods permitted under the funding sources for the Project described in the Project Assignment including, without limitation, through mini-RFPs. **Respondents must submit proposals for all of the Environmental Consulting Services described herein**, provided that each Consultant must be experienced in all aspects of the type of Environmental Consulting Services to be provided by that Consultant, if selected.

The selected Consultant(s) will commence the Services upon a written Notice to Proceed from NYCEDC or upon execution of the Contract by the Consultant(s) and NYCEDC substantially in the form of the Contract Draft. The Contract Draft is an initial draft subject to further review and revision by NYCEDC prior to execution. NYCEDC shall not be bound to the terms of any aspect of the Contract Draft, and the final acceptance of any successful proposal shall be subject to, and contingent upon, the negotiation between the parties of a Contract in form and substance acceptable to NYCEDC. Nevertheless, **you should review the Contract Draft and be familiar with all of the terms and conditions set forth therein prior to submitting your proposal.**

All or a portion of the Services to be provided pursuant to any Project Assignment may be funded with funds (“Funds”) from other Federal, State and local sources (“Outside Funding”) including, without limitation, United States Environmental Protection Agency (“USEPA”) Brownfield Assessment and Cleanup Grant Program Funds (“USEPA Grant Funds”), New York State Department of State (“NYSDOS”) Brownfield Opportunity Areas (“BOA”) Grant Program Funds (“BOA Grant Funds”), New York State Regional Economic Development Council (NYSREDC), and/or other Funds made available for the Project pursuant to any applicable funding agreements (the “Applicable Agreements”) including, without limitation, any agreements between the City, NYCEDC, NYSDOS, NYSDEC, OER, other city agencies or offices, USEPA HUD, EDA, US Economic Development Administration, Army Corps of Engineers, Federal Emergency Management Agency, and/or any other Agency, related to those Funds. In such event, the Contract and the Services will be subject to all applicable statutes and regulations (“Applicable Requirements”) including all legal requirements (“Legal Requirements”) related to such Outside Funding. Respondents should make sure they read and fully understand such requirements prior to submitting their proposals in response to this RFP.

2. RFP SUMMARY

2.1 In General. This summary of terms, deadlines and requirements specific to this RFP is set forth for your immediate reference and convenience only. It does not set forth all of

the requirements of this RFP, but should be read in conjunction with the General Requirements (Part II) and the Specific Requirements (Part III) of this RFP. You should review and become familiar with all parts of this RFP prior to submitting your proposal.

2.2 **Specific Terms, Deadlines and Requirements.**

2.2.1 **Project Information.**

2.2.1.1 **The Project:** Mayor's Office of Environmental Remediation

2.2.1.2 **The Project Site:** City-wide

2.2.1.3 **Type of Services:** On-Call Environmental Consulting and Related Consulting Services (the "**Services**"), as more specifically described in the Scope of Services (Appendix B of the Contract Draft) including, without limitation the following services:

2.2.1.4 **Project Assignments:** Samples tasks include without limitation those set forth in the Proposal Forms annexed hereto at Exhibit 2.2 of the RFP

2.2.2 **The Consultant(s):**

2.2.2.1 **Type:** Environmental Engineer, Scientists, Planners and Specialists specializing in all aspects of the investigation and remediation of Brownfield sites, BOA and/or other community planning services, storage tank compliance, real estate advisory and grant writing.

2.2.2.2 **The Consultant Team:** It is anticipated that the Consultant will lead a team of consultants (collectively, with the Consultant, the "**Consultant Team**") in providing the Services. The members of the Consultant's staff and/or the Consultant's Subcontractors on the Consultant Team are expected to include, without limitation, the following:

2.2.2.2.1 **Required Consultant Team Members:**

2.2.2.2.1.1 Professional Engineers

2.2.2.2.1.2 Geologists

2.2.2.2.1.3 Hazardous Materials Scientists and Specialists

2.2.2.2.1.4 Planners

2.2.2.2.1.5 IT/GIS Specialists

2.2.2.2.1.6 Grant Writing Specialists

2.2.2.2.2 **Other Possible Consultant Team Members**

2.2.2.2.2.1 U.S. EPA and New York State approved laboratories

2.2.2.2.2.2 Geophysical surveyors

2.2.2.2.2.3 Drillers

2.2.2.2.2.4 Surveyors

2.2.2.2.2.5 Communication specialists

2.2.2.2.2.6 Tank tightness testing contractor

2.2.2.2.2.7 Certified industrial hygienists

2.2.2.3 Experience Required: The Consultant shall be experienced in the following:

2.2.2.3.1 All aspects of Brownfield Remediation and Development , preferably in New York City and New York State, and in particular, with respect to hazardous material and petroleum

2.2.2.3.2 Local, state and federal requirements and Legal Requirements related to Brownfield Remediation and Development Project, including, without limitation, those related to permits, transport and disposal of contaminated materials and hazardous waste, notice and other procedural and compliance requirements

2.2.2.3.3 Community outreach including, without limitation, securing participation of relevant community members at meetings and public processes

2.2.2.3.4 Advising private property owners as to the benefits o participating in remediation and redevelopment programs, including, without limitation, the State's BOA Grant Program, land preparation and redevelopment including partnerships that might include local community-based organizations and city brownfield planning, cleanup or development programs

2.2.2.3.5 Conducting primary and secondary research, analyzing data and writing reports

2.2.2.3.6 Information technology application development and deployment to the City's website, www.nyc.gov

2.2.2.3.7 Grant writing

2.2.3 Contract Information.

2.2.3.1 **Anticipated Contract Execution Date:** January 2016

2.2.3.2 **Anticipated Contract Term:** Five years (5) with two one (1) year renewal options

2.2.4 Questions Regarding RFP.

2.2.4.1 **Question/Clarification Deadline:**

(i) **Date:** November 2, 2015

(ii) **Time:** 5:00 pm

2.2.4.2 **Permitted Method:** At Pre-Proposal Meeting, if one is conducted; otherwise in writing to Recipient at Recipient's Mailing Address or Email Address as listed in Section 2.2.6 below only.

2.2.4.3 **Question Response Date:** November 9, 2015

2.2.4.4 **Answers to Questions Available at www.nycedc.com** (the "Website")

2.2.5 Pre-Proposal Meeting.

2.2.5.1 **Date:** October 30, 2015

2.2.5.2 **Time:** 2:00 pm

2.2.5.3 **Meeting Place:** 110 William Street, 6th Floor, New York, NY 10038

2.2.5.4 **Confirmation Contact:** Email address as listed in Section 2.2.6 below

2.2.5.5 **Attendance Mandatory:** No

2.2.6 Proposal Submission Requirements.

2.2.6.1 **Label on Envelope:**

2.2.6.1.1 **One for the Proposal Only:** "Proposal for On-Call Environmental Consulting and Related Services for MOER"

2.2.6.1.2 **One for Prices Only:** "Price Proposals for On-Call Environmental Consulting and Related Services for MOER"

2.2.6.1.3 One for the Doing Business Data Form Only: “Doing Business Data Form for On-Call Environmental Consulting and Related Services for MOER”

2.2.6.1.4 One for M/WBE Forms Only, if required by Part I, Section 2.2.7: “M/WBE Forms On-Call Environmental Consulting and Related Services for MOER”

2.2.6.2 Number of Sets of Proposals to be submitted: Six (6)

2.2.6.3 Submission Deadline:

(i) **Date:** November 17, 2015

(ii) **Time:** 4:00 pm

2.2.6.4 Method: By Hand or Express Mail or other nationally-known overnight courier

2.2.6.5 Submit to the following Recipient:

Maryann Catalano
Senior Vice President

2.2.6.6 Recipient’s Mailing Address:

NYCEDC
110 William Street, 4th Floor
New York, NY 10038

2.2.6.7 Recipient’s E-mail address: MOERRFP2015@edc.nyc

2.2.7 M/WBE Participation Goal. 10%-25%

2.2.8 Selection Criteria. NYCEDC will base its selection upon the following criteria:

- 20% The respondent’s and, as applicable, the proposed Consultant Team’s experience in providing services similar to the Scope of Services described herein;
- 20% The quality of the proposal and the degree to which it demonstrates the respondent’s full understanding of and the ability to perform the Services to be rendered; the content of the proposal demonstrating the respondent’s full understanding of the Project schedule and budget.
- 30% The proposed fee and cost schedules

- 15% The quality of the respondent's management, reputation, and references and, as applicable, the quality of the proposed Consultant Team; the terms under which the respondent will commit its personnel and, as applicable, the personnel of the proposed Consultant Team members, without transfers and changes favorable history, if any, in contracting or doing business with the City and/or NYCEDC.
- 15% The Respondent's proposed plans for encouraging participation by minority and women-owned business enterprises in connection with the Services including, as applicable, the respondent's M/W/DBE Subcontractors Participation Plan or M/WBE Narrative Form.

2.2.9 Outside Funding. A portion of the Services will be funded with Outside Funding including, without limitation, those listed in section 2.2.9.2 below

2.2.9.1 Certifications Required. Yes. See Exhibit 1.2 of this RFP

2.2.9.2 Types of Funds:

2.2.9.2.1 US EPA Grant Funds;

2.2.9.2.2 NYSDOS BOA Grant Funds;

2.2.9.2.3 New York State Regional Economic Council ; and

2.2.9.2.4 Any other City, State or federal funds made available for the Project

2.2.9.3 Funding Sources:

2.2.9.3.1 US EPA;

2.2.9.3.2 NYS DOS; and

2.2.9.3.3 Any other entity providing Funds for the Project

2.2.9.4 Applicable Agreements:

2.2.9.4.1 Any agreement entered into by the City and USEPA related to USEPA Grant Funds provided for the Project including, without limitation, the following USEPA Cooperative Agreements with the following USEPA Assistance ID Nos. BF96281015, BF96281115, BF96287213, and BF96295712 (copies of which are appended as Exhibit 1 to Appendix K to the Contract:

2.2.9.4.2 Any agreement entered into by the City and NYSDOS related to BOA Grant Funds or other funds provided for the Project including, without limitation, the BOA Agreement No. C096013 appended as Exhibit 2 to Appendix K to the Contract Draft; and

2.2.9.4.3 Any agreement entered into by the City and NYSREDC related to environmental or other land management including, without limitation, the NYSREDC Grant Program;

2.2.9.4.4 Any agreement entered into by the City and NYSDEC related to environmental or other land management including, without limitation, the Environmental Restoration Program and hazardous waste or other remediation; and

2.2.9.4.5 Any other agreement entered into by or among NYCEDC, the City, OER, other city agency, USEPA, US Department of Housing and Urban Development, FEMA, US Army Corps of Engineers, NYSDEC, NYSDOS or any other entity providing Funds for the Project and/or the Contract Draft

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**PART II
GENERAL REQUIREMENTS**

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**PART II
GENERAL REQUIREMENTS**

1. SERVICES TO BE PERFORMED AND WORK PRODUCT

The Consultant shall perform all work and services and deliver all of the Work Product specifically described in and required by the Scope of Services annexed as Appendix B in Part III of the Contract Draft. **Prior to submitting your proposal, please be sure that you review and fully understand the Scope of Services.**

2. STAFFING

2.1 **Personnel**. The Consultant shall, at its own expense, employ all personnel and retain all Subcontractors (including the subconsultants on the Consultant Team, if any) as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the Contract Term. The Consultant and its Subcontractors will be expected to cooperate fully with NYCEDC personnel. The respondent shall submit with its proposal resumes of its personnel and those of its Subcontractors who will perform the Services. The respondent, if selected, will be expected to use substantially the same personnel and Subcontractors described in the proposal to perform the Services. All personnel furnished by the Consultant as required under the Contract shall be employees or approved Subcontractors of the Consultant and not of NYCEDC or the City.

2.2 **Subcontractors**. If the Consultant is authorized under the Contract to enter into subcontracts for specialized services as required for performance of the Services, such authorization shall be subject to the prior written approval by NYCEDC of the Subcontractor (other than members of the Consultant Team which have been previously approved), the scope of services, compensation, and the principal responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not NYCEDC, will be responsible for the Subcontractor's work, acts and omissions. Respondents are directed to Article 4 of the Contract Draft for further information as to the requirements regarding subcontracting under the Contract.

2.3 **Person in Charge**. In its proposal, respondent shall identify the member of the respondent's staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services.

3. COMPENSATION

Subject to and in accordance with the final terms of the Contract, NYCEDC shall compensate the selected Consultant as follows:

3.1 **In General.** Under the Contract, NYCEDC will agree to pay to the Consultant an amount not to exceed a Maximum Contract Price to be negotiated between NYCEDC and the Consultant based upon its response to this RFP. The Maximum Contract Price shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract and all expenses of the Consultant in connection therewith, including costs of any Subcontractors. The Maximum Contract Price shall be payable as provided for in Sections 2.1 and 2.2 of the General Terms and Conditions (Part II) of the Contract and Appendix C (Part III of the Contract).

3.2 **Payments.** In order to receive payment for Services, the Consultant will be required to submit a Requisition setting forth in detail, for the period for which payment is requested, the Services actually rendered during that period and the amount of payment requested and due therefor. Requisitions may not be submitted more than once per month. All Requisitions shall be subject to NYCEDC's review, verification and approval, and all payments shall be conditioned upon NYCEDC's determination that all Services have been performed satisfactorily and in accordance with the terms of the Contract.

3.3 **Sales and Use Tax.** NYCEDC is exempt from state and local sales and use tax. SUCH TAX IS NOT TO BE INCLUDED IN PROPOSALS or in invoices submitted under the Contract. NYCEDC will provide the selected Consultant with an appropriate "sales and use tax exemption certificate".

4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION

4.1 **M/WBE Program.** Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129"). Section 6-129 establishes a program for participation in City procurement by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs", together with "MBEs" collectively referred to as "M/WBEs"), certified in accordance with Section 1304 of the City Charter. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business and lowering contract costs. NYCEDC endorses these goals and has adopted an M/WBE Program to further participation by MBEs and WBEs in the provision of the Services. All respondents shall comply with all requirements of the Corporation's M/WBE Program applicable to this RFP.

4.2 **Minority and Women -Owned Business Enterprises.** M/WBE firms must be certified by DSBS to credit such firms' participation toward attainment of the Participation Goals. Such certification must occur prior to the firms' commencement of work. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing

DSBS at 110 William Street, New York, New York, 10038, 7th Floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c)(20).

4.3 M/WBE Participation Goal.

4.3.1 The Participation Goal for the Contract is set forth in Part 2.2.7. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs or WBEs, and/or by crediting the participation of the respondent as provided in Section 4.3.4 below.

4.3.2 The Participation Goal is expressed as a range, the lower bound of which will be the minimal participation goal for which NYCEDC will award points in the selection criteria. Respondents must submit a narrative (the “M/WBE Narrative”) describing their methods for engaging M/WBEs, including good faith efforts to meet the Participation Goal and a description of any M/WBE related program administered by the respondent. (Refer to “M/WBE Narrative Form, attached hereto at Exhibit 4). The M/WBE Narrative will be ranked against that of other respondents and factor into selection. The M/WBE selection criteria accounts for 15% of respondent’s total score.

4.3.3 The Participation Goal is a material term of the Contract and the selected Consultant shall be subject to the NYCEDC approved Participation Goal.

4.3.4 An M/WBE respondent shall be permitted to count its own participation toward fulfillment of the Participation Goal. A respondent may not subcontract more than 50% of the total value of the Contract unless it is working under a retainer contract or a construction management contract. The value of an M/WBE respondent’s participation shall be determined by subtracting from the total value of the Contract any amounts that the respondent will pay to direct Subcontractors. If a respondent is not an M/WBE, it must meet the Participation Goal through the awarding of subcontracts to firms certified with DSBS as MBEs or WBEs.

4.3.5 A respondent that is a Qualified Joint Venture shall be permitted to count a percentage of its own M/WBE participation toward fulfillment of the Participation Goal. The value of the Qualified Joint Venture’s participation shall be determined by first subtracting from the total value of the Contract, any amounts that the Qualified Joint Venture will pay to direct Subcontractors. Thereafter, the M/WBE percentage of the Qualified Joint Venture shall be applied to the remaining value of the Contract to determine the overall Participation Goal.

4.4 M/WBE Proposal Submission Forms

4.4.1 If Part I, Section 2.2.7 sets forth a Participation Goal, then the respondent must complete and submit as part of its proposal a subcontractors participation plan (the “Subcontractors Participation Plan”) and an Intent to Perform as Subcontractor form (the “ITP Form”) in the form annexed at Exhibit 4 to this RFP. The respondent’s Subcontractors Participation Plan must set forth:

4.4.1.1 the proposed Participation Goal;

4.4.1.2 whether the Respondent is an MBE, WBE or qualified joint venture;

4.4.1.3 the percentage of work it intends to award to direct Subcontractors

4.4.1.4 the identity of all proposed M/WBE Subcontractors to which the respondent intends to award subcontracts;

4.4.1.5 a description of the type and dollar value of work designated for participation by M/WBEs; and

4.4.1.6 the time frames in which such work by M/WBEs is scheduled to begin and end.

4.4.2 Each Subcontractor listed in the respondent's Subcontractor Participation Plan must complete an ITP Form, which the respondent must include with its proposal.

4.4.3 The Subcontractors Participation Plan, as approved by the Corporation, shall be annexed to and made part of the Contract.

4.4.4 **Statement on M/WBE Goals.** If this Contract will be a Retainer Contract requiring multiple task orders or for Construction Management Services, respondents will be required to submit a narrative describing their methods for engaging M/WBEs and that it will make good faith efforts to meet the Participation Goal for the overall Contract value, including a description of any M/WBE related program administered by the respondent. The respondent must also submit the "Statement on M/WBE Goals", attached hereto at Exhibit 4, with its proposal or it will be deemed non-responsive.

4.4.5 In the event that the Corporation does not approve a Subcontractor proposed by the Consultant, the Consultant shall have a reasonable time to propose alternate Subcontractors.

4.5 **Qualified Joint Ventures.** Respondents are encouraged to enter into joint ventures with MBEs and WBEs. Respondents who submit a proposal as a Joint Venture must include a copy of the Joint Venture agreement. Only Qualified Joint Ventures may be permitted to count its own participation toward fulfilling the Participation Goal as set forth in in Part 2.2.7.

4.6 **Violations by Respondents to RFPs.** If the Corporation determines that a respondent has violated the requirements of the Corporation's M/WBE Program, then the Corporation may disqualify the respondent from competing for the Contract and may remove the respondent from the list of qualified consultants maintained by the Corporation.

4.7 **Statements.** Statements made in any instrument submitted to the Corporation in connection with the Corporation's M/WBE Program or the M/WBE requirements applicable to this RFP or the Contract shall be submitted under penalty of perjury, and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

4.8 **Other M/WBE Requirements.** Article 9 of the General Terms and Conditions (Part II) of the Contract Draft contains additional provisions related to the Corporation's M/WBE Program regarding, without limitation, reporting, change orders, modifications to Subcontractors Participation Plans, compliance audits, enforcement and evaluations. **Please be sure that you review and understand all of the requirements of the Corporation's M/WBE Program applicable to this RFP and the Contract prior to submitting your proposal.**

5. DOING BUSINESS DATA FORM REQUIREMENTS.

5.1 Pursuant to the City's Local Law No. 34 ("**LL34**"), amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city", as such terms are defined in LL34.

5.2 In order for the City to obtain information necessary to establish the required database, each respondent must complete a Doing Business Data Form in the form available at the Website and described in Exhibit 3 and return it in a separate envelope with the respondent's proposal.

5.3 The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions. Respondents are encouraged to consult legal counsel with respect to the impact of LL34. Respondents may also wish to review the document "Q&A: The Doing Business Data Form and the Doing Business Database" available at the Website and described in for further information. Note that responding to this RFP constitutes "doing business with the city" under LL34.

6. CONTRACT CONDITIONS

6.1 **In General.** The acceptance of any proposal shall be subject to, and contingent upon, the execution by NYCEDC of a Contract substantially in the form of the Contract Draft annexed hereto. NYCEDC shall not be bound to the terms of the Contract Draft but shall use such form as a basis of negotiating a final Contract with the selected Consultant, if any. **However, please note that the General Terms and Conditions (Part II) and the Appendices (Part III), other than Appendix B and Appendix C, are NOT NEGOTIABLE.**

6.2 **Specific Terms.** The Contract shall contain, among other terms, certain provisions required by law, by policies of the City, and the City Contract including, without limitation, the following:

6.2.1 Executive Order 50 Supply and Service Rider - attached as Appendix F in Part III of the Contract. This rider contains equal opportunity requirements mandated under Executive Order No. 50 (1980).

6.2.2 Provisions providing that the Consultant:

6.2.2.1 is an independent contractor and that neither it nor any of its employees is or shall be an agent, servant or employee of the City or NYCEDC;

6.2.2.2 shall defend, indemnify and hold harmless the City and NYCEDC against any claims or damages relating to its acts and omissions;

6.2.2.3 shall maintain financial and other records relating to the Contract, including, without limitation, payroll records, for a period of six (6) years from the end of the Contract Term, and shall make such records available for inspection and audit;

6.2.2.4 has no conflicts of interest with, or outstanding financial obligations owing to, the City;

6.2.2.5 maintains insurance as specified in Article 6 of the General Terms and Conditions (Part II) of the Contract and Appendix E of Part III of the Contract with insurers licensed or authorized to provide insurance and in good standing in the State of New York, such policies to be in a form acceptable to, and include any conditions reasonably required by NYCEDC, and naming NYCEDC and the City as additional insureds;

6.2.2.6 is licensed to conduct business in the State of New York;

6.2.2.7 shall comply with the City's requirements regarding vendor background investigations, which include a review by the City's Department of Investigation of the City's past experience with the Consultant;

6.2.2.8 shall complete and submit the Business Entity Questionnaire and a Principal Questionnaire for each principal of the Consultant (collectively, the "Vendex Clearance Forms");

6.2.2.9 shall complete and submit the Doing Business Data Forms;

6.2.2.10 shall represent and warrant that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the Services as set forth in the Contract. The Consultant must further agree that it shall employ no person having such a conflict of interest in the performance of the Services;

6.2.2.11 shall agree to New York County as the venue in any legal action or proceeding between the Consultant and NYCEDC;

6.2.2.12 acknowledges that the Contract shall be assignable to the City;

6.2.2.13 shall comply with the City's prohibition of certain business practices with respect to Northern Ireland;

6.2.2.14 shall comply with the City's prohibition of certain business practices with respect to Iran; and

6.2.2.15 shall comply with the City's Whistleblower protections.

Respondents are directed to the Contract Draft (Exhibit 5 to this RFP) for the exact

language of the provisions referred to in the foregoing paragraphs.

7. GENERAL CONDITIONS, TERMS, LIMITATIONS AND REQUIREMENTS

7.1 **Proposal as Offer to Contract.** Unless a specific exception is noted, submission of a proposal in response to this RFP shall constitute an offer on the part of the successful respondent to execute the Contract substantially in the form annexed hereto as Exhibit 5. Any supporting documents or other items attached as exhibits to this RFP shall be incorporated into the Contract. The successful respondent shall cooperate in supplying any information as may be required with respect to the Vendex Clearance Forms, which are available online at www.nyc.gov/vendex (the “Vendex Website”), and any other government review and approval forms. Respondent’s proposal shall remain open for acceptance by NYCEDC and shall remain firm and binding upon the respondent for at least sixty (60) days after the date on which the proposals are received by NYCEDC, except that NYCEDC may by written notice to the respondent extend that date for an additional forty-five (45) days.

7.2 **News Releases.** Recipients of this RFP shall make no news or press release pertaining to this RFP or anything contained or referenced herein without prior written approval from NYCEDC. All news and press releases pertaining to this RFP must be made in coordination with NYCEDC.

7.3 **Investigations/Derogatory Information.** The respondent, the members of its Consultant Team, and all officers, principals, principal shareholders, partners and members thereof, if applicable, must complete a background questionnaire and shall be subject to investigation by NYCEDC and the City’s Department of Investigation. The selection of a respondent may be rejected or revoked, or the Contract, if awarded, terminated for cause, in NYCEDC’s sole discretion, in the event any materially derogatory information is revealed by such investigation or otherwise including, without limitation, that any such persons or any other persons substantially involved in the respondent’s activities has committed any of the acts or omissions specified as the grounds for debarment in the City’s *Procurement Policy Board Rules*.

7.4 **Freedom of Information Law.** All proposals submitted to NYCEDC in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York (“FOIL”). A respondent may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm such entity’s competitive position. This characterization shall not be determinative, but will be considered by NYCEDC when evaluating the applicability of any exemptions in response to a FOIL request.

7.5 **Costs.** NYCEDC shall not be liable for any cost incurred by the respondent in the preparation of its proposal or for any work or services performed by the respondent prior to the execution and delivery of the Contract. NYCEDC is not obligated to pay any costs, expenses, damages or losses incurred by any respondent at any time unless NYCEDC has expressly agreed to do so in writing.

7.6 **NYCEDC Rights.** This is a “Request for Proposals” and **not** a “Request for Bids”. NYCEDC shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual proposals. Notwithstanding anything to the contrary contained herein, NYCEDC reserves the right to take any of the following actions in connection with this RFP: amend, modify or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any respondents to this RFP; award a contract to as many or as few or none of the respondents as NYCEDC may select; accept or reject any or all proposals received in response to this RFP; extend the deadline for submission of proposals; negotiate or hold discussions with one or more of the respondents; permit the correction of deficient proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP with respect to one or more respondents; reject any or all proposals and cancel this RFP, in whole or in part, for any reason or no reason, in NYCEDC's sole discretion. NYCEDC may exercise any such rights at any time, without notice to any respondent or other parties and without liability to any respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a proposal or otherwise. All proposals become the property of NYCEDC.

7.7 **Applicable Law.** This RFP and any Contract, Subcontract or any other agreement resulting herefrom are subject to all applicable laws, rules, regulations and executive orders, policies, procedures and ordinances of all Federal, State and City authorities, as the same may be amended from time to time, including without limitation, equal employment opportunity laws.

7.8 **Modifications and Questions.**

7.8.1 NYCEDC will advise RFP respondents of any modifications to this RFP by posting them on the Website. (See Part I, Section 2.2.4.4.) Nothing stated at any time by any representative of NYCEDC or of any other entity shall effect a change in, or constitute a modification to this RFP unless posted on the Website or confirmed in writing by NYCEDC.

7.8.2 Respondents may submit questions and/or request clarifications from NYCEDC by submitting them *in writing* to the Recipient at the Recipient’s Mailing Address or E-Mail Address listed in the RFP Summary (Part I, Section 2.2.6). All questions and requests for clarifications must be submitted no later than the Question/Clarification Deadline listed in the RFP Summary (Part I, Section 2.2.4.1). Any questions or requests for clarifications received after this date will not be answered. All questions received through the Question/Clarification Deadline will be answered no later than the Question Response Date listed in the RFP Summary (Part I, Section 2.2.4.3), and NYCEDC shall post such answers on the Website, so as to be available to all respondents, if NYCEDC determines that such answers provide material clarification to the RFP.

7.8.3 Respondents are reminded to check the Website periodically to view updated information and answers to questions posed by other respondents.

7.8.4 While NYCEDC may send Notices, addenda or other information related to this RFP to respondents via e-mail alerts or otherwise in writing, such e-mail alerts and other written materials shall be considered courtesy copies only. In the event any conflict exists

between any information set forth on the Website and any Notice, addendum or other information provided to a respondent by NYCEDC in writing via e-mail or otherwise, the information set forth on the Website will govern and be definitive. NYCEDC is not obligated to provide the respondent with any Notices, addendum or other information that appears on the Website in writing, and the fact that NYCEDC may have sent one or more e-mails, Notices, addenda or other written information to a respondent shall not be deemed to imply that NYCEDC has any duty or obligation to continue to do so.

7.9 **City Not a Party**. The City is not a party to this RFP, has made no representation to any prospective respondent and shall have no liability whatsoever in connection with this RFP.

7.10 **Brokerage Fees or Commissions**. The City and NYCEDC shall not be obligated to pay any fee, cost or expense for brokerage commissions or finder's fees with respect to the execution of the Contract. The respondent agrees to pay the commission or other compensation due to any broker or finder in connection with the Contract, and to indemnify and hold harmless the City and NYCEDC from any obligation, liability, cost and/or expense incurred by the City or NYCEDC as a result of any claim for commission or compensation brought by any broker or finder in connection with the Contract.

7.11 **Proposals From Principals**. Only proposals from principals and authorized officers will be considered responsive.

7.12 **Disclaimer**. NYCEDC and the City, and their respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, NYCEDC and the City do not warrant or make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or any other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaim any liability for any technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

7.13 **Protest Procedures**. The procedures set forth in this section shall apply to all protests (collectively, "Protests" and each individually, a "Protest") related to this procurement. NYCEDC will not entertain any Protest that is untimely or fails in any manner to comply fully with the procedures set forth in this section.

7.13.1 **Types of Protests**. There are three types of procurement Protests:

7.13.1.1 Pre-Proposal Protest: A protest submitted prior to the Submission Deadline to challenge the notice procedures followed by the Corporation;

7.13.1.2 Pre-Award Protest: A protest submitted after the Submission Deadline but before Contract execution; and

7.13.1.3 Post-Award Protest: A protest submitted after the Contract has been executed, but only to the extent that the protest is based on newly discovered information that was not available prior to execution of a Contract.

7.13.2 Submission of Protests/Deadlines. All Protests must be in writing and must be submitted in accordance with the following timeline for the following types of Protests:

7.13.2.1 A Pre-Proposal Protest must be submitted at least two (2) business days prior to the Submission Deadline set forth in Part I, Section 2.2.6.3 of the RFP;

7.13.2.2 A Pre-award Protest must be submitted five (5) business days from the later of receipt of Notice of the Corporation's contingent award of the Contract and the date proposals are made publicly available; and

7.13.2.3 A Post-award Protest must be submitted five (5) working days from the date the protesting party knew or should have known the newly discovered evidence that serves as the grounds of its Protest.

A Protest will be considered submitted when the Protest is received by the Corporation.

7.13.3 Contents of Protest: The Protest should include, without limitation, the following information:

7.13.3.1 name, address and telephone number of the protester;

7.13.3.2 appropriate identification of the procurement, including the Contract Number;

7.13.3.3 statement of the basis of the Protest;

7.13.3.4 supporting exhibits and documentary evidence to substantiate the grounds for the Protest; and

7.13.3.5 form of relief requested.

7.13.4 Address for Submission of Protests:

NYCEDC
110 William Street
New York, NY 10038
Attention: Maryann Catalano, Senior Vice President, Contracts

7.13.5 Method of Submission: By Hand or U.S. Mail

7.13.6 Envelope: The envelope enclosing the Protest must be clearly labeled "PROTEST" and must list the Contract Number to which the Protest relates.

7.13.7 Additional Information: The Corporation may request that the protestor submit additional information that it may need in order to consider the Protest. Any additional

information requested by the Corporation must be submitted within the time period established by the Corporation in order to expedite consideration of the Protest. Failure of the protester to comply with a request for information within the specified time period will result in a resolution of the Protest without consideration of any information subsequently submitted by the protester in an untimely manner.

7.13.8 Determinations. The President or his/her designee has the authority to make a final determination. The Corporation will respond to each substantive issue in the Protest. The Corporation may, in its sole discretion, meet with the protesting respondent and any affected party to discuss the Protest. The Corporation shall have the right to take such appropriate action as may be in the best interests of the Corporation and the City in light of the determination.

The Corporation's determination shall be final. The respondent shall have been deemed to have received NYCEDC's determination notice no later than five (5) days from the date of mailing or upon delivery, if delivered by hand of NYCEDC's determination.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
MAYOR'S OFFICE OF ENVIRONMENTAL REMEDIATION
REQUEST FOR PROPOSALS
FOR THE PROVISION OF ON-CALL ENVIRONMENTAL
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NYCEDC CONTRACT NO. 3692XXXX
PROJECT CODE NO. 3692**

**PART III
SPECIFIC REQUIREMENTS**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
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**PART III
SPECIFIC REQUIREMENTS**

1. STRUCTURE AND CONTENT.

In order to be considered responsive, your proposal must be organized and include all of the items as listed below. If Part I, Section 2.2.7 indicates that:

- M/WBE Participation Goals **are not** applicable to this RFP, the proposal must be submitted in **three (3) sealed envelopes**
- M/WBE Participation Goals **are** applicable to this RFP, the proposal must be submitted in **four (4) sealed envelopes**.

The contents of the envelopes must be as follows:

1.1 **Envelope # 1 [Required for All Proposals]**. In one sealed envelope, labeled as required by Part I, Section 2.2.6.1.1 place the following:

1.1.1 Respondent's Proposal Certification Form, attached hereto at Exhibit 1.1

1.1.2 A statement of your approach to the Services that clearly demonstrates your understanding of the Scope of Services and your ability to manage and complete multiple projects in a timely and cost-efficient manner. The proposal must include a detailed statement of your approach and ability to provide the required Services and Work Product including, but not limited to a schedule for completing all aspects of the Services. **In order to facilitate the same, Envelope #1 must include a description of your approach to Sample Tasks A through I, inclusive, set forth in Exhibit 1.3.** It is imperative that the proposal includes a list and detailed explanation of the extent of all work or services to be performed by Subcontractors.

1.1.3 Proposals should demonstrate clearly that the respondent is capable of and experienced in providing all of the Services necessary for the complete performance of the Contract.

1.1.4 The proposal should contain a description of the respondent's organization, including a history of the firm, a description of all subsidiaries and affiliates, an organization chart indicating the level of responsibility of all personnel who are expected to provide Services, and the name and location(s) of business of the respondent. This should be accompanied by, to

the extent known, the names and resumes of all individuals and entities that will be performing the Services under the Contract including, without limitation, all personnel, Subcontractors and other entities or individuals performing and/or supervising the Services, and the respondent's proposed staffing schedule. Please include the addresses, phone and fax numbers, e-mail addresses, designated roles, and relevant experience and expertise for the same.

1.1.5 The respondent shall make the following statements and representations as part of its proposal:

1.1.5.1 That the respondent has examined all parts of this RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.

1.1.5.2 That the respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation for the performance of the Services.

1.1.6 The respondent should provide a description of services it has previously provided to governmental and quasi-governmental organizations with similar requirements to those contained herein. Written statements of reference or the names, addresses and telephone numbers of administrators or contract officers, who can explain the respondent's involvement and the scope of services, should be included. Information concerning personnel assignment and contract duration should be described.

1.1.7 If the Scope of Services (Appendix B, Part III of the Contract) permits payment of Allowable Additional Costs, the respondent should provide a list of anticipated Allowable Additional Cost items, excluding costs for these items.

1.1.8 If Respondent is a joint venture, response must include a copy of the joint venture agreement.

1.1.9 Outside Funding Compliance Certifications annexed at Exhibit 1.2 of this RFP.

1.1.10 **Do not include in this portion of your proposal any costs or fees associated with the above items.** Costs and fees should be included in a separate envelope. (See Part III, Section 1.2 below.)

1.1.11 **Do not include in this portion of your proposal your Doing Business Data Form.** This form should be included in a separate envelope. (See Part III, Section 1.3 below.)

1.1.12 **Do not include in this portion of your proposal your M/WBE Forms.** Your M/WBE Forms should be included in a separate envelope. (See Part III, Section 1.4 below.)

1.2 **Envelope #2 [Required for All Proposals]**. In a second sealed envelope labeled as required by Part I, Section 2.2.6.1.2 place complete fee and cost schedules for all Services. All fee and cost schedules should be submitted in the forms attached hereto as Exhibit 2 to this RFP. NYCEDC may not consider fee and cost schedules that do not follow the prescribed formats.

Please note that there are two sections of the Price Proposal Form:

1.2.1 The first part requires you to provide the costs for specific items related to the Sample Tasks enumerated therein.

1.2.2 The second part of the Price Proposal Form requires you to list the staff intended to be employed on the Sample Tasks and the respective fees therefor.

1.2.3 **DO NOT INCLUDE YOUR APPROACH TO THE SAMPLE TASKS IN ENVELOPE #2. THE APPROACH TO THESE SAMPLE TASKS MUST BE PLACED IN ENVELOPE #1. ONLY YOUR PRICE PROPOSAL FOR THE SAMPLE TASKS ARE TO BE SUBMITTED IN ENVELOPE # 2.**

1.3 **Envelope #3 [Required for All Proposals]**. In a third sealed envelope labeled as required by Part I, Section 2.2.6.1.3 place a complete and accurate Doing Business Data Form in the form as described in Exhibit 3 to this RFP.

1.4 **Envelope #4 [Proposals Subject to M/WBE Forms Only]**. If Part I, Section 2.2.7 sets forth M/WBE Participation Goals for this Contract or for future tasks, in a fourth separate sealed envelope labeled as required by Part I, Section 2.2.6.1.4 place a completed and signed M/WBE Narrative Form attached hereto at Exhibit 4.

1.5 **Non-compliant Proposals**. In furtherance of and without limiting NYCEDC's rights as set forth in Part II, Section 7.6 of this RFP, non-compliant proposals may, in NYCEDC's sole discretion, be considered "not responsive" and may be rejected by NYCEDC including, without limitation, proposals that are:

1.5.1 not enclosed in separate sealed envelopes as aforesaid;

1.5.2 not properly labeled;

1.5.3 received by a person other than the designated Recipient; and/or

1.5.4 missing any information, certifications, supplemental forms or other documentation required by this RFP or by applicable law.

1.6 **Cover Letter**. You should include a cover letter summarizing key points of your proposal.

2. PRE-PROPOSAL INFORMATION MEETING. If Part I, Section 2.2.5 indicates that a pre-proposal information meeting will be held, you should attend the meeting in order to receive any additional information that may be distributed at the meeting. You will also be able to obtain answers to any questions you may have about the Services at the meeting. **If Part I, Section 2.2.5.5 indicates that attendance at the pre-proposal information meeting is mandatory and you do not attend the meeting, your proposal will not be accepted.** Please confirm your attendance to the Confirmation Contact identified in Part I, Section 2.2.5 indicating who from your office will attend. Except as may otherwise be permitted by Part I, Section

2.2.4.2, no other contact with NYCEDC or the City regarding issues raised by this RFP is permitted.

3. INTERVIEWS. Interviews may be held with any or all of the respondents after the receipt of proposals. Interviews with NYCEDC will be scheduled after its initial review of proposals.

4. SELECTION. NYCEDC will review each respondent's proposal in its totality. The selected respondent, if any, will be a respondent whose proposal is most advantageous to NYCEDC's goals. See Part I, Section 2.2.8 for an explanation of the criteria on which NYCEDC will base a selection.

5. SUBMISSION.

5.1 You must submit the number of sets of your proposal indicated in Part I, Section 2.2.6.2.

5.2 All proposals must be **delivered by hand or express mail or other nationally-known overnight courier**. Proposals received via facsimile or e-mail transmittal, or by regular mail will not be accepted.

5.3 **Proposals are due and must be received by the Recipient at the location designated in Part I, Section 2.2.6.6 no later than the Submission Deadline.** Please be sure to leave adequate time to get through building security. Proposals received after the indicated date and hour and/or at a different location may not be considered.

5.4 NYCEDC reserves the right, in its discretion, from time to time, to postpone the date for submission and opening of proposals. **Respondents are again reminded to check the Website periodically for updated information, which may include a notice of postponement.** Any proposal submitted prior to such notice may be withdrawn without prejudice.

5.5 Please note that you must respond to this RFP in order to be eligible to be considered for the award of the Contract for the Services pursuant to this RFP.

5.6 For more information, please contact the Recipient **in writing** at the Recipient's Mailing Address or at Recipient's E-mail address, all as identified in Part I, Section 2.2.6.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
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**EXHIBIT 1
TO
REQUEST FOR PROPOSALS

PROPOSAL FORMS**

Exhibit 1 –1

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
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**EXHIBIT 1.1
TO
REQUEST FOR PROPOSALS**

**RESPONDENT'S PROPOSAL CERTIFICATION FORM
[TO BE PLACED IN ENVELOPE #1]**

Submitted by

[Insert Name of Respondent] (The "Respondent")

Respondent, in accordance with and subject to all of the terms and conditions of the Request for Proposals pursuant to which this proposal (the "Proposal") is being submitted, agrees that it will provide in consideration of the price(s) set forth in the Fee and Cost Schedule, all of the Services set forth in the Scope of Services in accordance with the Contract, and to accept in full compensation therefore (including without limitation all overhead, profit, taxes and other charges and expenses applicable thereto), the price(s) stated in the Fee and Cost Schedule. The Fee and Cost Schedule, is simultaneously being delivered to you in a separate sealed envelope and is incorporated herein and made part hereof.

Respondent makes the following statements and representations as part of its Proposal:

- (a) That the Respondent has examined all parts of the RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.
- (b) That the Respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation of the performance of the Services.

In order to induce NYCEDC to accept this Proposal, Respondent hereby agrees to abide by all of the terms and conditions of the Contract including, without limitation, all representation and warranties set forth therein.

WHEREFORE, the Respondent submits this Proposal to NYCEDC.

[INSERT NAME OF RESPONDENT]

Signed by: _____

Printed Name: _____

Title: _____

Respondent's Address: _____

Notice Address (if different from above): _____

Respondent's Telephone Number: _____

Respondent's Fax Number: _____

Respondent's E-mail Address: _____

Respondent's Tax I.D. Number: _____

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EXHIBIT 1.2

TO

REQUEST FOR PROPOSALS

OUTSIDE FUNDING COMPLIANCE CERTIFICATIONS

1.2(a) – LOBBYING CERTIFICATIONS

**1.2(b) - GOVERNMENTWIDE DEBARMENT AND SUSPENSION
CERTIFICATIONS**

1.2(c) – DRUG FREE WORKPLACE

[TO BE PLACED IN ENVELOPE #1]

In General. Payments for the Services will be funded in whole or in part by the Funds identified in Part I, Section 2.2.9 of this RFP). The respondent shall be responsible for submitting all certifications, schedules, documents and any other materials required in connection with such funding. The Consultant will be required to meet and adhere to all applicable Legal Requirements of the Contract in performing the Services including, without limitation, those set forth in the Applicable Requirements (Appendix J) and the Applicable Agreements (Appendix K) in Part III of the Contract. **By submitting a proposal the respondent acknowledges and agrees that it has read and fully understands all such requirements and agrees to comply fully with the same.**

Compliance Certifications. The Contract will be funded with the Funds identified in Part I, Section 2.2.9.3. The receipt of governmental funds is conditioned upon the respondent's compliance with certain Federal, State and/or City provisions with respect to the submission of proposals. If Part I, Section 2.2.9.1 so indicates, all respondents shall complete and submit with their proposals compliance certifications annexed to this RFP, if any, certifying the respondent's compliance with federal statutes and regulations regarding Drug Free Workplace, Lobbying and Government Debarment and Suspension.

1.2(a) – LOBBYING CERTIFICATIONS

DISCLOSURE OF LOBBYING ACTIVITIES

I _____ hereby certifies on behalf of _____
name and title of company representative name of company

will file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

REQUIREMENTS REGARDING LOBBYING ACTIVITIES ON FEDERAL AID CONTRACTS

Federal regulations require that any contractor or firm intending to do business with the Federal government, or wishing to participate in any Contract funded with Federal money, disclose to the Federal government any lobbying activities which that Contractor or firm may have undertaken. More specifically, and in addition to disclosing lobbying efforts of any kind, any prospective contractor or firm who expects to perform work funded with Federal moneys must certify that none of this lobbying activity has been paid for with Federal funds of any kind.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <p>A. contract B. grant C. cooperative agreement D. loan E. loan guarantee F. loan insurance</p>	<p>2. Status of Federal Action:</p> <p>a. bid/ offer/ application initial award post-award</p>	<p>3. Report Type:</p> <p>(b) initial filing (c) material change For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity.</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known:</i></p> <p>Congressional District, <i>if known:</i></p>		<p>5. If Reporting Entity in No. 4 is Subawardee,</p> <p>Enter Name and Address of Prime:</p> <p>Congressional District, <i>if known:</i></p>
<p>6. Federal Department/ Agency:</p>	<p>7. Federal Program Name/ Description:</p> <p>CFDA Number, <i>if applicable:</i></p>	
<p>8. Federal Action Number, <i>if known:</i></p>	<p>9. Award Amount, <i>if known:</i></p> <p>\$</p>	
<p>10. a. Name and Address of Lobbying Registrant: <i>(if individual, last name, first name, MI):</i></p>	<p>b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI.):</i></p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is material representation of facts upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p> <p>Date: _____</p>	

INSTRUCTIONS FOR COMPLETION OF SF. LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/ or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number, the application/ proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/ loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

b) Enter the full names of individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/ her name, title and phone number.

1.2(b) GOVERNMENTWIDE DEBARMENT AND SUSPENSION CERTIFICATIONS

**CERTIFICATION OF A CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND
OTHER RESPONSIBILITY MATTERS**

The Contractor _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
5. The Contractor agrees to provide NYCEDC with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to NYCEDC.

NOTE: If for any reason the Contractor is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this certification.

THE CONTRACTOR, _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

Date

CERTIFICATION OF A SUBCONTRACTOR/SUPPLIER REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Subcontractor/Supplier _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
5. The Subcontractor agrees to provide the Contractor with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to NYCEDC.

NOTE: If for any reason the Subcontractor/Supplier is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this certification.

THE SUBCONTRACTOR/SUPPLIER, _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

Date

Contractor Note: Contractor must require all Subcontractors/Suppliers to complete this certification and Contractor shall submit the certifications to NYCEDC as they are received.

1.2(c) – DRUG FREE WORKPLACE

In order to maintain a drug-free workplace, the Contractor shall:

- Publish statements notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- Establish an on-going drug-free awareness program to inform employees about the dangers of drug abuse in the workplace. the Contractor's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance program; and the penalties that may be imposed upon the employee and participant for drug abuse violation occurring in the workplace.
- Require that each employee working under this Agreement be given a copy of the statement described above.
- Notify the employee in such statement that as a condition of employment under the grant, the employee will abide by the terms of the statement and notify the Contractor in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
- Provide notice in writing within 10 calendar days after having received notice from an employee or otherwise receiving actual police notice of such conviction to the Department and to Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12244. Notices shall include the identification number(s) of each affected grant.
- Take one of the following actions, within thirty (30) calendar days of receiving notice, with respect to any employee who is convicted:
 - appropriate personnel action against such employee, up to and including termination, consistent with the Requirements of the Rehabilitation Act of 1973, as amended; or
 - require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- Make a good faith effort to continue to maintain a drug-free workplace through implementation of all of the foregoing.
- Provide a written certification of the foregoing for each of its training sites.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
MAYOR'S OFFICE OF ENVIRONMENTAL REMEDIATION
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FOR THE PROVISION OF ON-CALL ENVIRONMENTAL
CONSULTING AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 3692XXXX
PROJECT CODE NO. 3692**

**EXHIBIT 1.3
TO
REQUEST FOR PROPOSALS**

SAMPLE TASKS

[TO BE PLACED IN ENVELOPE #1]

SAMPLE TASKS*

** Your responses will be reviewed on a qualitative basis. If similar Tasks are to be undertaken as Project Assignments under the Contract, they will be described in more depth in support of a more precise Request for Proposals for a Project Assignment*

A. Conduct a Phase I ESA

You are tasked by OER to conduct a Phase I Environmental Site Assessment on a privately owned site in New York City, with the consent of the site owner. The site is 30,000 square feet in size and is occupied by a 20,000 square-foot vacant 1-story warehouse building and a 10,000 square-foot undeveloped parking area. The Site is surrounded by commercial warehouses and several elderly neighbors say that the property has been industrial since it was developed in the late 1800's.

- What steps would you take to perform the Phase 1?
- Who would perform the work?
- How long would the phase 1 take?
- Generally how much would it cost?
- Who would you contact and what sources would you pursue for information?
- Explain the expertise you have to perform such work.

B. Perform a subsurface environmental investigation

You are tasked by OER to perform a remedial investigation of a property that is planned to be used for affordable senior housing in the Bronx. The site is a former gas station on a 0.5-acre lot with a service area and two visible service bays. The station was operated from at least 1951 until the property was purchased last year. There are no records of spills on the site and there are no records of closure of any tanks. The elevation of the property is 55 feet above sea level and there is a sharp 20 foot rise in topography in the rear of the property. The goal is to develop a cleanup plan sufficient to enable enrollment in the State Brownfield Cleanup Program. Discuss your proposal for the RI for two scenarios, one where the goal is maximum speed of work and development of an approved cleanup plan and the second where the goal is minimizing cost of the RI.

- What equipment would you use?
- What factors would you consider in developing this plan?
- How might the plan be adjusted to deliver quality outcome while addressing the goals established for the project?

- What testing would you perform?
- What guidance documents would you follow?
- Roughly how many samples would you collect?
- What media would you sample?
- What permits might you need to obtain?
- What health and safety measures would you engage?
- What other factors would you consider?
- Explain the expertise you have to perform such work.

C. Develop an estimate of the cost of remedial action for two sites.

You are tasked by OER to provide a cost estimate for remedial action at two brownfield sites to be enrolled in the State BCP in order for OER to provide a financial support offering to fund the remedial action for eventual use for affordable and supportive housing development projects.

Site A is 30,000 square feet in area. Site has two 10,000 gallon gasoline tanks and a 150 gallon waste oil tank and two service bays with hydraulic lifts. Site has elevated PCE (above 350 ug/m³) and TCE (1,200 ug/m³). Development consists of excavation to 12 feet below grade for construction of a cellar across the entire property. The stratigraphy of the Site consists of 6 feet of historic fill material underlain by clean native material. Water table is 15 feet deep.

Site B is 30,000 square feet in area. Site has 18 feet of historic fill and development plans call for slab on grade construction. The building will occupy 60% of the property with parking and open space evenly distributed on remaining area. Several hotspots have been identified for lead and arsenic beneath the building area. Soil vapor samples have not yet been collected but groundwater and soil are complete and show no evidence of chlorinated VOCs. Site has been a parking area for 20 years and was non-differentiated commercial prior to that. Planned development is high rise residential affordable housing with commercial at grade.

- Explain how costs estimates might change depending on the nature of proposed redevelopment.
- Show how your cost estimates would be derived.
- How would your estimates be qualified?
- How variable are these estimates and what factors contribute to this variability?
- How would you characterize the variability in your estimate?
- What options are available for cleanup and how would they affect cost?

Exhibit 1 –15

- Explain the expertise you have to perform such work.
- D. Perform assistance to community based organization in identifying strategically located brownfields in their neighborhood; assist in the development of the community vision for reuse of the property; and establish a plan to assist the CBO in implementing their vision for cleanup and reuse of the property**

You are tasked by OER to deliver a program to assist a Community Brownfield Planning community based organization achieve local community goals for the identification of three strategic sites for community based development, as defined below. Assume a low income community with joblessness and poverty and common occurrence of brownfields and vacant and underutilized land. Assume any brownfield sites selected are privately owned and have a history of limited owner engagement in the community. Assume community brownfield planners are interested in both affordable housing and development of industrial jobs and have strong planning skills but no past experience in community development, although community based developers operate extensively in the borough. Assume financial resources are very limited and all of consultation work for tasks in the program have to be performed for less than approximately \$100,000. Generally this is subdivided as follows: \$10,000-15,000 to identify strategic brownfield sites; and up to \$25,000 for each strategic site to perform pre-development analyses (generally up to \$10,000) and the remainder to perform Phase 1 and Phase 2 studies of each strategic site. Assume government resources are ultimately available to assist for the final development step through a very competitive process but the project depends on your consultation services to establish an efficient and cost effective approach in order to make these projects competitive for that funding.

Explain how you would assist community brownfield planners (CBP) and understand (1) the occurrence of brownfields in their neighborhood that could become strategic properties for community based development and how to select three strategic brownfield sites to establish a community development plan; (2) how you would assist CBP in development of specific plans for redevelopment and reuse of the three strategic brownfield sites; and (3) how you would assist CBP in implementing (i.e. financing and constructing) the community based development plans established for the three strategic brownfield sites.

Explain your strategy for each task and consider:

- What resources, programs and/or incentives would you recommend to assist CBP in achieving their goals in each of these tasks?
- How would you allocate available funds for these tasks?
- If you had the opportunity to do this work in 10 communities over a four year period, how would you alter your approach?
- Explain the main factors that would be relevant to each of these tasks.

- Explain any resources that you could help the CBP independently obtain to assist this effort, including those that could contribute funding resources available to you to perform higher level consultation services.
- Explain the impediments to this work.
- Explain the opportunities of this work.
- What other government or private resources are available to assist in this process and how could you help leverage this assistance?
- What sort of property, land use or other analyses would you perform?
- What kind of partnerships would you encourage?
- Explain the expertise you have to perform such work.

E. Performance of maintenance and expansion of functionality of web-based applications including EPIC, SPEED and FAST.

You are tasked by OER to provide basic maintenance on SPEED 2.0, EPIC Community and EPIC Environment, three new web applications established by OER.

- How would you proceed in performing this task?
- What are the impediments associated with performance of such work for a NYC agency?
- Explain the expertise you have to perform such work.

F. Assist with the performance of a brownfield conference to be held by OER in NYC

You are tasked by OER to provide support services for a city-wide conference for community brownfield planners, developers and the environmental industry at large. The conference will be attended by 400 people and OER has arranged for a venue.

Explain the recommendations you would make to OER and the role that your firm could play to make the event a success.

G. Assist OER in its duties in regulatory duties for oversight of the NYC Voluntary Cleanup Program

You are tasked by OER to provide technical assistance on program matters associated with remedial program. Elements will include screening-type review of site management plan certification documents for a cleanup program. This will involve review of documents for completeness and compliance with established protocols established by OER and under the oversight of OER staff and may include site inspection to confirm results.

- Please explain how you would prepare for and approach such a task.

- How would you execute this task?
- How would you cost out these services?
- What expertise do you have to perform such work?

In addition, you are tasked with preparation of an annual report including the presentation of various analytics and metrics.

- Please explain how you would prepare for and approach such a task.
- What expertise do you have to perform such work?

H. Grant Writing

You are tasked by OER to develop a strategy to apply for and successfully compete for grants from federal, state and/or regional funding sources.

- Please explain how you would identify potential grant sources.
- Please explain your past experience in grant writing

I. Multimedia and public outreach

You are tasked by OER to produce a video to provide public education on the practice of remedial action that can be part of OERE's "Cleaning Up NYC" video series. Assume available funding is limited.

- Please explain how you would prepare for and approach such a task.
- How would you execute this task?
- How would you work to limit costs of this task?
- What expertise do you have to perform such work?

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NYCEDC CONTRACT NO. 3692XXXX PROJECT CODE NO. 3692**

**EXHIBIT 2
TO
REQUEST FOR PROPOSALS**

PRICE PROPOSAL

1. The Respondent shall complete and submit a Price Proposal, substantially in the forms included on the following pages. Your Price Proposal must include the following:
 - a. Payment Schedule listing:
 - i. Unit Costs and Total Costs for each itemized Sample Task in each Category, and any assumptions, comments or notes upon which these costs are based;
 - ii. Sub-Totals listed for each Category; and
 - iii. Grand Total for all Tasks in all Categories.
 - b. A Staff and Fee Schedule (as described below).
2. The submitted Payment Schedule shall cover all Services and Tasks described in the RFP and the Contract Draft, as designated in the attached Price Proposal, and shall provide a breakdown of staff costs and Allowable Additional Costs per Task.
3. The Staff and Fee Schedule must list the names, position and hourly rates and, if applicable, multipliers for the staff Respondent proposes to use to perform the Services.
4. The Payment Schedule and Staff and Fee Schedule are for evaluation purposes only and shall not be used to determine payments or to define the Scope of Work. If selected, prior to Contract execution, the Consultant will provide detailed Payment Schedule and Staff and Fee Schedule that may be utilized for payment purposes.
5. **PLEASE BE SURE THAT YOU SUBMIT YOUR PRICE PROPOSAL IN A SEPARATE ENVELOPE [ENVELOPE #2]**

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Submitted by

[Insert Name of Respondent] (The "Respondent")

PROPOSED PRICES FOR SAMPLE TASKS

Please provide best estimates to your knowledge.

<u>Task</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Assumptions / Comments / Notes</u>
I. PHASE 1 ENVIRONMENTAL SITE ASSESSMENT				
Phase I ESA (< 1 acre or 3-story structure)	Each			
Phase I ESA (1-3 acres or 3- to 8-story structure)	Each			
Phase I ESA (>3 acres or 8-story structure)	Each			
Title Search	Each			
Sanborn Map Purchase	Each			
Environmental Database Report Purchase (1-acre site)	Each			
Aerial Photograph Purchase	Each			
Site Reconnaissance	Day			
Report Preparation (< 1 acre or 3-story structure)	Each			
Report Preparation (1-3 acres or 3- to 8-story structure)	Each			
Report Preparation (>3 acres or 8-story structure)	Each			
Sub-Total Phase 1 ESA				
II. PHASE 2 ENVIRONMENTAL SITE ASSESSMENT				
Work Plan Preparation	Each			
QAPP Preparation	Each			
HASP Preparation	Each			
Utility Clearance				
Hand Augering	Day			
Ground Penetrating Radar Survey	Day			
Vac Tron	Day			
Soil Boring Installation and Soil Sampling				
Boring Installation	LF			
Field Sampling	Day			

Exhibit 2 -2

VOCs	Sample			
SVOCs	Sample			
Pesticides	Sample			
PCBs	Sample			
Metals	Sample			
IDW Drum Removal and Disposal	Drum			
Well Installation, Development and Groundwater Sampling				
Well Installation	LF			
Well Installation Oversight	Day			
Equipment Rental	Day			
Well Development	Each			
Field Sampling	Day			
VOCs	Sample			
SVOCs	Sample			
				<u>Assumptions</u>
				<u>/ Comments</u>
				<u>/ Notes</u>
<u>Task</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total Cost</u>	
Pesticides	Sample			
PCBs	Sample			
Total Metals	Sample			
Dissolved Metals	Sample			
Well Water Elevation Measurement	Day			
IDW Drum Removal and Disposal	Drum			
Soil Gas Probe Installation and Soil Gas Sampling				
Soil Gas Probe Installation	LF			
Field Sampling	Day			
TO15	Sample			
Report Preparation (1-acre site)	Each			
Sub-Total Phase 2 EAS:				

III REMEDIATION				
Remedial Action Plan Preparation (1-acre site)	Each			
HASP Preparation	Each			
H&S Equipment	Day			
Air Monitoring	Day			
Excavation	CY			
Backfill with Clean Fill	CY			
Storage Tank Removal	Each			
Storage Tank Closure	Each			
Endpoint Sampling	Sample			
Dewatering	Day			
VAC Truck Removal	Day			
Soil Vapor Extraction System	LS			
Sub-slab Venting System (1-acre site)	LS			
Transport and Disposal of Petroleum-Contaminated Waste	CY			
Transport and Disposal of Hazardous Waste	CY			
Transport and Disposal of Non-Hazardous Wastewater	Gallon			
Sub-Total Remediation:				
IV. GRANT WRITING				
Preparation, Submission and Processing of Grant Applications	Each			
Sub-Total Grant Writing:				
Grant Total (Add Subtotals for Tasks I-IV, inclusive, above):				

STAFF AND FEE SCHEDULE

Name	Title	Company Equivalent Names	Hourly Rates	Multipliers
	Principal in Charge			
	Project Manager			
	Senior Engineer			
	Senior Scientist			
	Senior Planner			
	Junior Engineer			
	Junior Scientist			
	Junior Planner			
	Specialist			
	Administrative / Support Staff			

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**EXHIBIT 3
TO
REQUEST FOR PROPOSALS
DOING BUSINESS DATA FORM**

The Consultant shall complete and submit a Doing Business Data Form which can be found at www.nycedc.com in the following section:

“Resource/Vendor Resources”

If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms. The text of said section provides as follows:

Doing Business Accountability Project Forms

Local Law 34 of 2007 (LL 34) requires the creation of a database containing information about entities that do business with the City as defined by the law, and principal officers, owners and senior managers of these entities. This information will be collected on Doing Business Data Forms that are distributed, collected and reviewed by agencies, and forwarded to the Doing Business Accountability Project (DBAP) at MOCS for processing. Collected data will be used to identify entities and people who are subject to LL 34's limitations on campaign contributions in municipal elections.

If you have any questions or concerns, please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.

[Doing Business Form](#)

[Doing Business Form-Real Property](#)

[Q&A General](#)

[Q&A Real Property](#)

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**EXHIBIT 4
TO
REQUEST FOR PROPOSALS
M/WBE FORMS**



M/WBE Narrative Form

NYCEDC is dedicated to furthering the participation of minority- and women-owned businesses in its work. Each RFP Respondent must submit this form together with its proposal to indicate how M/WBE participation will be achieved if it is selected.

Construction Manager/Lead Consultant: [Click here to enter text.](#)

Project Number: [Click here to enter text.](#)

A. Establishment of numerical MWBE contracting utilization goals or targets

The Participation Goal Range for this contract is set in Part I Section 2.2.7 of the RFP. Please indicate the goal you commit to reaching on this contract by entering your M/WBE Participation Commitment Percentage below Please note, if you are selected this goal will become part of your contract.

MWBE Participation Commitment Percentage*: [Click here to enter text.](#)

*M/WBE Participation Commitment Percentage = Projected Payments to MWBEs/Total Contract Payments

B. Prequalified list information (Construction Management contracts only)

What is the size of your list of prequalified subcontractors? [Click here to enter text.](#)

How many M/WBE's are on your list of prequalified subcontractors? [Click here to enter text.](#)

Please fill out table below so that we may determine how well M/WBEs represented on your prequalified list for trades that are key to this project.

	1. Trade	2. No. of Prequalified Contractors/Consultants for Trade	3. No. of Firms in Previous Column (#2) that is M/WBE
Key Trade #1			
Key Trade #2			
Key Trade #3			
Key Trade #4			
Key Trade #5			

C. List of Subcontractors (Retainers, On-Call and CM contracts)

Please separately attach the Subcontractors Participation Plan (SPP) listing all subcontractors, both M/WBE and non-M/WBE, that will be used on this contract. For CMs, list all the members of the team included in proposal. The SPP will be reviewed and rated based on:

- *Percentage of subcontractors who are certified as M/WBE with the appropriate agency*
- *Number of M/WBE firms on the SPP*

- *Type of work M/WBE firms will provide—Are they critical tasks integral to the project? Are they providing support services? Are there multiple firms on the SPP for a task that an MWBE is slated to provide?*

D. Strategies and methods that will facilitate participation by M/WBE firms

Please separately attach a narrative that lists the specific measures that will be taken to fulfill the M/WBE requirements of this contract and the goals established. Below are some recommended methods for engaging M/WBE firms. In the narrative, be sure to indicate which of the methods will be incorporated into your M/WBE outreach efforts as well as any additional strategies. These strategies should be specific and easily verifiable. Also include detailed information about any MWBE programming offered by your firm. Note that specific actions committed to in the narrative must be documented sufficiently so that proof of their application can be readily obtained. As this narrative will be a factor in selection, it is critical that consultants fulfill every aspect of the narrative set forth in the response to the RFP.

- Advertise opportunities for M/WBEs
- Hold direct subcontractors accountable to meeting Participation Goals
- Engage in direct outreach to M/WBEs
- Hold informational meetings with M/WBEs
- Work with M/WBE and community organizations to enhance outreach
- Reach out to vendors on the NYCEDC Interested Subcontractor List
- Seek assistance from NYCEDC Opportunity M/W/DBE staff
- Carve out specific work for M/WBE contractors
- Unbundle bid packages to engage more subcontractors

E. Provide the name and contact information of in-house M/WBE contact [Click here to enter text.](#)

E. Attestation

I acknowledge that all the information provided herein is true and correct. In addition, I confirm the following:

- I have read and understand the M/WBE requirements for this contract.
- I will make and thoroughly document Good Faith Efforts utilized in encouraging M/WBE participation.
- I understand that I must notify NYCEDC of any material changes to the information submitted herein.

X _____
Authorized Person

Date

Officer's Name, Title

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FOR THE PROVISION OF ON-CALL ENVIRONMENTAL
CONSULTING AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 3692XXXX
PROJECT CODE NO. 3692**

**EXHIBIT 5
TO
REQUEST FOR PROPOSALS
CONTRACT DRAFT
[SEPARATE ATTACHMENT]**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
MAYOR'S OFFICE OF ENVIRONMENTAL REMEDIATION
REQUEST FOR PROPOSALS
FOR THE PROVISION OF ON-CALL ENVIRONMENTAL
CONSULTING AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 3692XXXX
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DRAFT CONSULTANT CONTRACT

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
MAYOR'S OFFICE OF ENVIRONMENTAL REMEDIATION
REQUEST FOR PROPOSALS
FOR THE PROVISION OF ON-CALL ENVIRONMENTAL
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PART I SPECIFIC TERMS AND CONDITIONS

PART II GENERAL TERMS AND CONDITIONS

PART III APPENDICES

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
MAYOR'S OFFICE OF ENVIRONMENTAL REMEDIATION
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**PART I
SPECIFIC TERMS AND CONDITIONS**

New York City Economic Development Corporation (the "Corporation" or "NYCEDC") and the Consultant identified below, in consideration of the mutual covenants contained in this Contract (as defined below) and other valuable and good consideration, do hereby agree to all of the terms and conditions set forth in (i) these Specific Terms and Conditions (Part I) set forth immediately below, (ii) the General Terms and Conditions (Part II) annexed hereto and made a part hereof and (iii) the Appendices (Part III) annexed hereto and made a part hereof. Capitalized terms shall have the meaning set forth in Appendix A (Definitions) unless otherwise defined in this Contract or the context otherwise requires.

1. The Contract

- 1.1 **Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
- 1.2 **NYCEDC Contract No.** 3692XXXX
- 1.3 **Contract Date:** The date of the Contract is as of TBD
- 1.4 **Commencement Date:** TBD
- 1.5 **Term:** 5 years with two 1 year renewal options as set forth in section 5.1, below
- 1.6 **Maximum Contract Price:** TBD
- 1.7 **Project:** Mayor's Office of Environmental Remediation
- 1.8 **Project Site:** City-wide
- 1.9 **Allowable Additional Costs:** The Allowable Additional Costs are defined in Appendix B (Scope of Services) and the amount set forth in Appendix C (Payments). NONE
- 1.10 **Retainage:** NOT APPLICABLE
- 1.11 **Retainage Payment Date:** NOT APPLICABLE
- 1.12 **M/WBE Participation Goal:** _____%

2. Parties

- 2.1 **The Corporation:** New York City Economic Development Corporation, a not-for-profit corporation, organized under the laws of the State of New York.
- 2.2 **Director:** [INSERT NAME OF APPROPRIATE SVP OR EVP]
- 2.3 **The Consultant:** [_____], a [INSERT STATE CONSULTANT WAS ORGANIZED AND TYPE OF BUSINESS ENTITY,

e.g. a New York corporation (or partnership, LLP or LLC)], having an office at:

[ADDRESS: _____

_____]

[FEDERAL TAX ID# _____]

2.4 **Principal:** [INSERT NAME OF CONSULTANT’S MOST SENIOR OFFICER RESPONSIBLE FOR THE PERFORMANCE OF THE SERVICES]

2.5 **Person in Charge:** [INSERT NAME OF THE MEMBER OF THE CONSULTANT’S PROFESSIONAL STAFF WHO WILL HAVE PRIMARY RESPONSIBILITY TO PERFORM AND/OR SUPERVISE AND COORDINATE PERFORMANCE OF THE SERVICES]

3. **Notice Parties and Addresses**

3.1 **Notices to the Corporation:**

New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: General Counsel

with a copy to:

New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: [NAME: _____]

3.2 **Notices to the Consultant:**

[NAME: _____]

[ADDRESS: _____

Attn: [NAME: _____]

4. **Funding Source** The payments to be made to the Consultant by the Corporation pursuant to this Contract will be made from funds identified below and in accordance with the provisions of Appendices I, J and K. The Consultant agrees to comply with the provisions of each of such Appendices.

4.1 Type of Funds:

- 4.1.1 US EPA Grant Funds;
- 4.1.2 NYSDOS BOA Grant Funds;
- 4.1.3 New York State Regional Economic Council ; and
- 4.1.4 Any other City, State or federal funds made available for the Project.

4.2 Funding Agencies:

- 4.2.1 US EPA;
- 4.2.2 NYS DOS; and
- 4.2.3 Any other entity providing Funds for the Project.

4.3 Inspectors:

- 4.3.1 USEPA
- 4.3.2 US Comptroller General
- 4.3.3 NYSDOS
- 4.3.4 NYS Comptroller
- 4.3.5 Any other governmental agency or entity providing Funds for the Project

and/or this Contract.

4.4 Applicable Requirements: All Applicable Requirements and Legal Requirements related to any Funds provided for the Contract including, without limitation:

- 4.4.1 40 CFR Part 31, incorporated by reference at Appendix J;
- 4.4.2 All requirements set forth in the Applicable Agreements.

4.5 Applicable Agreements: Any agreement entered into by the City and/or NYCEDC with any governmental agency or entity related to any Funds provided for this Contract including, without limitation, the following:

4.5.1 Any agreement entered into by the City and USEPA related to USEPA Grant Funds provided for the Project including, without limitation, the following USEPA Cooperative Agreements with the following USEPA Assistance ID Nos. BF96281015, BF96281115, BF96287213, and BF96295712 (copies of which are appended as Exhibit 1 to Appendix K to the Contract;

4.5.2 Any agreement entered into by the City and NYSDOS related to BOA Grant Funds or other funds provided for the Project including, without limitation, the BOA Agreement No. C096013 appended as Exhibit 2 to Appendix K to the Contract Draft;

4.5.3 Any agreement entered into by the City and NYSREDC related to environmental or other land management including, without limitation, the NYSREDC Grant Program;

4.5.4 Any agreement entered into by the City and NYSDEC related to environmental or other land management including, without limitation, the Environmental Restoration Program and hazardous waste or other remediation; and

4.5.5 Any other agreement entered into by or among NYCEDC, the City, OER, other city agency, USEPA, US Department of Housing and Urban Development, FEMA, US Army Corps of Engineers, NYSDEC, NYSDOS or any other entity providing Funds for the Project and/or the Contract Draft.

5. **Special Provisions** The provisions set forth below are hereby added to and made part of, or deleted from this Contract, as indicated. In the event any conflict exists between any of the General Terms and Conditions (Part II) of this Contract and these special provisions, these special provisions shall govern.

5.1 Other Interested Parties:

- 5.1.1 USEPA
- 5.1.2 NYSDOS
- 5.1.3 the State of New York

5.2 Contract Term: The Contract Term shall be five (5) years from the Contract Date, subject to termination on any earlier date pursuant to Article 3 or any applicable extension period(s) (“Extension Period(s)”) pursuant to Sections 5.1.1 and 5.1.2 below.

5.2.1 Subject to the provisions of this Section 5.1, the Corporation shall have an option (the “First Option”) to renew this Contract and extend the initial five (5) year Term, from the date upon which it would otherwise expire, for a period of one (1) year (the “First Extension Period”), which option may only be exercised in the manner hereinafter set forth. Provided that this Contract shall then be in full force and effect and there shall not then exist any uncured default hereunder, the Corporation, in its sole discretion, may exercise the First Option to extend the initial Term for the First Extension Period, subject as aforesaid, by giving written Notice to the Contractor of its election to so extend at least thirty (30) days prior to the expiration of the initial Term. In the event that the First Option is exercised, the Term shall automatically be extended for the First Extension Period without the necessity for execution of any amendment, extension or renewal contract. The First Extension Period shall be upon all of the same terms, covenants and conditions as shall be in effect hereunder immediately prior to the commencement of the First Extension Period, except that there shall be one further option to extend or renew the Term following the First Extension Period.

5.2.2 Subject to the provisions of this Section 5.1, the Corporation shall have an option (the “Second Option”) to renew this Contract and extend the Term beyond the First Extension Period for a period of one (1) year (the “Second Extension Period”), which option may only be exercised in the manner hereinafter set forth. Provided that this Contract shall be in full force and effect and there shall not then

exist any uncured default hereunder, and provided further that the Corporation shall have exercised the First Option as provided hereunder, the Corporation, in its sole discretion, may exercise the Second Option to extend the Term from the date upon which it would otherwise expire for the Second Extension Period, subject as aforesaid, by giving written Notice to the Contractor of its election to so extend not later than thirty (30) days prior to the expiration of the First Extension Period. In the event that the Second Option is exercised, the Term shall automatically be extended for the Second Extension Period without the necessity for execution of any amendment, extension or renewal contract. The Second Extension Period shall be upon all of the same terms, covenants and conditions as shall be in effect hereunder immediately prior to the commencement of the Second Extension Period, except that there shall be no further option to extend or renew the Term.

This Contract may be executed in counterparts, all of which counterparts, when taken together, shall be deemed a fully executed instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the Contract Date hereinabove written.

**NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION**

[INSERT CONSULTANT NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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**PART II
GENERAL TERMS AND CONDITIONS**

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**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
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**PART II
GENERAL TERMS AND CONDITIONS**

The Corporation and the Consultant agree as follows:

**ARTICLE 1
PERFORMANCE OF SERVICES**

1.1 Services. The Corporation hereby retains and engages the Consultant and the Consultant agrees to perform the Services as described in **Appendix B** (Scope of Services), attached hereto.

1.2 Time for Performance of Services/Term/Delays and Force Majeure.

1.2.1 The Consultant shall commence the Services upon or promptly after the Commencement Date and shall complete the Services and each phase of the Services within the time or times stated for Final Completion as set forth in **Appendix B**, and in accordance with any directive given and Progress Schedule approved by the Corporation, unless this Contract is earlier terminated pursuant to Article 3 hereof.

1.2.2 This Contract shall be for the Term as set forth in Part I, Section 1.5 unless sooner terminated pursuant to Article 3 hereof.

1.2.3 If the Consultant has been delayed and as a result will be unable to complete performance fully and satisfactorily within the time fixed therefor, the Consultant may be granted an extension of time fixed for performance equal to the period the Consultant was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of the Director in his or her sole discretion. The decision of the Director as to the granting of the extension and its length shall be binding upon the Consultant.

1.2.4 Subject to the Corporation's determination and approval, the Corporation may extend the time or times for performance of the Services where such performance has been substantially obstructed, hindered or delayed by reason of acts of Force Majeure. The Consultant shall have no claim against the Corporation or the City for any loss or damage sustained by the Consultant nor for any extra compensation in the form of an increase in the Maximum Contract Price, or otherwise, through such delay, hindrance or obstruction.

1.3 Complete Work and Timing and Sequence/Meetings. It is the intent of the parties that the provisions of this Contract shall not be construed so as to limit the Services, but that the Services shall include all acts necessary to fully and finally complete the work described in **Appendix B** hereof. The Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge and such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the Director or her or his designee as often as necessary to effectively perform the Services, and as often as may be specified in **Appendix B**.

1.4 Authority of Director/Performance of Services.

1.4.1 The Services to be performed by the Consultant shall at all times be subject to the review, direction and control of the Director, whose decision shall be final and binding upon the Consultant. The Director shall have the right to determine the amount, quality, acceptability and fitness of the Services and her or his approval shall be a condition precedent to the right of the Consultant to receive any compensation under this Contract. The Director shall act reasonably in exercising her or his authority under this Contract. The Director and any other person or agent duly authorized to act for and on behalf of the Corporation shall not, by virtue of such authority or action, be liable in any manner to the Consultant.

1.4.2 The Consultant shall perform all of the Services in a prudent and professional manner and in accordance with standards and practices as are customary for such Services in the New York City Metropolitan Statistical Area.

1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes in the Services without prior written authorization from the Director. The Consultant shall revise or correct any Work Product submitted in accordance with this Contract until accepted by the Director and accepted by all agencies whose approval is required by law, without additional compensation or time extension. Any changes to the performance of the Services or the Work Product which are necessary due to improper performance of the Services, a defect of design, unworkability of details or other fault or error of the Consultant shall be made by the Consultant, also without additional compensation or time extension.

1.5.2 The Director shall have the right to alter the Services, provided however, that if the Consultant believes that any work or services that it has been directed to perform as a result of such alteration is beyond the Scope of Services and constitutes Extra Work, the Consultant shall so Notify the Director within three (3) days of such directive. The Director shall determine whether such altered Services are (i) within the Scope of Services; or (ii) Extra Work requiring an amendment to the Scope of Services and the Contract. The Director's determination shall be final, binding and conclusive.

1.5.3 The Director reserves the right to reduce the Scope of Services under this Contract by Notice to the Consultant specifying the nature and extent of such reduction. The Consultant shall be compensated for all Services satisfactorily performed prior to the reduction and for Services satisfactorily performed thereafter. If said reduction results in a credit for the

Corporation, such credit shall be immediately due and owing to Corporation, and the Consultant shall either pay such credit to the Corporation or the Corporation may withhold the credit amount from any future payments by the Corporation to the Consultant, at the exclusive option of the Corporation.

1.6 Equipment.

1.6.1 The Consultant, at its own expense, shall secure all supplies, materials and equipment required to perform and complete the Services.

1.6.2 The Consultant, at its sole cost and expense, shall bear the risk of loss for any supplies, materials and equipment used to perform the Services whether such loss arises by reason of fire, theft, vandalism, negligence or any other cause whatsoever. Consultant, at its sole cost and expense, shall promptly replace or repair all such lost, stolen or damaged supplies, materials and equipment.

1.6.3 The Consultant, at its sole cost and expense, shall maintain all of its supplies, materials and equipment in good working and serviceable order so as to enable the Consultant to perform the Services in a first-class and professional manner.

1.6.4 The Consultant shall be solely responsible for the means and methods and the safety and protection of all its employees and shall assume all liability for injuries, including death, that may occur to such employees due to the act, omission, negligence, fault or default of the Consultant.

1.7 Services Subject to City Contract, Indemnification and Third Party Beneficiary. This Contract is a subcontract under the City Contract. The Consultant acknowledges that it has reviewed the City Contract and agrees to comply with the City Contract with respect to the Services and not to violate, or through its acts or failure to act cause the Corporation to violate, the City Contract. The Consultant agrees to defend, indemnify and hold harmless the Corporation from any claim, liability or judgment to which the Corporation may be subject because of any such action or failure to act. The City shall be a third party beneficiary of this Contract and shall have a direct cause of action against the Consultant in the event that any claim be made or any cause of action be brought against the Corporation or City or if the Consultant breaches this Contract.

1.8 Acts to be Performed by the Corporation. The Corporation shall perform the following acts in connection with this Contract:

1.8.1 The Corporation shall make available to the Consultant all relevant technical data (subject to the provisions of Part II, Section 5.3 herein) in regard to the Contract which is in the possession of the Corporation.

1.8.2 The Corporation shall designate a Project Manager to serve as a liaison between the Corporation and the Consultant.

ARTICLE 2 **COMPENSATION**

2.1 Payments.

2.1.1 Subject to, and in accordance with this Article 2, the Corporation shall pay to the Consultant, and the Consultant agrees to accept, in full consideration for the Services, and for all expenses of the Consultant in connection therewith, including Subcontractors' Costs and Allowable Additional Costs, an amount not to exceed the Maximum Contract Price, payable as provided for in this Section 2.1 and in Appendix C.

2.1.2 Requisitions shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs required under Section 9.6 and, where applicable, the time sheets and/or certified payroll reports of the Consultant's staff and its Principal.

2.1.3 Each Requisition submitted to the Corporation by the Consultant shall constitute a representation that, except as specifically set forth in the Requisition, as of the date of the Requisition, all representations and warranties made by the Consultant in Article 7 are true, complete and accurate as if made as of the date of the submission of the Requisition.

2.1.4 The Director shall review the Requisitions and the Work Product. If, in her or his judgment, the Services have been satisfactorily performed in accordance with this Contract, the Director will approve the Requisition. All payments to the Consultant will be made in accordance with this Article 2.

2.1.5 Subject to Section 3.5, Final Payment will be due only upon Final Completion.

2.1.6 The Consultant, with the Director's prior approval, may exceed the Maximum Payment allocated to a particular Portion of the Services if the Consultant by Notice determines that the Maximum Payment initially allocated to the Portion is insufficient to adequately perform the Portion of the Services and if the Consultant demonstrates to the Director a savings with respect to another Portion of the Services which is at least equal to the amount of such excess. However, notwithstanding the above, in no event shall the Corporation pay the Consultant more than the Maximum Contract Price.

2.1.7 All Requisitions must be submitted to the Corporation's Accounts Payable Department.

2.2 Miscellaneous Payment Provisions.

2.2.1 In addition to its rights under Section 9.10, if the Corporation shall have reasonable grounds for believing that:

(i) the Consultant will be unable to perform the Services or any Portion thereof fully and satisfactorily in accordance with any Progress Schedule, or

(ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract,

then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the Corporation and the City against any loss and may, after Notice to the Consultant, be applied in satisfaction of any claim herein described.

2.2.2 The Corporation shall not be deemed to have released the Consultant from any claim or liability, or to have waived any cause of action arising from any breach of this Contract by virtue of making payments to the Consultant.

2.2.3 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have fully released the Corporation and the City from any and all claims, demands and causes of action whatsoever which the Consultant has or may have against the Corporation or the City in connection with this Contract and, upon the request of the Corporation, shall execute a release to such effect.

2.2.4 All payments to the Consultant under this Contract shall be subject to all applicable Legal Requirements.

2.3 Electronic Funds Transfers. All payments due under this Contract in excess of \$100,000 shall be made by Electronic Funds Transfer ("EFT"). Upon execution of this Contract, and in no event later than its submission of its first Requisition, the Consultant shall complete and submit to the Corporation the "EFT Vendor Payment Enrollment Form" annexed to Appendix C. The Consultant shall update such information to the extent necessary for EFT payments to be made. The Corporation shall not be obligated to make any payment in excess of \$100,000 unless such information is provided and shall be entitled to rely solely on the information provided by the Consultant. Payments to the Corporation shall be made by check unless the Corporation Notifies the Consultant to make payments by EFT.

ARTICLE 3

SUSPENSION OR TERMINATION

3.1 Delay, Postponement or Suspension of Work.

3.1.1 The Corporation shall have the right to delay, postpone or suspend the Services, or any Portion thereof, immediately or upon a specified date, for a period of not more than ninety (90) days, upon Notice to the Consultant, for any reason deemed by the Corporation to be in its interest. The Consultant and all of its Subcontractors and Representatives shall cease all Services, or any specified Portion thereof, immediately or as of the date specified in the Notice.

3.1.2 Any such delay, postponement or suspension shall not give rise to any cause of action for damages against the Corporation or the City, but the Term specified in Part I of this Contract and the Consultant's time for performance of the Services shall be extended for the period of the delay, postponement or suspension.

3.1.3 In the event of any delays, postponements or suspensions, the Consultant shall resume the Services upon the date specified in the Notice or upon such other date as the Corporation may thereafter specify by Notice.

3.2 Termination for Convenience. The Corporation shall have the right to terminate the Services, or any Portion thereof, immediately or upon a specified date, upon Notice to the Consultant and for any reason deemed by the Corporation to be in its interest.

3.3 Defaults and Termination for Cause.

3.3.1 In addition to any other right that the Corporation may have, upon the occurrence of an Event of Default, the Corporation shall have the right to declare the Consultant in default and terminate this Contract, in whole or in part, for cause, by giving Notice to the Consultant of the cause and the date of such termination.

3.3.2 An Event of Default shall be deemed to have occurred if any of the following events has occurred, each an "Event of Default":

- (i) The Consultant fails to assign workers, order materials or enter into subcontracts in a manner sufficient to permit completion of the Services, or any Portion thereof, within the time limits of the Progress Schedule or in accordance with any Progress Schedule approved by the Corporation;
 - (ii) The Consultant fails to complete the Services, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by the Corporation;
 - (iii) The Consultant materially violates any term, covenant or provision of this Contract;
 - (iv) The Consultant materially fails to comply with any Applicable Requirements or any Applicable Agreements;
 - (v) Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;
 - (vi) The Consultant becomes insolvent, files for bankruptcy or is adjudged a debtor in possession;
 - (vii) The Consultant voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Corporation;
 - (viii) The Consultant fails to comply with the M/WBE Requirements in Article 9;
- or
- (ix) The Consultant or any of its officers, directors, partners, members, five (5%) percent shareholders, principals or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the City's *Procurement Policy Board Rules*.

3.4 Effects of Termination for Convenience or for Cause.

3.4.1 The Contract, or such portion of the Contract described in the Notice of termination, shall terminate as of the termination date set forth in the Notice given pursuant to Section 3.3.1, or immediately if no date is specified.

3.4.2 Upon receipt of a Notice of termination for cause or for convenience, the Consultant shall cease any or all Services, immediately or on the date specified, in accordance with the terms of the Notice.

3.4.3 Termination, whether for convenience or for cause, shall not give rise to any cause of action for damages against the Corporation or the City.

3.4.4 Within ten (10) days after the effective date of termination, the Consultant shall surrender and turn over to the Corporation all Work Product and any other materials related to this Contract requested by the Corporation including, without limitation, all materials, equipment and supplies purchased by the Consultant on behalf of the Corporation in connection with this Contract.

3.5 Payment Upon Termination.

3.5.1 Upon termination with or without cause, the Consultant shall promptly present to the Corporation a verified statement of all costs actually incurred prior to the date of termination, together with all documents in the Consultant's possession related thereto that the Corporation may demand in order to verify such statement of costs including, without limitation, canceled checks, subcontracts, and paid receipts and bills from Subcontractors. The Corporation will review the statement of costs and review or audit any supporting documentation provided by or in the Consultant's possession. The Corporation will Notify the Consultant of the results of such review or audit and the amount approved for payment.

3.5.2 If the termination was without cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation after consultation with the Consultant, subject to any rights of audit provided herein. Such payment will be processed by the Corporation after Consultant provides all information and documentation required hereunder. Such payment shall constitute full and Final Payment to the Consultant.

3.5.3 If the termination was for cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation, subject to any rights of audit provided herein, and subject to set-off by the Corporation for any additional expenses the Corporation incurs to complete the Project satisfactorily, including the expenses of engaging another consultant and the costs set forth in Section 9.10(ii). The sum of (i) such additional expenses incurred to the Corporation for the completion of the Project, and (ii) payments made to the Consultant prior to the termination of the Contract shall hereafter be referred to as the "Contract Completion Costs".

(i) If the Contract Completion Costs exceed the Maximum Contract Price, Consultant shall pay such difference to the Corporation, as described in Section 3.5.4 below.

(ii) If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the

difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Consultant, equitably compensates Consultant for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 3.5.4 below.

3.5.4 If the termination was for cause, the Corporation will, upon full completion of the Project, deliver a written notice to the Consultant advising the Consultant that the Project has been completed and setting forth the Contract Completion Costs. If the Contract Completion Costs exceed the Maximum Contract Price, the Consultant shall promptly pay such difference to the Corporation upon receipt of such notice. If the Contract Completion Costs are less than the Maximum Contract Price, then, subject to (i) the Consultant's providing to the Corporation all information and documentation required by this Section, and (ii) any other applicable provisions of this Contract including, without limitation, Sections 3.5.5 and 3.5.6 hereof, the Corporation will pay the Consultant the amount described in Section 3.5.3(ii). Such payment shall constitute full and Final Payment to the Consultant.

3.5.5 The Corporation need not wait until the completion of the Services to seek the enforcement of its rights against the Consultant if there has been a termination for cause, but no monies shall be due or payable to the Consultant terminated for cause until the Services are completed.

3.5.6 The provisions of this Section 3.5 shall be in addition to any other rights the Corporation may have under this Contract, any Applicable Requirement, any Applicable Agreement, or otherwise, in law or in equity.

3.6 No Release. Termination of this Contract, whether by expiration of its Term or otherwise, shall not release the Consultant from any liability to the Corporation or from the Consultant's indemnification and other obligations under this Contract that have not been specifically terminated pursuant to this Article of the Contract.

ARTICLE 4

PERSONNEL AND SUBCONTRACTORS

4.1 Personnel.

4.1.1 The Consultant shall employ at its own expense all personnel and retain all Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of this Contract. The personnel of the Consultant and any Subcontractor shall cooperate fully with the personnel of the Corporation including, without limitation, the Director, and, in the event any personnel of the Consultant or any Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

4.1.2 The Consultant shall submit to the Director, prior to performance of Services by such personnel, resumes of the Consultant's personnel and those of its Subcontractors' personnel who will perform the Services. The experience and training of such personnel is a material inducement for the Corporation to enter into this Contract and make payment for the Services.

The Consultant and its Subcontractors are expected to use such personnel to perform the Services. If the Consultant or a Subcontractor proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the Director and obtain the Director's prior approval of the substitution. Notwithstanding anything contained herein to the contrary, all personnel furnished by the Consultant as required under this Contract shall be employees of the Consultant or approved Subcontractors of the Consultant and not employees or subcontractors of the Corporation or the City.

4.2 Subcontractors.

4.2.1 The Consultant is authorized to enter into subcontracts for specialized professional services as required for performance of the Services subject to the prior written approval of the Director as to the Subcontractor, the scope of services, compensation, and the Principal or other member(s) of the Consultant's staff responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not the Corporation, is responsible for the Subcontractor's work, acts and omissions.

4.2.2 The Consultant shall pay any Subcontractors approved by the Corporation for work that has been satisfactorily performed no later than thirty (30) days from the date of Consultant's receipt of payments from the Corporation.

4.2.3 The Consultant is solely responsible for the payments to the Subcontractors. Upon receipt of evidence of Consultant default hereunder with respect to its obligations to make payments to its Subcontractors, the Corporation reserves the right, after three (3) calendar days prior Notice, to retain any money due the Consultant and pay directly for labor, materials, equipment, Services and all other obligations of the Consultant and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Consultant.

4.2.4 The Consultant shall inform all Subcontractors fully of the terms and conditions of this Contract. All subcontracts shall provide that:

- (i) there is no privity of contract between the Subcontractor and the Corporation or the City;
- (ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;
- (iii) the Subcontractor shall indemnify, defend and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor's obligations under the subcontract;
- (iv) the Subcontractor's Requisitions shall conform to the same requirements and include the representations, warranties and agreements set forth in Sections 2.1.2 and 2.1.3;
- (v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;

(vi) the subcontract may be assigned without the written consent of the Subcontractor to the City, NYCEDC or any other corporation, agency or instrumentality having authority to accept the assignment; and

(vii) all work and services performed under the subcontract shall strictly comply with the requirements of this Contract.

If the Consultant fails to include the provisions set forth in this Section 4.2.4 in any subcontract, the Consultant hereby agrees to indemnify, defend and hold harmless the Corporation and the City and their Representatives against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon the Corporation and the City and their Representatives, including reasonable fees, as a result of said failure.

4.2.5 The Consultant shall provide the Corporation with a list of all Subcontractors employed for the performance of the Services whose subcontract amount totals \$25,000 or more. The Consultant will furnish each such Subcontractor whose Subcontract amount totals less than \$100,000 with the Corporation's internal qualification and background investigation forms. The Consultant will furnish each such subcontractor whose subcontract amount totals \$100,000 or more with the Mayor's Office of Contracts Investigations Forms. These forms will be provided by the Corporation to the Consultant. The Consultant shall cause each such Subcontractor to fill out and complete the forms in a timely fashion but in no event later than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

4.3 Person in Charge. The Consultant has designated a Person-in-Charge who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services. Substitution of said person shall be made only with the prior written approval of the Director. Failure to make such person(s) available to the extent necessary to perform the Services skillfully and promptly shall be a material violation of the terms of this Contract.

ARTICLE 5 **DOCUMENTS AND MATERIALS**

5.1 Approval. All Work Product to be prepared or furnished by the Consultant pursuant to this Contract or publicizing the work of the Consultant hereunder must be:

- (i) approved in writing by the Director before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;
- (ii) revised by the Consultant in accordance with the directions of the Director prior to approval; and
- (iii) prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as the Corporation may deem advisable, in whole, in part or in modified form, in all

formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

5.2.2 The Consultant shall not use, transmit, display, publish or otherwise license such Work Product without the Corporation's prior written consent.

5.2.3 The Work Product shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the Corporation is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire", the Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to the Corporation, free and clear of any liens, claims or other encumbrances. The Consultant shall retain no copyright or other intellectual property interest in the Work Product.

5.2.4 To the extent that the Work Product does not qualify as a "work-made-for-hire", Consultant acknowledges the existence, if any, of its statutory moral rights as those rights are described in 17 U.S.C. § 106A(a), and knowingly executes this Contract on the following terms: (i) this waiver applies to the Work Product and to any promotional materials connected with the Work Product; (ii) the Consultant hereby expressly and forever waives any and all rights under 17 U.S.C. § 106A, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed by 17 U.S.C. § 106A, or any other type of moral right or *droit moral*.

5.2.5 The Consultant represents and warrants that, except for material which is in the public domain and non-original material that meets the requirements of §5.2.6, the Work Product

- (i) shall be wholly original material not published elsewhere;
- (ii) shall not violate any copyright, trademark or other applicable law; and
- (iii) shall not, to the best of Consultant's knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.

5.2.6 The Consultant represents and warrants that to the extent that the Work Product incorporates non-original material, the Consultant shall obtain and provide the Corporation with copies of all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract. Since some licenses for materials may be for a limited duration, the Consultant shall provide and/or specify the following to the Corporation with respect to all non-original materials included in its Work Product:

- (i) all information as to any durational limitations on use;
- (ii) any requirement that a notice be displayed in connection with display, including the specific owner of the rights to be credited, and any limitation on the use under the Consultant's license; and
- (iii) a statement certified by the Principal verifying the foregoing in the form annexed hereto as Appendix D.

Consultant will update the foregoing information and promptly provide such updates to the Corporation during the Contract Term.

5.2.7 The Consultant acknowledges that the Corporation or the City may, in their sole discretion, register copyright in the Work Product with the U.S. Copyright Office or any other government agency authorized to grant registrations to copyright. The Consultant will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

5.2.8 The Consultant agrees that the Corporation and the City may use the Consultant's name and the names, biographies and likenesses of its members, in advertising and promotion related to the Work Product, and in any and all ancillary products related to the Services regardless of the format in which such use occurs.

5.2.9 Prior to acceptance of any Work Product by the Director, upon the Director's request and within a reasonable time following delivery of the Work Product, the Consultant shall submit revised Work Product incorporating any revisions, changes or alterations reasonably requested by the Director. If the original Work Product or the revised Work Product is not acceptable to the Director, the Corporation shall have the right to use the Work Product, to prepare or finalize the Work Product or to commission a third party to do so without further employment of or compensation to the Consultant.

5.2.10 The Consultant acknowledges that the decision to accept the Work Product for use, incorporation, transmission, display or publication is within the sole discretion of the Director.

5.2.11 Consultant agrees that it will cooperate in providing any other documentation necessary to effectuate the intent of this Section of the Contract.

5.2.12 The Consultant shall not make any unauthorized use of copyrighted, trademarked or other protected materials or intellectual property and agrees to defend, indemnify and hold harmless the Corporation and the City and their respective officers, officials, agents, members, directors, and employees against any damage or liability arising out of the Consultant's infringement or unauthorized use of any such material or property.

5.3 Confidential Information.

5.3.1 The Consultant shall hold all Confidential Information provided by the Corporation in the strictest confidence. Consultant agrees to:

- (i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- (ii) not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;
- (iii) execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and

(iv) not disclose the Confidential Information for three (3) years following Final Completion.

5.3.2 Consultant represents that it has adequate safeguards and procedures to protect the confidentiality of records and information and to limit dissemination only to authorized employees as necessary for the performance of the Services. All Confidential Information provided to Consultant shall remain the property of the Corporation.

5.3.3 Consultant agrees that money damages would not be a sufficient remedy in the event of any breach of this Section 5.3 and that, in addition to all other remedies which may be available, the Corporation shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Consultant shall defend, hold harmless and indemnify the Corporation for any and all claims, losses, expenses and/or damages arising out of breach of this Section 5.3 or unauthorized use of the Confidential Information.

ARTICLE 6

INDEMNIFICATION, CLAIMS AND INSURANCE

6.1 Indemnification of the Corporation and the City.

6.1.1 The Consultant shall indemnify, defend and hold harmless the Corporation and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any negligence or any fault or default of the Consultant, its agents, employees or subcontractors or the breach of the Consultant's obligations under the Contract.

6.1.2 The Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under this Contract resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors or subcontractors retained by the Consultant pursuant to this Contract. The Consultant agrees to indemnify, defend and hold the Corporation and the City harmless from any liability upon any and all claims for injuries to persons (including death) and damage to property on account of negligence, fault or default of the Consultant, its employees, authorized agents, servants, independent contractors and subcontractors retained by the Consultant.

6.2 Claims or Actions Against the Corporation.

6.2.1 The Consultant shall look solely to the funds appropriated by the Corporation for this Contract for the satisfaction of any claim or cause of action the Consultant may have against the Corporation in connection with this Contract or the failure of the Corporation to perform any of its obligations hereunder. In no event shall the Corporation's aggregate liability hereunder in connection herewith or related to the performance of the Services exceed the Maximum Contract Price.

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released the Corporation from

any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

6.2.3 No member, director, employee, servant, officer, agent or other person authorized to act on behalf of the Corporation shall have any personal liability in connection with this Contract or any failure of the Corporation to perform its obligations hereunder.

6.2.4 No person or entity shall have any right against the Director or any member, director, employee, servant or officer, agent of the City or the Corporation or other person authorized to act on their behalf or any claim against the City or the Corporation by reason of the failure or refusal to withhold money pursuant to Section 2.2.1 hereof.

6.2.5 The Consultant agrees that no cause of action against the Corporation in connection with this Contract or the Services shall lie or be maintained by the Consultant, its successors or assigns unless such action is commenced within six months after (i) the termination of this Contract, or (ii) the accrual of the cause of action, whichever is earlier.

6.2.6 If any claim is made or any action brought relating to this Contract or the Services, whether or not the Consultant is a party, the Consultant shall diligently render to the Corporation any and all assistance that the Corporation may require of the Consultant, without compensation.

6.2.7 The provisions of this Section shall not waive, limit or in any way prejudice any other right of the Corporation or the City.

6.3 Insurance.

6.3.1 At all times during the performance of the work or Services in connection with this Contract or for such other time periods as the Corporation may require, the Consultant, at its sole cost and expense, shall purchase and maintain the insurance described in this Section 6.3 and the annexed Appendix E, as may be applicable and as may be required by the Corporation.

6.3.2 Consultant shall purchase and maintain insurance with insurance companies that:

- (i) are acceptable to the Corporation;
- (ii) are rated A:X or better by A.M. Best Company; and
- (iii) are licensed to issue such insurance by the New York State Department of

Insurance.

6.3.3 The insurance policies purchased and maintained by the Consultant shall:

- (i) be in form and substance satisfactory to the Corporation;
- (ii) be in the minimum face policy amounts set forth in Appendix E;
- (iii) list all individuals and entities identified in Appendix E as Additional

Insureds except in the case of any workers' compensation, automobile liability and professional liability policies required to be maintained hereunder; and

- (iv) contain the provisions set forth in Appendix E.

6.3.4 Coverage for the individuals and entities identified in Appendix E as Additional Insureds shall be written into those policies set forth in Section 6.3.3 above as an endorsement at least as broad as ISO Form CG 20 10 (07/04 ed.).

6.3.5 The Consultant shall make and maintain timely premium payments for all policies required hereunder.

6.3.6 The Consultant shall require that each of its Subcontractors, prior to the commencement of their work, purchase and maintain, or be covered by, at no cost or expense to the Corporation or the City, the same types and amounts of insurance and meet all of the same requirements as required of the Consultant as set forth in this Article 6 and Appendix E. The Consultant hereby covenants and warrants that its Subcontractors shall purchase and maintain the policies required by this Section in the amounts and for the periods required by this Section.

6.3.7 Prior to the commencement of the Services the Consultant shall forward to the Corporation's Contract Administration and Procurement Department at least three (3) original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subcontractors substantially as set forth in Appendix E. The Consultant shall also provide an original certificate of insurance to each of the Additional Insureds.

6.3.8 The Consultant shall provide the Corporation and the Additional Insureds written confirmation of the renewal of any policy required hereunder no less than five (5) days prior to the expiration of any such policy.

6.3.9 Unless otherwise agreed to in writing by the Corporation, the types of insurance to be purchased and maintained by the Consultant and its Subcontractors are as follows:

(i) Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation, disability benefits insurance in statutory amounts, and employer's liability insurance in the amounts set forth in Appendix E, for all of its employees engaged in the Services. The failure of the Consultant to comply with this Section 6.3.9(i) shall make this Contract voidable at the option of the Corporation.

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance to protect the Corporation, the City and the Additional Insureds, the Consultant and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant and its Subcontractors, and any work incidental thereto. The commercial general liability insurance policy must also include products and completed operations coverage, which shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the Corporation of all of the Services. The certificate of insurance must indicate that such insurance is on a "per occurrence" and an aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as the most current ISO Form CG 00 01. The additional insured protection must be as broad as coverage that would be afforded through use of ISO Forms CG 20 26, CG 20 33 and CG 20 37. The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically

assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant shall suspend performance of the Services if the Corporation shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Corporation to order suspension, then the Corporation may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to the Corporation.

(iii) Automobile Liability Insurance. The Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles.

(iv) Umbrella/Excess Liability Coverage. If the Consultant purchases or maintains umbrella/excess liability insurance, such insurance should specifically list the Consultant's commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect the Corporation, the City, the Additional Insureds, the Consultant and its Subcontractors from any and all claims in excess of the underlying policy limits for such primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.9(iv) is on a "per occurrence" basis and an aggregate basis.

(v) If applicable, any additional policies as may be described in Appendix E.

6.3.10 As a condition precedent to payment of any amounts owing to the Consultant by the Corporation, the Consultant shall, unless otherwise expressly agreed to in writing by the Corporation, provide to the Corporation the original certificates of insurance required under this Contract and shall on demand provide true copies of policies and endorsements to policies showing compliance with the insurance requirements set forth in this Article 6 and Appendix E.

6.3.11 The policies to be maintained by the Consultant hereunder that are subject to the Additional Insured requirements set forth in Section 6.3.3 (iii) above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Consultant's insurer. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall give the insurer, the Corporation, the City and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same.

6.3.12 The insurance provisions of this Article 6 shall be in addition to any rights that the Corporation, the City and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by this Contract or by law. The Consultant shall not violate or permit to be violated any term or condition of the policies.

6.3.13 The Commercial General Liability and Umbrella Excess Liability Coverage policies must be endorsed to show that these primary and/or excess policies are to be considered primary and non-contributory. In addition, the Commercial General Liability and Umbrella/Excess Liability Coverage policies must provide that (i) the Additional Insured protection afforded under the Consultant's policies shall be primary and not on an excess or contributing basis with any policies which may be available to the Corporation, and (ii) that the

Consultant's policies, primary and excess, must be exhausted before implicating any Corporation policy available.

6.3.14 In order to ensure vertical erosion of liability limits provided by the Consultant under this Contract, the Consultant agrees to permit the Corporation's staff and/or the Corporation's insurance consultants to review the Consultant's liability policy language for all liability policies and to endorse those policies to clarify the hierarchy of policies in the event of a claim.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants that:

7.1 The Consultant is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract in accordance with its terms. The Consultant is authorized to do business in the City of New York.

7.2 The authorization, execution and delivery of this Contract, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or, to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

7.3 The Consultant has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Contract.

7.4 The Consultant has not employed any person to solicit or procure this Contract, and has not made and shall not make, except to full-time employees of the Consultant, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract.

7.5 The Consultant has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land in an area related to the Services or any interest in any corporation, partnership, or other entity with any such interest), which would conflict in any manner or degree with the performance of the Services. The Consultant further represents and covenants that in the performance of this Contract no person having any such conflicting interest shall be employed by the Consultant.

7.6 The Consultant is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

7.7 All questionnaires and/or disclosure forms delivered by the Consultant and its Representatives to the Corporation to date are, to the best of the Consultant's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Consultant, or any of its principals or affiliated persons or entities since the respective dates upon which such disclosure forms were executed that would otherwise require disclosure on such forms; and such disclosure forms do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such form not misleading.

ARTICLE 8

APPLICABLE LAWS, RULES AND REGULATIONS

8.1 New York Law Governs; New York Courts. The Contract shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the Corporation arising under this Contract or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York. To effect this agreement and intent, the Consultant agrees as follows:

8.1.1 If the Corporation initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant in person, wherever the Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Contract, or to such other address as the Consultant shall have provided to the Corporation in writing.

8.1.2 With respect to any action between the Corporation and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, and (ii) to move for a change of venue to a New York State Court outside New York County.

8.1.3 With respect to any action between the Corporation and the Consultant in Federal Court located in the City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City.

8.1.4 If the Consultant commences any action against the Corporation in a court located other than in the City and State of New York, then, upon request of the Corporation, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is pending will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

8.3 Compliance with the Law. The Consultant agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all Legal Requirements, including without limitation, Applicable Requirements and Applicable Agreements. Failure by the Consultant to abide by such Legal Requirements shall be a material default under this Contract.

8.4 Equal Employment Opportunity/Employment Reports.

8.4.1 The Consultant shall comply with the applicable provisions of the Equal Employment and Affirmative Action Compliance for Non-Construction Contracts Addendum (the “Executive Order No. 50 (1980) Supply and Service Rider” or “E.O. 50”) attached hereto as Appendix F and made a part hereof. Appendix F shall be attached to and made a part of any subcontract entered into by the Consultant pursuant to this Contract that exceeds \$100,000.

8.4.2 The Consultant covenants that it shall complete and submit and shall require all Subcontractors to complete and submit Employment Reports (as required by E.O. 50) to the Corporation which can be found at www.nycedc.com in the section identified in Appendix G. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

8.4.3 The Consultant and any subcontractor that provide any on-site construction activity shall complete and submit the Payroll Report to the Corporation in the form annexed to this Contract as Appendix C.

8.4.4 The Consultant shall give consideration to employing City residents who are economically disadvantaged or are eligible under any applicable Legal Requirements including, without limitation, the Workforce Investment Act of 1998, and who have qualifications and skills commensurate with the requirements for the position available. To the greatest extent feasible, the Consultant shall give opportunities for training and employment to lower income persons in the Project area.

8.4.5 The provisions of this Section 8.4 shall be deemed supplementary to, and not in lieu of, or in substitution for, the applicable provisions of the New York State Labor Law relating to non-discrimination, and other applicable Legal Requirements.

8.5 Minimum Wages. Except for any employees whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law, which employees shall be paid such prevailing wage, all persons employed by the Consultant or any subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract.

8.6 No Tropical Hardwoods. Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be used in the performance of this Contract except as expressly permitted by the foregoing provision of law.

8.7 Sales and Use Tax.

8.7.1 The Consultant acknowledges that the Corporation and the City are exempt from sales and use taxes imposed by Article 28 of the New York State Tax Law for purchases of tangible personal property, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of real property. This exemption does not apply to tools, machinery, equipment or other property leased by the Corporation's contractors and subcontractors or to supplies, materials or other property that are consumed in the construction or for any reason not incorporated into real property.

8.7.2 The Consultant shall inform its Subcontractors of this exemption and shall advise its Subcontractors to exclude sales and use taxes from their bids, as applicable.

8.8 Whistleblowers.

8.8.1 In accordance with Section 12-113 of the New York City Administrative Code (the "Administrative Code"),

8.8.1.1 The Consultant shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of the Consultant or any of its Subcontractors to (i) the Corporation, (ii) the City's Department of Investigation, (iii) a member of the New York City Council, the City's Public Advocate or the Comptroller, or (iv) the City Chief Procurement Officer, DSBS Chief Contracting Officer ("DSBS ACCO") or DSBS Commissioner.

8.8.1.2 If any of the Consultant's officers or employees believes that s/he or has been the subject of an adverse personnel action in violation of paragraph 8.8.1.1 above, s/he shall be entitled to bring a cause of action against the Consultant to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the DSBS ACCO or DSBS Commissioner of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the City, any public agency or other public entity, or the Corporation, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

8.8.2 In accordance with Section 6-132 of the Administrative Code, the Consultant shall post a notice in the form annexed hereto at Exhibit L

8.8.3 For purposes of this Section, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

8.9 MacBride Principles. The Consultant stipulates and agrees to comply with the MacBride Principles.

8.10 Iran Divestment Act. The Contractor shall comply with Section 165-a of the New York State Finance Law.

8.11 Doing Business Data Form Requirements.

8.11.1 Local Law No. 34 of 2007 amended the City’s Campaign Finance Law and required the City to establish a database containing the names of any “person” that has “business with the city”, as such terms are defined in LL 34. The Consultant shall comply with all requirements of LL 34 applicable to this Contract.

8.11.2 The Consultant shall complete and submit a Doing Business Data Form which can be found at www.nycedc.com. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

8.11.3 The Consultant’s failure to complete and submit a Doing Business Data Form and/or its submission of a form that is not accurate or complete may result in appropriate sanctions.

ARTICLE 9

M/WBE REQUIREMENTS

9.1 M/WBE Program. Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes a program for participation in City procurement by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”, together with “MBEs” collectively referred to as “M/WBEs”), certified in accordance with Section 1304 of the City Charter. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business and lowering contract costs. The Corporation endorses these goals and has adopted an M/WBE Program to further participation by MBEs and WBEs in the provision of the Services. All Consultants shall comply with all requirements of the Corporation’s M/WBE Program applicable to this Contract.

9.2 Minority and Women -Owned Business Enterprises. M/WBE firms must be certified by DSBS to credit such firms’ participation toward attainment of the Participation Goals. Such certification must occur prior to the firms’ commencement of work.

9.3 Participation Goal.

9.3.1 The Participation Goal for this Contract is set forth in Part I, Section 1.12. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs or WBEs, and/or by crediting the participation of the Consultant.

9.3.2 The Participation Goal is a material term of the Contract and the Consultant shall be subject to the Participation Goal.

9.3.3 A consultant that is an M/WBE shall be permitted to count its own participation toward fulfillment of the Participation Goal, provided that the value of the Consultant's participation shall be determined by subtracting from the total value of the Contract any amounts that the Consultant pays to direct Subcontractors. A Consultant may not subcontract more than 50% of the total value of the Contract unless it working under a retainer contract or a construction management contract. The value of an M/WBE Consultant's participation shall be determined by subtracting from the total value of the Contract any amounts that the respondent will pay to direct Subcontractors. If the Consultant is not an M/WBE, it must meet the Participation Goal through the awarding of subcontracts to firms certified with DSBS as MBEs or WBEs.

9.3.4 A Consultant that is a Qualified Joint Venture shall be permitted to count a percentage of its own M/WBE participation toward fulfillment of the Participation Goal. The value of the Qualified Joint Venture's participation shall be determined by first subtracting from the total value of the Contract, any amounts that the Qualified Joint Venture will pay to direct Subcontractors. Thereafter, the M/WBE percentage of the Qualified Joint Venture shall be applied to the remaining value of the Contract to determine the overall Participation Goal.

9.4 Subcontractors Participation Plan.

9.4.1 The Subcontractors Participation Plan for this Contract is annexed hereto as Appendix H.

9.4.2 In the event that the Corporation does not approve a Subcontractor proposed by the Consultant, the Consultant shall have a reasonable time to propose alternate Subcontractors.

9.5 M/WBE Compliance Reports.

9.5.1 The Consultant shall provide the Corporation with written statements ("M/WBE Compliance Reports"), certified under penalty of perjury, reporting the status of the Consultant's compliance with its M/WBE Subcontractor Participation Plan as set forth in this Section 9.5.

9.5.2 The Consultant shall submit a M/WBE Compliance Report to the Corporation:

- (i) with each Requisition for payment; and/or
- (ii) on a periodic basis as the Corporation may require.

9.5.3 Each M/WBE Compliance Report shall set forth the following for the period covered by the report:

- (i) the total amount paid to Subcontractors (including Subcontractors that are not MBEs or WBEs);
- (ii) the names, addresses and contact numbers of each MBE or WBE hired as a Subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE.

9.5.4 In addition to the foregoing, the Consultant shall submit a final, cumulative M/WBE Compliance Report to the Corporation with its Requisition for Final Payment. The Consultant shall set forth in such final report the information required by Section 9.5.3 in connection with all Services rendered by the Consultant and its Subcontractors during the entire Contract Term.

9.6 Change Orders. If the Consultant requests a change order having a value that exceeds ten percent (10%) of the Contract, the Corporation will establish an M/WBE participation goal for the work to be performed pursuant to the change order.

9.7 Modification of the Consultant's Subcontractors Participation Plan.

9.7.1 The Consultant may request modification of its Subcontractors Participation Plan after the award of the Contract. The Corporation may grant such request if it determines that the Consultant has established, with appropriate documentary and other evidence, that the Consultant has made all reasonable, good faith efforts to meet the Participation Goal set for the Contract.

9.7.2 Good Faith Efforts. Good faith efforts should be documented by Consultant requesting a modification and such documentation provided to the Corporation upon the Corporation's request. In determining whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal, the Corporation will consider, along with any other relevant factors, evidence submitted by the Consultant showing that the Consultant has, without limitation, conducted the following:

9.7.2.1 Direct Outreach. The Consultant provided timely notice to M/WBEs of specific opportunities to participate in the Contract;

9.7.2.2 NYCEDC Assistance. The Consultant submitted timely requests for assistance to the Corporation's M/WBE liaison officer and provides the Corporation with a description of how the Corporation's recommendations were acted upon and an explanation of how action upon such recommendations did not lead to the desired level of participation of M/WBEs;

9.7.2.3 Advertised Opportunities. The Consultant advertised opportunities to participate in the Contract in general circulation media, trade and professional association publications, small business media and publications of M/WBE organizations;

9.7.2.4 Follow Up with M/WBEs. The Consultant sent timely written notices to advise M/WBEs that their interest in the Contract was solicited;

9.7.2.5 Substitution of Work. The Consultant made efforts to identify portions of the Contract Work that could be substituted for portions originally designated for the

participation by M/WBEs in the M/WBE Subcontractors Participation Plan and for which the Consultant claims an inability to retain M/WBEs;

9.7.2.6 Meeting with M/WBEs. The Consultant held meetings with M/WBEs prior to the date their proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their proposals were solicited;

9.7.2.7 Negotiated with M/WBEs. The Consultant made efforts to negotiate with M/WBEs as relevant to perform specific subcontracts, or acts as suppliers or service providers; and

9.7.2.8 Interested Subcontractor List. The Consultant made efforts to contact interested M/WBEs listed on the Website's Interested Subcontractor list.

9.7.3 The Corporation's M/WBE Director and Chief Contracting Officer will provide written notice to the Consultant of the determination on whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal.

9.8 Compliance Audits. This Contract may be audited by the Corporation, DSBS and the City Comptroller to determine the Consultant's compliance with the requirements of the Corporation's M/WBE Program and the Consultant's M/WBE Subcontractors Participation Plan.

9.9 Enforcement. In the event the Corporation determines that the Consultant or its Subcontractors have violated the requirements of the Corporation's M/WBE Program or the M/WBE Subcontractors Participation Plan including, without limitation, a determination that the Consultant has made payments to or awarded work to M/WBE Subcontractors in amounts less than the amounts specified in the Consultant's M/WBE Subcontractor Participation Plan (unless the Corporation has permitted the Consultant to modify the Consultant's M/WBE Subcontractors Participation Plan in accordance with Section 9.7), the Corporation may:

- (i) terminate the Contract;
- (ii) assess actual and consequential damages for and/or exercise its right to set off any additional expenses the Corporation incurs to complete the Project satisfactorily in accordance with the Corporation's M/WBE Program and in order to meet the Participation Goal including, without limitation, the actual and administrative costs of:
 - (a) meeting the Participation Goal through additional procurements;
 - (b) payments made to any other consultant retained to complete the Services; and
 - (c) investigation and enforcement; or
- (iii) assert any other right or remedy it has under the Contract.

9.10 Liquidated Damages for Failure to Fulfill Approved Participation Goals. If the Consultant fails to fulfill its Participation Goals set forth in its Subcontractors Participation Plan or the Participation Goals as modified by the Corporation pursuant to Section 9.7, the Corporation may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to M/WBEs to meet the Participation Goal and the dollar amount the Consultant actually awarded and paid to M/WBEs. In view of

the difficulty of accurately ascertaining the loss which the Corporation will suffer by reason of the Consultant's failure to meet the Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that the Corporation will suffer by reason of such failure, and not as a penalty. The Corporation may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of the liquidated damages suffered by the Corporation, the Consultant shall be liable to pay the difference.

9.11 Statements. Statements made in any instrument submitted to the Corporation in connection with the Corporation's M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

9.12 Evaluations. The Consultant's record in implementing its M/WBE Subcontractor Participation Plan shall be a factor in the evaluation of its performance.

ARTICLE 10 **MISCELLANEOUS**

10.1 Consultant as Independent Contractor. Notwithstanding anything contained herein to the contrary including, without limitation, the provisions of Section 5.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Consultant and its Representatives shall not be deemed to be acting as agents, servants or employees of the Corporation or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or the Corporation or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for the Corporation, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

10.2 Assignment. This Contract is intended to secure the Services of the Consultant or a competent Representative or Representatives of the Consultant approved by the Director. The Consultant shall not assign, convey, subcontract, or transfer this Contract or the Consultant's rights hereunder without the written consent of the Director, which consent shall be manifested by Notice. The Corporation shall have the right to assign, convey, subcontract or transfer this Contract or the Corporation's rights hereunder without the written consent of the Consultant to the City or any other corporation, agency or instrumentality having authority to accept the assignment.

10.3 Right to Inspect. The Corporation, the City Comptroller, the Inspectors and any other individual or entity authorized under any Legal Requirement shall have the right on reasonable Notice to inspect the operations and records of the Consultant and its Subcontractors relating to this Contract.

10.4 Maintenance of Records. In order to facilitate any audit provided herein, the Consultant agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles of the Services

performed by it, its employees, and its Subcontractors under this Contract and of all financial accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to make such records available for inspection and audit in the City by the Corporation, the City, the Inspectors and any other individual or entity authorized under any Applicable Statute or Applicable Agreement upon reasonable Notice. Said records shall be maintained for a period of six (6) years after termination of this Contract.

10.5 Modification in Writing. No modification, amendment, waiver or release of any provision of this Contract or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is asserted.

10.6 Captions. The tables of contents and captions of this Contract are for convenience of reference only and in no way define, limit or describe the scope or intent of the Contract or in any way affect this Contract.

10.7 Completeness. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the parties hereto.

10.8 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

10.9 Notices.

10.9.1 Each Notice, demand, request or other communication in connection with this Contract shall be either: (i) served in person, with delivery of service acknowledged in writing by the party receiving the same; (ii) sent by nationally known overnight delivery service or telefax; or (iii) deposited in the U.S. mails, first class mail, postage prepaid, and addressed to the respective address herein set forth in Part I, Section 3 or to such other address as may be specified by Notice sent in accordance herewith.

10.9.2 Every Notice hereunder shall be deemed to have been given: (i) at the date of receipt by the respective party in the case of personal delivery, overnight delivery or telefax and (ii) five (5) business days after the date of deposit in the first class U.S. mails.

10.10 Non-Waiver. Failure of the Corporation or its Representatives to enforce or otherwise require the performance of any of the terms and conditions of this Contract, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by the Corporation and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of the Corporation.

10.11 Refusal to Testify.

10.11.1 The Consultant agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

10.11.2 If:

(i) any person who has been advised that her or his statement, and any information from such statement, will not be used against her or him in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the PANYNJ, or the Corporation, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or

(ii) any person refuses to testify for a reason other than the assertion of her or his privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or the Corporation, or any local development corporation within the City,

then the commissioner or agency head (each of which is hereinafter referred to as the "Commissioner") whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license involved in such investigation, audit or inquiry shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

10.11.3 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing or the Corporation may, upon the Commissioner granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subsection 10.11.5 below without the City or the Corporation incurring any penalty or damages for delay or otherwise.

10.11.4 The Corporation or the City may impose the following penalties after a final determination by the Commissioner that penalties should attach for the failure of a person to testify:

(i) the disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at

the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or the Corporation, as the case may be; and/or

(ii) the cancellation or termination of any and all such existing City or Corporation contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or the Corporation incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City or the Corporation, as the case may be.

10.11.5 The Commissioner shall consider and address, in reaching her or his determination, and the Corporation and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in subparagraphs (i) and (ii) below. The Commissioner and the Corporation may also consider, if relevant and appropriate, the criteria established in subparagraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including, but not limited to, the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City or the Corporation.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity (subject to penalties under subsection 10.11.4 above), provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in subsection 10.11.2(2) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

10.11.6 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

10.11.7 The term "entity" as used herein shall mean any firm, partnership, corporation, association, joint venture or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

10.11.8 The term "member" as used herein shall mean any person associated with another person or entity as a partner, director, officer, principal or employee.

10.11.9 The term “person” as used herein shall mean any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

10.12 No Political Activity. The Consultant agrees that there shall be no political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
MAYOR'S OFFICE OF ENVIRONMENTAL REMEDIATION
REQUEST FOR PROPOSALS
FOR THE PROVISION OF ON-CALL ENVIRONMENTAL
CONSULTING AND RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 3692XXXX
PROJECT CODE NO. 3692**

**PART III
APPENDICES**

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APPENDIX A
DEFINITIONS

APPENDIX A**DEFINITIONS**

The defined terms listed below shall have the following corresponding meanings in the annexed Contract (as defined herein) unless otherwise defined or the context otherwise requires. The singular shall include the plural and vice versa as the context may dictate. The gender used in the annexed Contract shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the persons being referred to may require.

Additional Insured	All individuals and entities listed in Appendix E
Allowable Additional Costs	As defined in Appendix B Scope of Services
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific “Applicable Agreements” identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Requirements	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific “Applicable Requirements” identified in Part I
Borough	The City borough where the Project is located
City	The City of New York
City Contract	The Amended and Restated Contract between the City and the Corporation, dated as of June 30, 2013 and the Amended and Restated Maritime Contract between the City and the Corporation, dated as of June 30, 2013, as applicable, as each may be amended, restated and/or revised from time to time
City Comptroller	Comptroller of the City or his or her designee
Commencement Date	The date upon which the Consultant shall commence the Services as stated in Part I, Section 1.4
Comptroller General	The United States Comptroller General

Confidential Information	Any and all information, records, data, materials, documents, electronic files or Work Product provided by NYCEDC and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than NYCEDC, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from NYCEDC, the City or any of its agencies without any obligations of confidentiality with respect thereto
Consultant	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in Part I, Section 2.3
Consultant's Underlying Intellectual Property	The Consultant's analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
Contract	The Contract between the Consultant and the Corporation to which this Appendix A is annexed, as defined in Part I, Section 1.1
Contract Completion Costs	As defined in Section 3.5.3
Contract Date	The date of this Contract, as stated in Part I, Section 1.3
Corporation	New York City Economic Development Corporation, a not-for-profit corporation organized pursuant to laws of the State of New York
CPL	Contractor Pollution Liability Insurance
DBEs	Disadvantaged Business Enterprises
Director	The person set forth in Part I, Section 2.2, or such other person as may be subsequently designated by the Corporation
Disability Benefit	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for

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	all of its employees engaged in the Services
DCAS	New York City Department of Citywide Administrative Services
DCP	New York City Department of City Planning
DEP	New York City Department of Environmental Protection
Division	Division of Labor Services of DSBS
DOB	New York City Department of Buildings
Doing Business Data Form	The form available at www.nycedc.com to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
DOT	New York City Department of Transportation
DPR	New York City Department of Parks and Recreation
DSBS	New York City Department of Small Business Services
DSNY	New York City Department of Sanitation
Electronic Funds Transfer (EFT)	Any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorized a financial institution to debit or credit an account
E.O. 50	Executive Order No. 50 (1980), as amended or revised from time to time
Employment Report(s)	The reports described in Appendix G and available at www.nycedc.com to be completed and submitted to the Corporation pursuant to Executive Order 50
Event of Default	As described in Part II, Section 3.3.2
Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in Part II, Section 1.5.2
FDNY	New York City Fire Department
Federal Courts	United States Federal Courts located in New York City

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FHWA	United States Federal Highway Administration
Final Completion	The performance of all Services contemplated in this Contract to the satisfaction of the Director
Final Payment	The last payment by the Corporation to the Consultant under the Contract upon Final Completion or as provided in Part II, Sections 3.5.2 and 3.5.4
Force Majeure	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Corporation express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable)
FTA	United States Federal Transit Administration
Funding Agencies	All federal, State or local agencies or entities that are the source of the Funds including, without limitation, any specific "Funding Agencies" identified in Part I
Funds	All funds from the federal, State or local sources to be applied to payments for Services under this Contract including, without limitation, any specific "Funds" identified in Part I
IDA	New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized pursuant to Article 18-A of the General Municipal Law of the State of New York
Inspectors	All individuals or entities specifically identified as "Inspectors" in Part I, if any
Insurer	Any insurance company retained by the Consultant pursuant to Part II, Section 6.3.2
Joint Venture	An association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in

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	which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.
Landmarks Preservation Commission (LPC)	The City of New York Landmarks Preservation Commission
Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Requirements
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
MacBride Principles	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City's Administrative Code
Maximum Contract Price	The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.6
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
MBEs	Minority-owned Business Enterprises
M/WBE Compliance Reports	As described in Part II, Section 9.6
M/WBEs	MBEs and WBEs, collectively
M/WBE Subcontractors Participation Plan	As described in Part II, Section 9.5
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9.1

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Notice to Proceed	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof
Notify	To give a Notice pursuant to Part II, Section 10.9.1
NYCEDC	The Corporation
NYCTA	New York City Transit Authority
NYPD	New York City Police Department
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOS	New York State Department of State
NYSDOT	New York State Department of Transportation
OMB	New York City Office of Management and Budget
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
PANYNJ	The Port Authority of New York and New Jersey
Participation Goal	The Corporation's goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.3.
Payment Schedule	Schedule listing Maximum Payment for each Portion of the Services, appended to Appendix C when payment for Services or a Portion of the Services is on a Tasks completed basis
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete
Percentage of Completion	An amount equal to the percentage of completion of each Portion of the Services
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services
PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in

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	Appendix B and/or Appendix C
Principal	The Consultant's most senior officer of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4
Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule
Progress Schedule	Any schedule issued or approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
Project Site	The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B
Public Design Commission ("PDC")	Public Design Commission of the New York City (f/k/a The Art Commission)
Qualified Joint Venture ("QJV")	A Joint Venture between one or more MBEs and/or WBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the Contract, as set forth in the joint venture agreement, is at least 25% of the total profit.
RAP	Remedial action plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity
Requisition	A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period
Retainage	Any sum withheld from any payment to the Consultant including, without limitation, those set forth in Part II, Sections 1.5.3, 2.2.1 and 4.2.3
Retainage Payment Date	The date by which any Retainage identified in Part I,

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	Section 1.10 will be paid to the Consultant, as identified in Part I, Section 1.11, subject to the provisions of Part II, Article 2 and Part III, Appendix C
Scope of Services	The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B
Services	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in Appendix B
SHPO	State Historic Preservation Officer
Specific Terms and Conditions	Part I of this Contract
Fee and Cost Schedule	Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services, appended to Appendix C when payment for Services or a Portion of the Services is on an hourly rate basis
State	State of New York
Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2
Term	The duration of this Contract, as stated in Part I, Section 1.5
USACOE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
UST	Underground storage tanks
WBEs	Women-owned Business Enterprises
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services

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Work-Made-For-Hire As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101

Work Product All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract, provided however that Work Product shall not include any Consultant's Underlying Intellectual Property

APPENDIX B
SCOPE OF SERVICES

I. DEFINITIONS

A. **In General.** All capitalized terms defined in Appendix A of the Contract to which this Appendix B is attached shall have the same meaning herein unless otherwise defined or the context otherwise requires.

B. **Additional Definitions.** For purposes of this Contract, the following terms shall have the following meanings:

Agencies	BPO, DEP, DOB, DOHMH, DOT, DPR, DSBS, DSNY, HPD, LPC, MOO, MOEC, MOER, OMB, PDC, NYCHA, other city agencies, NYSDEC, NYSDOH, NYSDOS, NYSDOT, OPRHP, SHPO, FHWA, FTA, HUD, NMFS, NYCTA, OSHA, USACOE, USEPA and USDOT (all as defined in Appendix A or in this Appendix B), and any other agencies, Bureaus, Departments, Offices, or other discrete entities of The City of New York, the State of New York or the United States, that have jurisdiction over any activities carried out in respect of the Services and/or the Program
Allowable Additional Services	Project-related services that are not specifically identified in this Scope of Services, but are, in NYCEDC's sole discretion, determined to be contemplated by, directly related to and essential to the Consultant's completion of the Services under this Contract. NYCEDC's directing the Consultant to perform such additional services may be based on the Consultant's relevant experience and its successful performance under the Contract to date. NYCEDC, in its sole discretion, may direct such additional services to be performed as Extra Work on a lump sum or an hourly basis
Approvals	Any and all approvals to be obtained by the Consultant from all applicable Interested Parties in connection with and required for proper completion of the Services including, without limitation, written evidence of the receipt thereof
ASTM	American Society for Testing and Materials International
ASTM E 1527-13	ASTM Environmental Standard, Number 1527 (2013), entitled "Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process"

BCP	New York State Brownfield Cleanup Program, a State-wide Brownfield cleanup program administered by NYSDEC
BOA	Brownfield Opportunity Area and, alternatively, the BOA Grant Program, as describe below
BOA Grant Funds	Outside Funding provided by NYSDOS for certain Services to be performed under this Contract and/or related to the Project, as described in and pursuant to a BOA State Assistance Contract under the BOA Grant Program
BOA Grant Program	A program created pursuant to General Municipal Law Section 970-r that is funded and administered by the NYSDOS for planning in areas characterized by clusters of Brownfield sites, including gathering of basic information about a community, identifying strategic brownfield sites, developing revitalization plans and implementation strategies, and conducting environmental assessments of strategic sites
BOA or other Community Brownfield Planning Services	As described in greater detail in Part V.E? of this Appendix B
BOA State Assistance Contract	Grant contract between NYSDOS and the City of New York governing the use of BOA grant funds
BOA or other Community Planning Work Plan	A particular type of statement of work appended to a BOA State Assistance Contract or other contract setting forth the specific tasks to be performed by a recipient of BOA Grant Funds or other grant funds for community Brownfield planning
BP	The Borough President of the Borough in which a Project Site is located and/or a Project Assignment is being performed
Brownfield	A local brownfield site, as described in § 24-902 of the Administrative Code of the City of New York. May also include other vacant or underutilized land
Brownfield Project	An assessment or cleanup project being undertaken on a Brownfield within New York City, including community engagement activities, or other assignment established under this Contract by the Project Team

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Community Groups, Community Based Organizations (CBO's) or Stakeholders	Any group of persons, whether or not a legally organized entity under the laws of New York State or any other sovereign state, and whether or not organized on a formal or informal basis, that may assert an interest in any Brownfield Project
Contaminant	Shall mean hazardous substances and/or petroleum, as such terms are defined in § 27-1405 (7-a) of the New York State Environmental Conservation Law ("ECL") on in the NYC Brownfield Law of 2009
Contractors	Collectively, all construction contractors, construction subcontractors, consulting contractors, and consulting subcontractors providing work and/or Services on, at or in connection with a Project Site
Cooperative Agreement	A USEPA Brownfield Cooperative Agreement, as defined below
Delegates	As defined in Section II.B.1.b of this Appendix B
DOHMH	New York City Department of Health and Mental Hygiene
DSNY	New York City Department of Sanitation
EPIC Community	A web-based application established by OER for use by community based organizations for planning of Brownfields and other vacant or underutilized land
EPIC Environment	A web-based application established by OER for use by community based organizations, environmental consultants and Brownfield developers
ELAP	Environmental Laboratory Accreditation Program
Environmental Consulting Services	As generally described in Part II.A of this Appendix B
ESA	Environmental Site Assessment
Geological or Environmental Investigations	Subsurface investigations used to assess the physical and chemical quality of soil, water and soil vapor, usually conducted through the use of soil borings, monitoring well and/or test pit installations from which samples are drawn and analyzed by qualified laboratories
Geotechnical Studies	Subsurface investigations used to determine the geotechnical properties of soil (<i>e.g.</i> , grading, Atterberg limits and moisture content), usually conducted through the use of test pit installations from which samples are drawn and analyzed by qualified laboratories

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GPS	Global Positioning System
Grant Writing	In general, all Services necessary for and related to the preparation, submission and processing of applications to and awards of grants by various Agencies to underwrite the costs of Environmental Consulting Services and/or in furtherance of Project Goals including, without limitation, as further described in this Appendix B
Climate Resilience and Sustainable Remediation Survey	Technical assistance, review and advisory services regarding the integration of measures that may be implemented during remediation that can improve the environmental performance and increase the sustainability of remediation projects
HASP	Health and Safety Plan
Hazardous Waste	As defined in ECL §27-1301
Heating Oil Storage Tanks	Aboveground and belowground storage tanks containing Number 2 and Number 4 fuel oil
HPD	New York City Department of Housing Preservation and Development
Hydro-geological Investigations	Subsurface investigations used to evaluate aquifer characteristics (<i>e.g.</i> , groundwater flow direction, hydraulic conductivity, transmissivity, storativity, quantitative modeling of groundwater flow and solute transport), usually conducted through the use of monitoring wells and hydraulic conductivity testing
Interested Parties	All Project Team members, all applicable Agencies, Utilities and Community Groups, and all other individuals and entities that use, are working near or may be directly affected by the Project or any specific Project Assignment and/or Brownfield Project Site
Investigation Services	Any services required to investigate and characterize the Contaminants present at a Brownfield Project Site and necessary to the development of a Remedial Action Work Plan for a Brownfield Project including, without limitation, Phase 1 Environmental Site Assessments and Phase 2-type Environmental Site Investigations
Investigation Work Plan(s)	Document that describes the environmental investigation work to be done on a property
IT	Information Services
IT Services	As described in V.E of this Appendix B
Lead Consultant	As identified in Part II.B.2 of this Appendix B

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LEED Certification	A third-party certification program and the nationally accepted benchmark for the design, construction and operation of high-performance green buildings and sustainable site design. Certification is accomplished through independent evaluation of a suite of rating systems that recognize projects that implement strategies for better environmental and health performance.
MOER	New York City's Mayor's Office of Environmental Remediation or OER
MOEC	New York City Mayor's Office of Environmental Coordination
MOO	New York City Mayor's Office of Operations
NMFS	The National Marine Fisheries Service
NYC Brownfield Jumpstart	New York City Brownfield Jumpstart program administered by OER to promote environmental study, cleanup in City and State Brownfield cleanup programs
NYC VCP	The New York City Local Voluntary Cleanup Program administered by OER pursuant to Local Law 27 of 2009
NYC Green Property Certification Program	A program establish by the City pursuant to which OER certifies the success of a Brownfield remediated under the NYC VCP (<i>i.e.</i> , that the remedial actions taken adequately protect the public and the environment)
NYCHA	New York City Housing Authority
OER	New York City Mayor's Office of Environmental Remediation
OER Director	The Director of OER
<i>OneNYC</i>	As described in Part II.A of this Appendix B
OSHA	The United States Occupational Safety and Health Administration
Petroleum	As defined in §172 of the New York State Navigation Law
PCBs	Polychlorinated Biphenyls
PDC	New York City Public Design Commission

Phase 1 Environmental Site Assessment or a Phase 1	Type of pre-development design and/or investigation Services for a property including, without limitation, an analysis of a site's prior use and a review of government databases detailing relevant environmental incidents and information, which must be conducted in accordance with ASTM E-1527-05
Phase 2 Environmental Site Investigation or a Phase 2	Type of investigation Services, usually conducted based upon the findings of a Phase 1, reporting on the results of relevant field work conducted to identify and quantify Contaminants in soil, groundwater, sediments, and soil vapor at a property, which is typically conducted in compliance with DER-10
PID	Photo Ionization Detector
Place-Based Community Brownfield Planning Program	Administered by OER to promote community identification of strategic vacant or underutilized contaminated land, prepare plans for land use and assist in implementation of these plans.
Project Assignment	<p>In general, Services that the Corporation may require at particular Project Sites for specific projects from time to time during the Contract Term that the Corporation directs the Consultant to perform and that usually require an amendment to this Contract; provided that reference to a Project Assignment may also mean:</p> <ol style="list-style-type: none"> 1. A Notice from NYCEDC to the Consultant that directs the Consultant to provide certain Services for the specific project(s) listed therein and includes, without limitation, the following: <ol style="list-style-type: none"> a. description of the Tasks required; b. the Project Site(s) involved; c. the manner of payment (<i>i.e.</i>, per Task or based on hourly rates), the Maximum Payment, Payment Schedule and/or Staff and Fee Schedule therefor; d. the Interested Parties; e. the Project Team; f. the Design Team; g. the Additional Insureds; h. the Commencement Date and the estimated or required completion time; i. any special provisions or requirements applicable to the Project Assignment including, without limitation, specific Outside Funding Sources, Applicable Statutes, Applicable Agreements and Legal Requirements; and

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	<p>j. such other information specific to the Project Assignment(s) and required for the proper completion of the Services listed therein; or</p> <p>2. The specific Project Assignment(s) listed in such Notice</p>
Project Budget	The budget prepared by the Consultant and approved and/or allocated by the Director for each Project Assignment pursuant to this Contract
Project Goals	As described in Part II.A of this Appendix B
Project Site	The location of a specific project for which Consultant's Services are required, as identified in any Project Assignment issued pursuant to this Contract
Project Team	As identified in Part II, Section B.1 of this Appendix B or in the case of a specific Project Assignment, as identified in the Project Assignment
QA/QC Plan(s)	Quality Assurance/Quality Control Plan
QAPP	Quality Assurance Project Plan
Qualitative Human Health Exposure Assessment	Estimation (qualitative or quantitative) of the magnitude, frequency, duration, and route of human exposure to contaminants
Remedial Action Report(s) (RAR)	A written report describing the Remediation Services performed and completed on a Brownfield or other remedial site
Remedial Action Work Plan(s) (RAWP)	A written work plan for remediation of a Brownfield or other remedial site
Remediation Services	Any services required to implement a Remedial Action Work Plan for the remediation of Contaminants at a Brownfield or other remedial site including, for example and without limitation, excavation, removal, transport and disposal of contaminated soil or other Contaminants present in a New York City Brownfield or other remedial site
Reporting Period	The one month period commencing on the Commencement Date and each month thereafter during the term of the Contract, for which period the Consultant shall report to the Project Team on the status of the Consultant's performance of the Services including, without limitation, each Brownfield Project, or as otherwise required pursuant to any Project Assignment
Sample Tasks	Various Tasks that the Consultant may be directed to perform under Project Assignments issued pursuant to this Contract including, without limitation, the Tasks listed in Exhibit 1 to this Appendix B

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Sampling, Analysis, and Monitoring Plan(s) (SAMP)	Pursuant to USEPA Brownfield Assessment Grants, a document describing plans for Phase 2 Environmental Site Investigation work to be funded, following USEPA Region 2 guidance, or an equivalent document for another remedial program
Services	The Services to be provided by the Consultant, as directed by the Project Team, pursuant to this Contract including, without limitation, any of the Environmental Consulting Services identified in Parts III-V, inclusive of this Appendix B and/or as set forth in any Project Assignment
Site Management Plan(s) (SMP('s))	Document and plan outlining the procedures for ongoing engineering controls and institutional controls and oversight of a site after the remedial action phase
Soil Management Plan	Document and plan outlining the planned source and final location of soil involved in site remediation or the long-term management in place of residual contamination on a Brownfield site or equivalent plan or document
SPEED; SPEED ²	OER's GIS-based web application of environmental and historic land use information on vacant, privately-owned, commercial and manufacturing properties in New York City. It is available at https://gis.nyc.gov/moer/speed/ . SPEED ² is an updated version of SPEED.
Statement of Work	A written statement to be submitted by the Consultant to the Project Team, describing the proposed work and services to be performed for a Brownfield Project
Statement of Work Report	Written description of work actually conducted at the Brownfield Project Site or on another project assignment under this Contract including, without limitation, pursuant to an approved Statement of Work to be submitted to the Project Team for Approval
Subcontractor	Collectively, all Subcontractors providing consulting services or construction services or other work at a Project Site
Task(s)	A Portion of the Services to be provided by Consultant pursuant to this Contract, as described in great detail in Parts IV and V of this Appendix B including, without limitation, the Sample Tasks identified in Exhibit 1 to this Appendix B
TCL	Total Compound List
Total Analyte List	USEPA's list of metals for which concentrations should be determined

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Toxic Characteristic Leaching Procedure (TCLP)	USEPA test designed to determine the mobility of both organic and inorganic analytes present in liquid, solid, and multiphasic wastes so as to simulate landfill conditions
USEPA	United States Environmental Protection Agency
USEPA Brownfield Cooperative Agreement	Grant Contract between USEPA and the City of New York governing the use of USEPA Brownfield Grant Funds
USEPA Brownfield Grant Funds	Outside Funding provided by USEPA for this Contract and/or the Project pursuant to a Cooperative Agreement under the USEPA Brownfield Grant Program
USEPA Brownfield Grant Program	A USEPA-administered grant program that provides funds for environmental assessment and cleanup work related to brownfields
USEPA Brownfield Work Plan	A statement of work attached to a USEPA Brownfield Cooperative Agreement that governs the work to be performed utilizing USEPA Grant Funds and usually including a project overview, activities, requirements, schedule and budget related to the work
Utilities	Any and all private or public utilities affected by or otherwise interested in a Brownfield Project

II. GENERAL INFORMATION

A. Project Background and Project Goals. On April 22, 2015, OneNYC2030 (“**OneNYC**” or the “**Plan**”), was introduced as an ambitious sustainability plan for New York City. The Plan seeks to maintain growth, equity, sustainability, and resilience for the City’s infrastructure and quality of life as its population grows by one million additional people by 2030. One of *OneNYC*’s goals is the cleanup of all contaminated land in the City and its return to productive use.

OneNYC estimated that there are as many as 4,000 potential Brownfield properties in the City, the redevelopment of which is blocked by actual or perceived environmental contamination. Left unattended, these Brownfield properties may pose a threat to public health and the environment. They also represent lost opportunities for urban revitalization and economic development including new housing, job opportunities, and open space to serve a growing population.

To address the challenge posed by so many existing Brownfield sites in the City, *OneNYC* identified eleven major Brownfield initiatives. One of these initiatives, the creation of the NYC Mayor’s Office of Environmental Remediation (“**OER**”) to oversee the City’s Brownfield programs, was accomplished on May 11, 2009 with the “New York City Brownfield and Community Revitalization Act” (Local Law 27 of 2009).

OER is leading the Project Team assembled by the City to create programs and initiatives that will spur the remediation and redevelopment of New York City Brownfields (the “**Project Goals**”). The City has asked NYCEDC to serve as a member of the Project Team. NYCEDC has agreed to do so.

The Project Team has determined that one or more independent on-call environmental consultants are needed to assist its initiatives and achieve the Project Goals. These consultants shall perform the various services (collectively, “**Environmental Consulting Services**”), as directed by the Project Team, as described below in greater detail in Sections III-V, inclusive of this Appendix B. In general, the Environmental Consulting Services are anticipated to include, without limitation, the types of services (the “**Services**”) identified in Section III.A.1 below.

The Services will be funded in part with USEPA Brownfield Grant Program grants, BOA Grant Funds, and NYC Brownfield Incentive Grants and other funds and all Services performed by the Consultants are subject to all Legal Requirements and other requirements related to these Funds and any other Outside Funding that may become available during the Contract Term.

For additional information please see OER’s website at: www.nyc.gov/oer.

B. Identity of and Relationship of the Parties.

1. Project Team and Delegation of Duties

- a.** The Project Team is comprised of the NYCEDC, OER and any other person,

entity or group specified by the Corporation from time to time.

b. NYCEDC may delegate all or part of the administration of this Contract and/or the duties, rights and obligations of the Corporation's Director to the OER Director or her or his designated representatives or delegates (all the foregoing collectively, the "Delegates"), provided that the Delegates have consulted with the NYCEDC prior to making any determination or exercising any of NYCEDC's or its Director's rights under the Contract.

2. The Consultant Team. The members of the Consultant Team may include the Consultant's staff and/or Subcontractors. The Consultant shall act as the Lead Consultant. Required Consultant Team members shall include, without limitation, the following:

:

<i>Consultant Team Members</i>	<i>Titles</i>
a. Selected Consultant	Lead Consultant
b. TBD	Professional Engineer
c. TBD	Geologist
d. TBD	Hazardous Materials Scientist/Specialist
e. TBD	Planners
f. TBD	IT/GIS Specialists
g. TBD	Grant Writing/Management Specialists

3. Actions Subject to Project Team Approval. In addition to any other actions that require Approvals from any member of the Project Team or any other Interested Party, the Consultant must obtain the Project Team's Approval of the following:

- a. Requisitions for Services;
- b. Project Assignment work plans and budgets; and
- c. All marketing and outreach materials.

III. GENERAL DESCRIPTION OF SCOPE OF THE SERVICES

A. Project Types/Project Assignments

1. Project Types. The Consultant will perform on-going, on-call Services, as directed, from time to time during the Contract Term, as specified in and in accordance with any Project Assignment awarded to the Consultant in connection with specific Project Sites including, without limitation, the following:

a. Sites Requiring Environmental Consulting Services. Certain Project Sites require all Services necessary for the assessment and remediation of Hazardous and Non-Hazardous Substances and Petroleum that shall include, but are not limited to, performance of Phase 1 and Phase 2 environmental site assessments, pre-development studies such as title searches, sample collection and laboratory analysis; preparation of remedial work plans and reports; remediation; and programmatic and community outreach and participation activities, and ongoing site management and site inspection related to Brownfield and other remedial site assessment, cleanup, and redevelopment. Services may also include support services for

remedial program regulatory oversight, such as review of work plans and reports, field inspections and other assigned duties. As applicable, all Investigation Services and Remediation Services must be performed in accordance with all applicable Legal Requirements, regulations and procedures required by the Project Team and all applicable Agencies, as well as industry-accepted ASTM methods and other standards to be identified by the Project Team.

b. Related Planning, Research, Project Management, Study and Reporting, Outreach, Communication and IT Services. Certain Project Sites will require a variety of other related Services including, without limitation, the following:

(1) **Community Brownfield Planning Services, and Real Estate and Land Cleanup and/or Development Planning Services** shall include, without limitation, land vacancy analyses, assessments of land use, zoning analyses, affordability analyses, land ownership, and basic transportation, utilities and infrastructure systems in specified locations, as well as the performance of certain predevelopment activities including but not limited to pro forma financial analyses, site surveys, market analysis, conceptual plan developments, and sustainability planning; or supporting achievement of LEED Certification and/or NYC Green Property Certification; and any other planning, monitoring, evaluation and compliance activities. Planning services established here may lead to selection of strategic sites by community based organizations engaged in place based community Brownfield planning.

(2) **GIS-based Analyses** shall include, without limitation, data gathering, queries and generation of reports.

(3) **Project Management** shall include, without limitation, the assessment of, possible removal, and long-term compliance for hazardous waste and non-hazardous waste remediation projects, and petroleum remediation projects, in particular Heating Oil Storage Tanks and fuel tanks.

(4) **Community Outreach** shall include, without limitation, the development of content for print materials and websites explaining Brownfield programs and activities, or other audio visual tools and resources including Powerpoint presentations or short videos, and conduct or support public meetings, workshops, or conferences. Such outreach may be associated with various OER remedial programs or OER's place based community Brownfield planning program.

(5) **General IT Services** shall include, without limitation, assisting with and development of logs, databases and/or possibly public portals or other such IT-related tools to help manage the Project Sites and monitor compliance with various Legal Requirements and input of data or other assigned tasks associated with OER's web applications.

(6) **Advanced IT Services** shall include, without limitation, the development of web pages and web applications designed to advance the Project Team's Brownfield initiatives and Project Goals including, but not limited to identification of incentives, program navigation, e-government and web-based interfaces and/or portals and other streamlining devices to facilitate existing and planned applications and programs maintained by the Project Team;

maintenance of EPIC Community, EPIC Environment, SPEED and/or SPEED² development of GIS-based applications and sub-applications, alterations, improvements or amendments, including addition of layers to existing programs (such as addition of new property environmental digital databases for the OER's NYC SPEED and/or SPEED² portal), updating of existing applications and development of new applications as required by the Project Team to support existing OER program or to support development of new programs.

(7) **Study and Reporting Services** shall include, without limitation, the development and analysis of reports derived from existing web applications and programs or other models required by the Project Team and the preparation of annual, periodic or one-time reports as directed by the Project Team, including but not limited to OER remedial and other programs (i.e. such as the NYC Clean Soil Bank or the NYC Green Property Certification program) and their utilization, OER remedial and other program metrics and analytics, financial models of benefit-to-City analyses, benefit-to-community analyses and benefit-to-developer analyses for Brownfield cleanups; Brownfield cluster analyses and associated Brownfield Opportunity Area Planning or Place-Based Community Brownfield Planning Area and development analyses, property analyses and analyses of properties for specialized uses such as affordable housing, industry and/or small park or open space development, broader program analyses for affordable and/or supportive housing development, industrial development and open space programs and various forms of technical assistance for existing grantees of the Brownfield Opportunity Area program or NYC Place-Based Community Brownfield Planning Area program in New York City as may be required by the Project Team.

(8) **Resilience and Sustainability Surveys** shall include analyses of the climate change resilience or overall sustainability of Brownfield or other development projects assigned by the Project Team, including the availability of financial incentives to support increased resilience or sustainability on a project.

c. **Grant Writing.** Grant Writing services are anticipated to include the identification of available federal, state and/or regional grants programs for which the Project Team might be eligible, the preparation of grant applications and consultation with the Project Team's pursuit of such grants and their implementation.

d. **Allowable Additional Services.** As defined in Part I.B of this Appendix B, it is anticipated that in the course of a Project Assignment the Project Team may determine that additional Environmental Consulting Services and/or other scope-related Services may be required to complete a Project Assignment.

2. Project Assignments.

a. **In General.** It is anticipated that NYCEDC will procure the Services for these projects from among a number of on-call consultants retained or to be retained by NYCEDC for such Services. Project Assignments will be procured using procurement methods permitted under the City Contracts and any Legal Requirements related to project Funds by any Outside Funding Sources. Project Assignments may include, without limitation, the types of Services identified and described in Section II.A.1 above and Services identified and described in Parts III

– V, inclusive, below, as required and directed by the Project Team.

b. Consultant Team. It is anticipated that the Project Assignments for specific Project Sites may require the Consultant to procure and identify a Consultant Team to perform the Services unique to the Project Assignment as required. The members of the Consultant Team for this Contract may include Consultant's staff and/or Subcontractors.

c. Project Team. It is anticipated that each specific Project Assignment will list the specific Agencies, Utilities, Community Groups and Interested Parties participating as members of the Project Team for that specific Project Assignment.

d. Project Assignment Requirements. Each Project Assignment will have terms and conditions specific to the project to be undertaken pursuant to the Project Assignment. The Consultant must adhere to all Legal Requirements including, without limitation, all Outside Funding Requirements related to the procurement, administration and implementation of the project including, without limitation, the requirements related to the Minority/Women-Owned Business Enterprises (M/WBE).

IV. ADMINISTRATIVE REQUIREMENTS AND TASKS

A. General Administrative Tasks.

1. The Consultant shall perform the Services through a staff (the "**Staff**") whose expertise shall be commensurate with the level of Services being performed at any specific Project Site. The Consultant shall provide the Services until completion and final acceptance of all Project Assignments awarded to the Consultant by the Project Team during the Contract Term. In the event of a work stoppage or a winter shutdown, or as the situation warrants during the course of a Project Assignment, the Consultant shall reduce the Staff appropriately or as directed by NYCEDC.

2. The Consultant agrees to provide, to the satisfaction of the Project Team, Services required during each phase identified in each Project Assignment. The Consultant's performance of the Services at each Project Site shall:

- a.** conform to the Legal Requirements and applicable Agency and/or program requirements;
- b.** are provided in accordance with industry standards; and
- c.** has been properly coordinated with the requirements, specifications, and infrastructure of all applicable Agencies and Utilities.

3. The Consultant specifically agrees that:

- a.** its Subcontractors, agents and employees and Staff shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform;
- b.** it shall pay for and obtain any licenses and permits necessary for the performance of the Contract and each Project Assignment; and

- c. duly authorized representatives of NYCEDC and other members of the Project Team shall have the right at all times to inspect each Project Site and the Consultant's Services including, without limitation, all Subcontractors' Services.

4. Without limiting the provisions set forth in Section 5.3 of this Contract, all office diaries, engineers' and inspectors' diaries, daily records of labor, materials and equipment used, notes, designs, reports, plans, studies, drawings, photographs, tracings, estimates, documents, materials and specifications prepared and furnished by the Consultant are the property of NYCEDC. The Consultant shall deliver to NYCEDC all such diaries, daily records of labor, materials and equipment used, notes, designs, reports, plans, studies, drawings, photographs, tracings, estimates, documents, materials and specifications which thereafter NYCEDC may utilize in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional compensation to the Consultant.

B. The Tasks. The Consultant(s) shall perform the Services as a series of Tasks which may fall into the following groups:

1. **Community Brownfield Planning, Strategic Site Selection, Site Reuse Planning, and Plan Implementation; and Predevelopment Tasks.** See Part V.A
2. **Environmental Assessment Phase Tasks.** See Part V.B
3. **Remedial Phase Tasks.** See Part V.C
4. **Site Management, Site Monitoring and Closure Tasks.** See Part V.D
5. **Community and Brownfield Industry Outreach, Support and IT Tasks.** See Part V.E
6. **Grant Writing.** See Part V.F
7. **Allowable Additional Services.** See Part V.G

Specific Tasks will be identified in Project Assignments issued during the Contract Term. A list of anticipated Sample Tasks is annexed as Exhibit 1 to this Appendix B.

V. SPECIFIC SCOPE OF SERVICES

The Services are anticipated to consist of, but shall not be limited to the Tasks listed below. The precise Tasks shall be identified and further clarified in the Project Assignments issued pursuant to this Contract. The Consultant shall, as directed, perform:

A. Community Brownfield Planning, Strategic Site Selection, Site Reuse Planning, and Plan Implementation; and Predevelopment Tasks for which the Consultant shall:

1. Coordinate property access and field activities with the Project Team and property owners prior to conducting work;
2. Conduct ASTM E1527-13 compliant Phase I ESA on multiple properties, searches of environmental databases and historic maps and records, ESA, and other pre-development and investigation tasks directed by the Project Team; investigate land use history of the Project Site for features of environmental significance, including potential hazardous waste generators, from historic resources review (such as historical maps and aerial photographs) to determine probable areas of concern or recognized environmental conditions and to establish locations for sampling; obtain and review environmental databases and regulatory and other Agency records including, but not limited to FDNY, DOB, DOHMH, NYSDOH, DEP, NYSDEC;
3. Prepare Investigation Work Plan(s) (“**Phase 1**”), including a Field Sampling Plan (FSP) or Sampling and Monitoring Plan (SAMP) as necessary, outlining the rationale, generic descriptions of the various study elements and activities, and proposed technical approach for each environmental investigation, which shall be accompanied by a HASP and a site-specific QAPP that conform to USEPA guidance or other guidance required by the Project Team;
4. Provide cost estimates for anticipated pre-development, Phase II assessment and remedial action work and establish preliminary and final remedial action work plans consistent with the NYC VCP or State BCP, as directed;
5. Identify all physical parameters and proposed sampling locations on a site map drawn to engineering scale that includes, without limitation, road names, site boundaries, buildings and structures, water features, drainage patterns, anticipated groundwater flow patterns, utilities, subsurface anomalies, rights-of-way and easements and proposed locations of monitoring wells and boreholes;
6. Attend meetings of all applicable Agencies, Community Groups and other Interested Parties, as directed;
7. Perform other Preparatory Phase Tasks as may be required by the Project Team, including performance of such work as required by applicable guidelines, including guidelines prescribed by grant-originating agencies or other funding sources.

B. Environmental Assessment Phase Tasks, for which the Consultant shall:

1. Conduct geophysical studies, such as, for example and without limitation, ground penetrating radar and electromagnetic studies, to determine the physical/chemical characteristics of a Project Site’s subsurface and produce geophysical data maps and evaluations of such measurements;
2. Conduct Triad Studies for Project Sites;
3. Conduct ASTM-E1903-97(2002)-compliant Phase II ESAs on one or multiple properties; execute Geological, Hydrogeological, or Geotechnical Studies, or other studies as

directed, such as a soil boring program including, but not limited to, the installation of borings, the excavation of test pits and the collection of soil samples for geological and chemical evaluation and to determine the horizontal and vertical extent of contamination; installation of groundwater monitor wells and collection of groundwater samples; installation of soil vapor probes and collection of soil vapor samples; and laboratory chemical analysis of samples; conduct evaluations of the configuration of the water table and direction of groundwater flow and other Geological and/or Hydrogeological Investigations, as well as, Remedial Assessment(s)/Investigation(s) field and laboratory activities as may be required by the Project Team;

4. Collect soil samples from borings or test pits for geological evaluation, continuously, or at a frequency determined by the Project Team, to the maximum depth required by the Project Team;

5. Conduct Geological Investigations and quantitative physical analysis of all soil samples collected, the parameters for which may include, but are not limited to total organic carbon, permeability, grain-size, bulk density, particle-specific gravity tests, hydraulic conductivity and other geological characteristics, as specified by the Project Team; and prepare geologic cross section/bedrock contour maps based on collected data;

6. Conduct soil gas sampling at intervals specified by the Project Team to measure concentrations of volatile organic vapor and methane; perform sampling and analysis in a manner consistent with NYSDOH methods, as directed;

7. Perform Hydrogeological Investigation(s) and assess such characteristics as, without limitation, the installation of monitoring wells and the collection of filtered and unfiltered groundwater samples to determine groundwater flow direction, water table depth, flow rates, horizontal and vertical extent of contamination; the mobility of pollutants; the soils' attenuating capacity and mechanisms; discharge and recharge areas; regional flow direction and quality; effects of any pumping to determine down- and up-gradient groundwater quality; and other hydro geological characteristics, in accordance with OER-approved and/or EPA- or DEC-approved procedures, screening intervals, and depths; develop wells in accordance with procedures approved by the Project Team prior to groundwater sample collection;

8. Conduct slug and pump testing of hydraulic properties of any aquifer to determine extent of transmissivity, storativity, hydraulic conductivity, porosity, groundwater flow velocity, and permeability, in accordance with any applicable dewatering permits for pump tests (if necessary), the information culled from which may be used for Hydro-geologic evaluations including, but not limited to determination of direction, rate of mitigation, dispersion and extent of any contaminants;

9. Assess sediment quality by collecting sediment samples from surface water bodies, water drainage systems, shorelines outfalls and other sources, as directed;

10. Collect and analyze soil, sediment, and groundwater samples for TCL volatile and semi-volatile organics, TCL pesticides, herbicides, and PCBs, Total Analyte List metals and/or TCLP or other analyses;
11. Collect and analyze appropriate QA samples including, but not limited to blind duplicates, field blanks, and trip blanks, as prescribed by the ELAP-certified laboratory or equivalent analysis method approved by the Project Team;
12. Survey monitoring wells and all sampling locations in GPS format, according to Project Team specifications;
13. Perform alternatives analysis and evaluate remedial options according to DEC's two-threshold criteria and seven criteria and sustainability of remedy;
14. Perform and summarize findings of a Qualitative Human Health Exposure Assessment to determine potential sources of soil, groundwater, sediment, and soil vapor contamination, nature and extent of contamination, mobility, exposure pathways and extent of exposure and receptor populations; address both on- and off-site exposures for potential and completed exposure pathways and prepare mitigation techniques for remedial reports;
15. Perform building hazardous material surveys to assess lead paint, asbestos, mercury/PCB-containing electrical components and mold conditions;
16. Establish work plans, HASPs and Construction HASP's in response to needs of developers or Agencies, as directed;
17. Develop Remedial Action Work Plans consistent with and in strict accordance with rules and regulations for remedial programs established by any applicable Agency including, without limitation, NYC VCP and NYS BCP and EPA Brownfield or other program, and provide cost estimates for anticipated Remediation Services;
18. Assist in development of application for enrollment in remedial programs including NYC VCP, NYS BCP, and EPA Brownfield and other programs;
19. Review reports sponsored by developers and prepared by other Consultant(s), Sub consultant(s), or Contractor(s), on behalf of OER, the Corporation, or other regulatory agency project sites; and
20. Competitively procure all Services to be performed by Subcontractors in accordance with the applicable Legal Requirements.

C. Remedial Action Phase Tasks, for which the Consultant shall:

1. Prepare documents including but not limited to draft and final Remedial Action Work Plans, HASPs, QA/QC Plans, Site Management Plans, Soil Management Plans (or equivalent) and cost estimates for Remediation Services, which include, without limitation, excavation, hot

spot removal, construction and/or implementation of institutional and engineering controls, soil import, reuse, and disposal, and the placement of clean fill and/or cover soils;

- 2.** Design, implement, and monitor the construction of remediation systems for groundwater, soil vapor, soil, sediment and aquatic habitat contamination, as warranted and directed by the Project Team and/or regulatory authorities, in accordance with an approved Remedial Action Work Plan and any applicable permits;
- 3.** Remove and properly dispose of all aboveground and underground storage tanks and associated petroleum-contaminated soils in accordance with all applicable Legal Requirements and provide all administrative documentation necessary to register or close tanks;
- 4.** Provide services for removal and transportation of underground storage tanks, contaminated soil/fill and hazardous and non-hazardous wastes;
- 5.** Screen by visual means, by odor and by PID monitoring all excavated soil for indications of contamination during all intrusive work;
- 6.** Prepare daily, weekly, monthly, or other requirements documenting remedial action activities and including photographs and narrative summaries or work;
- 7.** Collect and temporarily stockpile soil residuals in discrete piles; securely cover stockpiles by heavy-mill plastic sheeting or other means approved by the Project Team; pending results of analytical data in determination of their appropriate disposition, conduct TCLP or other tests at intervals to be determined by the Project Team, if warranted; based on TCLP results or other appropriate Tasks, dispose of soil residuals in accordance with all applicable Legal Requirements. All handling, transport and disposal shall be in compliance with applicable laws and regulations in all jurisdictions applicable to such management;
- 8.** Manage stormwater on the remedial site in compliance with applicable laws and regulations;
- 9.** Install demarcation barriers on top of the residual contamination horizon and import clean fill materials to be used for backfill and cover;
- 10.** Assist developers in managing compliance in long-term post remedial Site Management Phase for short- and long-term site inspection, monitoring, and certification; and
- 11.** Provide climate change resilience and sustainability surveys for Brownfield cleanup projects and other program reporting including, without limitation, providing assistance in identifying opportunities to integrate climate change resilience and green remediation concepts and principles of sustainability into NYC VCP and NYS BCP projects or other projects and/or in obtaining NYC Green Property Certification or LEED certification, data compilation and analysis, and preparation and submission of written reports regarding the same.

D. Site Monitoring and Remedial Action Closure and Tasks, for which the Consultant shall:

1. Prepare drafts of final investigation reports, including Phase I and Phase II and remedial investigations, summarizing all Investigation Services conducted at a Project Site, the results thereof and evaluating data showing the relationships between the various investigative efforts, data sufficiency and validation, and the quantities and concentrations of specific contaminants to the extent that this information can be supported by the available data;

2. Prepare drafts and final remedial action reports, closure reports, engineering reports and equivalent summarizing all remedial action elements; endpoint sample results; soil/fill disposal documentation and manifests; community air monitoring results; HASP results; daily, weekly, or monthly and other reports; photographs; soil import documentation engineering control documentation and site management plan; and final engineering and other certifications for engineering controls and other controls;

3. Submit the approved Site Management Plan, including plans for institutional and engineering controls, groundwater monitoring, operation and maintenance plans, inspection and certification plans, site management inspection checklists, and in or associated with the Remedial Action Report for long-term management of residual contamination or equivalent, as required by the deed restriction on real property. Execute deed restrictions or environmental easements as required;

4. Provide copies of all field documentation including, but not limited to field logs, boring logs, well construction logs, well development records, equipment lists, procedures for all sampling and QA/QC measures;

5. Perform community air monitoring of dust and volatile organic odors and properly record and report results;

6. Install and maintain engineering controls including, for example and without limitation, vapor barriers, active and passive sub-slab depressurization systems and sub-membrane depressurization systems, and long-term groundwater monitoring wells, as prescribed by the Project Team-approved SMP;

7. Prepare draft and final site closure reports to document the Remedial Services implemented and establish declarations of covenants and restrictions or environmental easements; and

8. Provide electronic copies of all final reports, project drawings and any other Work Product, as requested by the Project Team and/or required by all applicable Agencies.

E. Community and Brownfield Industry Outreach, Support and IT Tasks, for which the Consultant shall:

1. Provide logistical support and/or develop and present materials for and conduct public meetings and workshops for Community Groups, citizens, agencies, elected officials, consultants, developers and other interested parties related to work associated with the programs and duties of OER, including this contract, including but not limited to assessment of cleanup work on specific sites or Brownfield or land cleanup and redevelopment, including as may be required by any applicable Agency including, without limitation, USEPA, and community Brownfield planning activities;

2. Gather information from and facilitate discussions among such Interested Parties as Brownfield stakeholders, Agencies, Community Groups, businesses, lenders, developers, environmental attorneys, private property owners and citizens about work associated with the duties of OER, including this contract, including but not limited to obstacles and potential solutions regarding remediation and redevelopment of Brownfield and other projects in strategic locations and in general; integrate and report the resulting findings with local factors such as those that affect land sales; prepare written reports and other Work Product related to these findings; develop and deliver presentation and training materials based on these findings, as directed and approved by the Project Team; and conduct training and outreach activities related to these findings;

3. Assist community Brownfield planners, OER and others in the identification of strategic Brownfields or vacant and underutilized sites, development of plans for reuse of those strategic properties including community driven plans, development of implementation strategies to achieve the plans, and assistance in plan implementation. Conduct public outreach and incorporate public comments into conceptual site programming; identify financing options and marketing plans for projects; and produce materials such as cost estimates of remedial investigations, remedial actions and pro-forma analyses on selected sites. Identify opportunities to form partnerships among Interested Parties, especially, without limitation, community Brownfield planners; Brownfield stakeholders; research projects or conditions affecting Brownfield redevelopment. Perform various forms of real estate assistance including market and economic studies, infrastructure analyses, zoning analyses, affordability analyses, and local availability of transit; analyze, manage and track information related to Brownfields and vacant or underutilized land in the City and the Project Goals; present findings to OER, community based organizations or as otherwise directed in reports, presentations, workshops and/or training sessions, as requested; conduct outreach to private property owners, developers, community-based organizations and other Interested Parties concerning the resources offered by OER and any advantages of and incentives pursuant to Brownfield planning, assessment and cleanup programs;

4. Research, identify, summarize and provide, in such formats as the Project Team shall direct, summaries of local, state and federal Brownfield incentive programs and other opportunities available to Brownfield stakeholders including, without limitation, any other available assistance related to community strategic Brownfield site selection, Brownfield pre-development planning, Brownfield investigations, Brownfield cleanups, Brownfield funding or incentive programs, site redevelopment, land acquisition, business development, relocation and/or expansion, job growth and retention, technological innovation, on-site construction,

energy savings, green building design, affordable housing incentive programs and other geographic benefits available for properties located in New York City;

5. Provide support to the Project Team in the development and implementation of training opportunities, workshops and outreach including, without limitation, development of materials, curricula for outreach to various parties, finding and securing space for programs, procuring audio-visual services such as preparation of educational videos and Powerpoints, transportation services, conducting program registration and related administrative tasks;

6. Prepare comprehensive reports in formats designated by the Project Team of data and analysis characterizing a specified geographic areas and properties for the purpose of identification of strategic Brownfield sites and for other purposes as directed by the Project Team, the content of which may include, without limitation, descriptions of the geographic boundaries with respect to natural or cultural resources; location of the geographic area as it relates to the wider community; the total land area within the boundary; geographic, demographic, social, and economic, attributes; employment indicators; community features and conditions; identification of existing land uses, zoning, and ownership; economic and land use development trends; relationship to plans or economic development reports; a summary of known Brownfield sites and other abandoned, vacant, or partially developed sites; the area's potential for providing new development, uses, businesses, housing, employment opportunities, public amenities, or recreational opportunities, or for generating additional revenues; land area per land use category; conditions and potential contamination issues of Brownfield, underutilized, abandoned or vacant properties; local, county, state, or federal economic development designations; transportation and infrastructure systems; utilities; vacancy rates; affordable housing stock,; existing open space; and a summary of the analyses and recommendations;

7. Identify organizations, such as but not limited to community development organizations, community boards, business ombudsman organizations, business improvement districts and other non-profits within specific areas of the City specified by the Project Team; develop an outreach strategy and initiate discussions with these various groups to ascertain their interest and capacity to pursue funding opportunities for the redevelopment of clusters of Brownfields in their neighborhoods; and arrange and facilitate meetings with or among such groups;

8. Develop, conduct and prepare written reports of metrics and analytics, economic analyses, return on investment and other data and information and summarize results of financial models to identify the benefits to all Interested Parties including, without limitation, the City, communities and community based organizations, property owners and developers of participating in a recognized environmental or Brownfield cleanup program including, but not limited to NYC's VCP and the State BCP, the purpose and content of which might include, without limitation, to quantify returns on investment, increases in property values, jobs created and tax revenue generated as a result of Brownfield remediation and redevelopment;

9. Create and/or expand E-government and web-based interfaces and/or portals, such as OER's EPIC Community, EPIC Environment, FAST and SPEED or SPEED², and other streamlined devices to facilitate existing and planned applications and programs maintained by the Project Team or other Interested Parties, and develop any other IT and web-based content as directed by the Project Team that are useful for the Project and the Project Goals, including:

- a. creating additional portals with expanded search functionality;
- b. creating electronic delivery systems;
- c. creating training modules and a wizard assistant;
- d. creating additional data layers, and/or portal functionality;
- e. any alterations, improvements, amendments, updates or the development of new applications.

10. Maintain, OER's web-based and GIS-based applications, including SPEED or SPEED², EPIC Community, EPIC Environment and FAST, and such associated Tasks as:

- a. producing reports of usage;
- b. create surveys and questionnaires for users to solicit information on function;
- c. adding data layers or web pages or updating existing layers or pages, or developing systems for more efficient delivery of such updates.

11. Provide real estate advisory services to community based organizations and others directed by the Project Team that will inform owners about:

- a. increasing the value of their property;
- b. range of redevelopment options;
- c. potential benefits associated with redevelopment;
- d. contamination issues, clean-up options and available remedial programs;
- e. environmental liability;
- f. project financing; and
- g. techniques to consider to catalyze redevelopment project.

Report on the outcomes, lessons learned and site specific recommendations from the interaction with community based organizations and the private property owners of strategic Brownfield sites.

12. Provide technical assistance to existing grantees of the NYSBOA Program;

13. Fulfill SEQRA or CEQR requirements related to any Project Site or Project Assignment; and

14. Develop and produce brochures, reports, website content, presentations, videos, photo stories, or similar educational materials that explain Brownfield programs, activities, and/or other Project-related topics.

F. Grant Writing, for which the Consultant shall develop concepts and strategies for successful grant applications on behalf of OER, both as an individual applicant and in combination with other public entities, identify sources of grants at the federal, state and regional levels and make applications for grants to supplement OER's programs and initiatives; and

G. Allowable Additional Services. Consultant shall perform such Allowable Additional Services that may be required to complete a Project Assignment including, without limitation, to obtain all Approvals from all applicable Agencies for the Services conducted by the Consultant and/or the other members of the Consultant Team.

Exhibit 1
List of Sample Tasks

I. PHASE 1 ENVIRONMENTAL SITE ASSESSMENT
• Phase I ESA (< 1 acre or 3-story structure)
• Phase I ESA (1-3 acres or 3- to 8-story structure)
• Phase I ESA (>3 acres or 8-story structure)
• Title Search
• Sanborn Map Purchase
• Environmental Database Report Purchase (1-acre site)
• Aerial Photograph Purchase
• Site Reconnaissance
• Report Preparation (< 1 acre or 3-story structure)
• Report Preparation (1-3 acres or 3- to 8-story structure)
• Report Preparation (>3 acres or 8-story structure)
II. PHASE 2 ENVIRONMENTAL SITE ASSESSMENT
• Work Plan Preparation
• QAPP Preparation
• HASP Preparation
Hand Augering
Ground Penetrating Radar Survey
Vac Tron
• Soil Boring Installation and Soil Sampling
Boring Installation
Field Sampling
VOCs
SVOCs
Pesticides
PCBs
Metals
IDW Drum Removal and Disposal
• Well Installation, Development and Groundwater Sampling
Well Installation
Well Installation Oversight
Equipment Rental
Well Development
Field Sampling
VOCs
SVOCs
Pesticides
PCBs
Total Metals

Dissolved Metals
Well Water Elevation Measurement
IDW Drum Removal and Disposal
• Soil Gas Probe Installation and Soil Gas Sampling
Soil Gas Probe Installation
Field Sampling
TO15
• Report Preparation (1-acre site)
III. REMEDIATION
• Remedial Action Plan Preparation (1-acre site)
• HASP Preparation
• H&S Equipment
• Air Monitoring
• Excavation
• Backfill with Clean Fill
• Storage Tank Removal
• Storage Tank Closure
• Endpoint Sampling
• Dewatering
• VAC Truck Removal
• Soil Vapor Extraction System
• Sub-slab Venting System (1-acre site)
• Transport and Disposal of Petroleum-Contaminated Waste
• Transport and Disposal of Hazardous Waste
• Transport and Disposal of Non-Hazardous Wastewater
IV. .

Exhibit 2
Budget – Outside Funding

Source of Funds	Amount	Permitted Use
2016 Brownfield Jumpstart	\$ 3,000,000	Phase 1 and 2; remediation
2014 EPA Brownfields Assessment Grant Community-wide hazardous substance	\$ 163,655	Phase I and Phase II Environmental Site Assessments
2014 EPA Brownfields Assessment Grant Community-wide Petroleum	\$ 148,215	Phase I and Phase II Environmental Site Assessments
New York State Department of State Brownfield Opportunity Area (BOA) Grant	\$ 1,000,000	Expected grant for Contractual Services

APPENDIX C
PAYMENTS

APPENDIX C

PAYMENTS BASED ON TASKS COMPLETED

The Maximum Payment for each Portion of the Services shall be the respective amounts set forth for in the Payment Schedule annexed hereto as Exhibit 1 to this Appendix C.

Interim payments shall be made to the Consultant. The interim payments will be made no more frequently than once a month in an amount equal to the Percentage of Completion of each Portion of the Services, multiplied by the Maximum Payment for each Portion performed during the billing period, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs as such costs accrue. Except as may permitted under Part II, Section 2.2.1 of the Contract, Retainage will not be applied against Allowable Additional Costs.

To request an interim payment, the Consultant shall submit to the Corporation's **Accounts Payable Department**, not more than once per month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following:

- (i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period;
- (ii) Allowable Additional Costs incurred during the billing period;
- (iii) the amount of partial payment requested; and
- (iv) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

An EFT Enrollment Form is attached as Exhibit 2 to this Appendix C and must be completed and returned to the Corporation prior to Consultant's submission of its first Requisition.

In addition, the Consultant shall submit Progress Reports to the Director at least monthly or in accordance with any other schedule approved by the Director, or at the Director's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

APPENDIX C

PAYMENTS BASED ON HOURLY RATES

Interim payments shall be made to the Consultant no more frequently than monthly based on the number of hours members of the Consultant's staff, as shown on the Staff and Fee Schedule annexed hereto as Exhibit 1 to this Appendix C, spent providing the Services, multiplied by the hourly rate and applicable multiplier for each such member of the Consultant's staff on the Staff and Fee Schedule, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs incurred.

On or before the Commencement Date, the Consultant shall provide to the Director an estimate of the number of hours members of the Consultant's staff, as set forth on the annexed Staff and Fee Schedule (Exhibit 1), and its Principal are anticipated to spend providing the Services. Such estimate shall be subject to the Director's approval.

To request an interim payment, the Consultant shall submit to the Corporation's **Accounts Payable Department**, not more than once per month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following:

- (i) Services performed by Consultant's Principal and by its professional and technical staff;
- (ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period;
- (iii) actual salaries incurred during such month;
- (iv) Allowable Additional Costs incurred;
- (v) Subcontractors' Costs incurred during the billing period;
- (vi) the amount of partial payment requested; and
- (vii) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

An EFT Enrollment Form is attached as Exhibit 2 to this Appendix C and must be completed and returned to the Corporation prior to Consultant's submission of its first Requisition.

No multiplier overhead, administrative fee or other mark up will be paid to Consultant for Subcontractors' Costs or Allowable Additional Costs. Except as may permitted under Part II, Section 2.2.1 of the Contract, Retainage will not be applied against Allowable Additional Costs.

In addition, the Consultant shall submit Progress Reports to the Director at least monthly or in accordance with any other schedule approved by the Director, or at the Director's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

EXHIBIT 1 TO APPENDIX C

EXHIBIT 2 TO APPENDIX C
EFT ENROLLMENT FORM

	NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM
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INSTRUCTIONS: Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. See the reverse side for more information and instructions.

Mail to: New York City Economic Development Corporation, 110 William Street, 4th Floor, New York, NY 10038
Attention: Controller, Accounting Dept. or Fax to: 212-312-3914

SECTION I – VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER: (AS IT APPEARS ON W-9 FORM)	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td><td style="width: 12.5%;"></td> </tr> </table>										
2. VENDOR NAME (AS IT APPEARS ON W-9 FORM); (AS IT APPEARS ON W-9 FORM)											
3. VENDOR'S PRIMARY ADDRESS:											
4. VENDOR'S EMAIL ADDRESS:											
5. CONTACT PERSON NAME:	6. CONTACT PERSON TELEPHONE NUMBER:										

SECTION II – FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:	2. ACCOUNT NAME:										
3. BANK NAME:											
4. BANK BRANCH ADDRESS:											
5. ROUTING TRANSIT NUMBER: (LOCATED AT THE BOTTOM OF YOUR CHECK)	6. ACCOUNTING TYPE: (CHECK ONE)										
<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td><td style="width: 12.5%;"></td> </tr> </table>											<input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS
7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:	8. TELEPHONE NUMBER:										

SECTION III – VENDOR SIGNATURE

VENDOR SIGNATURE	PRINT NAME	DATE

 <p>New York City Economic Development Corporation</p>	<p align="center">NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION</p> <p align="center">DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)</p> <p align="center">VENDOR PAYMENT ENROLLMENT FORM</p>
<p align="center">GENERAL INSTRUCTIONS</p>	
<p>Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to:</p> <p align="center">New York City Economic Development Corporation, 110 William St., Room 400 New York, NY 10038 – Attention: Controller, Accounting Dept or Fax to: 212-312-3914.</p>	
<p>SECTION I – VENDOR INFORMATION</p>	
<ol style="list-style-type: none"> 1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on W-9 form. 2. Provide the name of the vendor (as it appears on the W-9). 3. Enter the vendor's complete address for EFT correspondence associated with this account. 4. Provide the vendor's E-mail address, if you have one. 5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person). 	
<p>SECTION II – FINANCIAL INSTITUTION INFORMATION</p>	
<ol style="list-style-type: none"> 1. Indicate the vendor's bank account number. 2. Indicate the vendor's account name. 3. Provide bank's name. 4. Provide the complete address of your bank. 5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check). 6. Indicate type of account: (Check one box only). 7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator. 	
<p>SECTION III – VENDOR SIGNATURE</p>	
<p>Sign and date where indicated.</p>	

EXHIBIT 3 TO APPENDIX C

THE CITY OF NEW YORK • OFFICE OF THE COMPTROLLER • BUREAU OF LABOR LAW

PAYROLL REPORT

TO BE SUBMITTED WITH REQUISITION FOR PAYMENT

NAME OF PRIME CONTRACTOR		NAME OF CONTRACTOR/SUBCONTRACTOR		ADDRESS		PHONE #		AGENCY				
CONTRACT REGISTRATION #		JOB CODE		WEEK ENDING DATE		PROJECT NAME & LOCATION		PAYROLL #				
TAX I.D. #		WEEK ENDING DATE		PROJECT NAME & LOCATION		PAYROLL #		TAX I.D. #				
(1) NAME ADDRESS LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER	(2) LIST TRADE & CHECK CLASSIFICATION JOURNEYPERMANENT APPRENTICE (NYS DOL REGISTERED) HELPER	(3) T I M E	(4) DAY AND DATE	(5) TOTAL HOURS	(6) BASE RATE OF PAY PER HOUR	(7) TOTAL BASE PAY	(8) SUPPLEMENTAL BENEFITS		(10) TOTAL BENEFITS PAID	(11) GROSS PAY	(12) TOTAL TAX & OTHER DEDUCTIONS	(13) NET PAY
							(9) RATE PER HOUR	(9) PAID TO (Local # if Union is checked)				
	U J A H	RT OT					U Local#					
	U J A H	RT OT					U Local#					
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INSTRUCTIONS ON REVERSE SIDE

FALSIFICATION OF THIS STATEMENT IS A PUNISHABLE OFFENSE

This certified payroll has been prepared in accordance with the instructions contained on the reverse side of this form. I certify that the above information represents wages and supplemental benefits paid to all persons employed by my firm for construction work on the above project during the period shown. I understand that falsification of this statement is a punishable offense.

SIGNATURE

NAME (Print)

TITLE

DATE

20



Instructions for the Preparation and Submission of a Payroll Report

1. All persons who performed any on-site construction activity, during the period of the requisition, shall be listed on the Payroll Report.
 2. Separate Payroll Reports shall be submitted by the prime contractor and each subcontractor who performed any on-site construction activity during the period of the requisition.
 3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment being reduced.
 4. **PAYROLL REPORT HEADING:** The Payroll Report Heading shall require the following information:

NAME OF PRIME CONTRACTOR: Enter the name of the firm that has entered into the contract with the New York City government agency.

NAME OF CONTRACTOR / SUBCONTRACTOR: The legal name of the firm submitting the Payroll Report shall be placed immediately below this designation. Circle either the word CONTRACTOR or SUBCONTRACTOR as applicable.

ADDRESS: Insert the current address (i.e., street, city, state and zip code) of the firm submitting the Payroll Report.

PHONE NO.: Enter the telephone number of the firm submitting the Payroll Report in the space provided.

AGENCY: Enter the name of the New York City government agency that has the contract with the Prime Contractor.

PAYROLL NO.: In the space provided, enter the Payroll Number of the Contractor or Subcontractor.

CONTRACT REG. NO.: Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and/ or the "Order to Commence Work" letters.

JOB CODE: In the space provided, enter the Contractor/ Subcontractor's in-house labor distribution code or job number where applicable.

WEEK ENDING DATE: In the space provided, enter the last date of the pay-week (i.e., month, day, year).

PROJECT NAME & LOCATION: In this space, enter the Project Name and Location where contract work is being performed.

TAX I.D. NO.: Enter in this space the Federal Tax Identification Number of the firm submitting the Payroll Report.
 5. For every employee who performed any on-site construction activity during the period of the Payroll Report, the following information shall be provided:
 - 1) **NAME, ADDRESS, LAST FOUR DIGITS OF THE SOCIAL SECURITY NO.:** The legal name, current address and the last four digits of the social security number of each employee. (Employers must keep the full social security number on file for each of their covered workers.) If the employee has no social security number, please list his/her IRS Individual Taxpayer Identification Number and mark it "TIN".
 - 2) **LIST TRADE & CHECK WORK CLASSIFICATION:** Specify and insert the Trade applicable to the work performed by each employee. The Trade identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller, i.e., Electrician, Laborer, etc. Check next to the letter J if the individual is a Journeyman. Check next to the letter A if the person is a Registered Apprentice with the Department of Labor of the State of New York. Check next to the letter H only if the person is a Helper in a trade classification that has Helper rates listed in the Comptroller's Schedule of Prevailing Wages.
 - 3) **TIME:** RT indicates Regular Time, and OT indicates Overtime.
 - 4) **DAY AND DATE:** Below this heading, in the first row, enter the appropriate sequence of the contractor's pay records. MTWTFSS, for example, is the sequence to use if the workweek ends on a Sunday, and SSMTWTFF is the sequence if the workweek ends on a Friday. In the second row, below each letter representing the day of the workweek, insert the corresponding date. Below the heading HOURS WORKED EACH DAY, at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate box either for RT (Regular Time) and/ or OT (Overtime). If an employee worked Shift Time, the RT (Regular Time) row shall be used and adjusted accordingly.
 - 5) **TOTAL HOURS:** Add the hours worked for Regular and/ or Shift Time with the hours worked for Overtime, and enter separate totals in this column.
 - 6) **BASE RATE OF PAY PER HOUR:** Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.
 - 7) **TOTAL BASE PAY:** Total amount earned by the employee, not including benefits.
- SUPPLEMENTAL BENEFITS:**
- 8) **RATE PER HOUR:** Amount of supplemental benefits paid / provided per hour.
 - 9) **PAID TO:** Place a check mark in the appropriate box: U for Union if benefits paid to a Union, E for Employee if benefits paid in cash (or check) directly to the Employee, or O for Other, if benefits are otherwise paid / provided to the employee. If U is checked, you must insert the "Local" number of the union in that box.
 - 10) **TOTAL BENEFITS PAID:** Total amount of supplemental benefits paid / provided for the workweek to the employee.
 - 11) **GROSS PAY:** Total amount earned for workweek. This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee (i.e., column (7) + column (9) E if Box E is checked and payment made directly to employee). No other type of benefit should be included in this column's total.
 - 12) **TOTAL TAX AND OTHER DEDUCTIONS:** Enter the sum total of all deductions in this column (including FICA, Federal, State and City Taxes, etc.). This does not absolve you from maintaining appropriate tax and other records required by law).
 - 13) **NET PAY:** Total amount of pay after all deductions (i.e., the actual Take-Home Pay).

APPENDIX D
FORM OF CERTIFIED STATEMENT REGARDING
USE OF NON-ORIGINAL MATERIALS

APPENDIX D

**FORM OF CERTIFIED STATEMENT REGARDING
USE OF NON-ORIGINAL MATERIALS**

STATE OF _____)
) ss.:
COUNTY OF _____)

The undersigned, being first duly sworn, deposes and states as follows:

1. I am the Principal of the Consultant named below in connection with the contract (the "Contract") identified below between the Consultant and New York City Economic Development Corporation ("NYCEDC").

2. I make this affidavit pursuant to Section 5.2.6(iii) of the Contract to verify certain information regarding non-original materials included in the Work Product (as defined in the Contract) furnished by the Consultant to NYCEDC pursuant to the Contract.

3. I hereby certify that the information set forth on the "List of Rights, Limitations and Requirements Regarding the Use and Display of Non-Original Materials Included in Consultant's Work Product" (the "Non-Original Materials List") annexed hereto and made a part hereof, and the licenses, releases, permissions, clearances and other documents (collectively, the "Licenses") annexed thereto, are complete, true and accurate as of the date of this affidavit, and I acknowledge and understand that NYCEDC shall rely thereon in connection with any use and display of such materials.

4. In particular, I hereby certify that the annexed Non-Original Materials List and Licenses set forth (i) all non-original materials included in Consultant's Work Product; (ii) all information as to the source of such materials; (iii) all information as to any durational limitations on use of such materials; (iv) all requirements as to notices that must be displayed in connection with display, including the specific owner of the rights to be credited; and (v) all other limitations on the use and display under the Licenses.

Dated: _____ Signature: _____

Consultant: _____ Printed Name: _____

NYCEDC Contract No.: _____ Title: _____

Sworn to before me this
day of _____, 20____

Notary Public

APPENDIX E**INSURANCE REQUIREMENTS**

- 1. Required Policies and Amounts**
- 2. Additional Insureds**
- 3. Required Provisions**
- 4. Sample Form of Insurance Certificate**

APPENDIX E

INSURANCE REQUIREMENTS

1. Required Policies and Amounts

<u>Workers' Compensation/ Disability Benefits:</u>	In statutory amounts
<u>Employer's Liability:</u>	The greater of statutory amounts or \$1,000,000
<u>Commercial General Liability:</u>	A minimum of \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be \$10,000
<u>Automobile Liability:</u>	\$1,000,000 combined single limit per occurrence
<u>Umbrella/Excess Liability:</u>	\$10,000,000 on a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer's primary liability limits (NYCEDC approve modified amount on a case by case basis)

If the Consultant or its Subcontractors use floating equipment, barges or floats, or performs marine-related construction, the Consultant and as applicable, its Subcontractors, shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services:

<u>U.S. Harbor Workers' Long Shoremens' Compensation Act:</u>	In statutory amounts
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<u>Marine Protection and Indemnity:</u>	\$25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$25,000,000 in the aggregate per year
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If the Project is adjacent to or includes an existing railroad or subway line, the Consultant, or its Subcontractors, shall purchase and maintain the following insurance in the following amounts in connection with the performance of the Services by the Consultant and its Subcontractors, and any work incidental thereto:

Railroad Protective Liability: \$1,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$2,000,000 in the aggregate

If the Consultant or any of its Subcontractors is performing asbestos or other toxic or hazardous materials remediation, removal, abatement, storage or disposal work including, without limitation, related demolition work, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services and any work incidental thereto:

Contractor Pollution Liability (“CPL”) Policy and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability (“PLL”) Policy, Transportation Coverage and Non-Owned Disposal <u>Site Coverage:</u>	\$5,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than \$5,000,000 in the aggregate per year dedicated to this Project, on an “occurrence” basis, with a term of not less than ten (10) years
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Such CPL and PLL policies shall be for a term of not less than (10) years, on an “occurrence” basis, and any aggregate applicable to such policies shall be dedicated to this Project. In addition, such policies shall include, without limitation, and as applicable, (a) bodily injury and defense coverage for asbestos and lead; (b) coverage for unknown UST’s; (c) a definition of “property damage” that includes diminution in value of third-party properties; (d) a statement that such insurance is primary and over any surety contracts or bonds covering the Services; (e) a statement that the insured’s rights will not be prejudiced if there is a failure to give notice due to the insured’s belief that the occurrence was not covered; (f) coverage for products brought onto the work site where Services are being performed; (g) a definition of “stop loss” or “cleanup cost cap” that includes monitoring activities; (h) a definition of “cleanup costs” that includes any costs associated with natural resources damages; and (i) a statement that exclusions for modifications of remedial action plans (“RAP”) shall not include changes required by regulatory agencies (either via a change in regulations or as a result of governmental entity oversight, increased levels or quantities of pollutants within the boundary of the RAP, discovery of pollutants not identified in the exclusion, and amendments to the RAP because of a change in technological approach).

If the Consultant or any of its Subcontractors is performing professional services in its capacity as a professional, including as may be evidenced by a license to practice that profession, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following type and in the following amount in connection with the performance of the Services and any work incidental thereto:

Professional Liability/Errors & Omissions Insurance:

Professional liability (“PL”) and/or errors and omissions (“E & O”) insurance policies shall be written with a minimum amount of \$2,000,000 per claim and in the aggregate.

If the Consultant cancels its PL or E & O policy during, or lets its PL or E & O policy coverage lapse after, the policy period in which the term for services under the Consultant Contract ends, the Consultant must obtain tail coverage, or an extended reporting period endorsement, that extends coverage of the professional liability insurance for a period of at least three years.

APPENDIX E
INSURANCE REQUIREMENTS

2. Additional Insureds

For the purposes of this Contract and the requirements of Article 6 thereof including, without limitation, Section 6.3.3 (iii), the term “Additional Insureds” shall include the following individuals and entities:

New York City Economic Development Corporation
The City of New York
The State of New York
USEPA

and such other entities and individuals as the Corporation may direct from time to time

APPENDIX E

INSURANCE REQUIREMENTS

3. Required Provisions

The policies required under Section 6.3.9 (ii) of the Contract shall contain the following provisions, if available:

“A. Notices from the insurer (the “Insurer”) to the New York City Economic Development Corporation (the “Corporation”) and the City of New York (the “City”), in connection with this policy, shall be addressed to the General Counsel, New York City Economic Development Corporation, at 110 William Street, New York, New York 10038 (with a copy to the Corporation’s Contract Administrator at the same address), and to the Commissioner, New York City Department of Small Business Services, at 110 William Street, New York, New York 10038 or such other addresses as may be specified by the Corporation;

B. The Insurer shall accept notice of accident from the Corporation or the City as soon as practicable after receipt by an official of such Additional Insured (as identified in Appendix E of the Contract between the Corporation and the Consultant to which this policy applies) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City as soon as practicable after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, as soon as practicable after receipt by such party as valid and timely notice under this policy;

D. Notice of accident or claim to the Insurer by the Consultant, the Corporation or the City shall be deemed notice by all under this policy;

E. This policy shall not be canceled, terminated or modified by the Insurer or the Consultant unless thirty (30) days prior written notice is sent by registered mail to the Corporation or the City;

F. The presence of engineers, inspectors or other employees or agents of the Consultant, the Corporation or the City at the site of the Services performed by the Consultant shall not invalidate this policy of insurance; and

G. Violation of any of the terms of any other policy issued by the Insurer to the Consultant or a subcontractor of the Consultant shall not invalidate this policy; and

H. Insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer.”

APPENDIX E

INSURANCE REQUIREMENTS

4. Sample Form of Insurance Certificate

APPENDIX F
E.O. 50 SUPPLY & SERVICE RIDER
EQUAL EMPLOYMENT OPPORTUNITY

APPENDIX F**E.O. 50 SUPPLY & SERVICE RIDER****EQUAL EMPLOYMENT OPPORTUNITY**

[Note: for purposes of this rider, the “contractor” means the Consultant identified in this Contract]

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) as revised (“E.O.50”) and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

- (1) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) will not discriminate in the selection of subcontractors on the basis of the owner’s, partners’ or shareholders’ race, color, creed, national origin, sex, age, handicap, marital status or sexual orientation or citizenship status;
- (3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status, or it is an equal employment opportunity employer;
- (4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§10-14) and the rules and regulations promulgated thereunder; and
- (5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14), the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services (the “Division”). Copies of all required reports are available upon request from the contracting agency; and
- (6) will permit the Division to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

- (i) disapproval of the contractor;
- (ii) suspension or termination of the contract;
- (iii) declaring the contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of New York City's small purchase limit established by rule of New York City's Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder.

APPENDIX G

E.O. 50 EMPLOYMENT REPORT FORM

The Consultant shall complete and submit, and if applicable, shall require its Subcontractors to complete and submit, Employment Reports (as required by E.O. 50) to the Corporation which can be found at www.nycedc.com in the following section:

“Resources/Vendor Resources”

If the Consultant cannot access or download these forms, the Corporation will, upon request, send the Consultant the required forms. The text of said section reads as follows:

Non-Construction Consulting Contracts

Non-construction consulting contracts require a Supply & Service employment report. Generally, the “under 50 employees” form should be used by companies with fewer than 50 employees, and the longer “full form” should be used for companies with more than 50 employees. Please refer to the Supply & Service instructions document to learn more about the forms.

[Supply & Service Employment Report Instructions](#)
[Supply & Service – under 50 employees](#)
[Supply & Service – full form](#)

APPENDIX H

M/WBE SUBCONTRACTORS PARTICIPATION PLAN

APPENDIX I
OUTSIDE FUNDING SOURCES

APPENDIX I

OUTSIDE FUNDING SOURCE PROVISIONS

1. General Terms.

This Contract will be funded in whole or in part by the Funds identified in Part I, Section 4.1 of this Contract. The receipt of such Funds is conditioned upon the Consultant's compliance with certain mandatory federal, State and City terms and conditions. The Consultant must comply with all applicable mandatory terms and conditions set forth in the Applicable Requirements and Applicable Agreements including, without limitation, those set forth in Part I, Section 4.3, 4.4, this Appendix, Appendix J and in Appendix K. This Appendix shall be annexed to and made a part of any subcontract entered into by the Consultant pursuant to this Contract, and shall be binding on any Subcontractor. To the extent any terms and conditions set forth in this Appendix conflict with any other terms of this Contract, the terms and conditions of this Appendix shall govern. In the event any terms and conditions set forth in this Appendix conflict with the terms and conditions of Appendix J or Appendix K, the more stringent of the conflicting provisions shall govern.

Consultant acknowledges and agrees that the Corporation has the right to delegate the responsibilities of the Director to the City or such agency of the City as may be appropriate.

The Funds have been made available for the Project under the Applicable Requirements and Applicable Agreements including, without limitation, those listed in Part I, Section 4.4 and 4.5, and any other governing statute or agreement related to the Funds, the Project and/or the Contract.

Notwithstanding anything to the contrary in this Contract, the Corporation shall be under no obligation to make such payments except when, and to the extent, such Funds are available. The Corporation shall not be liable to the Consultant in the event any or all of such Funds are not made available.

2. Termination or Suspension Related to Unavailability of Funds.

In addition to any other right to postpone, delay suspend or terminate the Services or the Contract set forth in this Contract, if, pursuant to the Applicable Requirements or Applicable Agreements or otherwise, there shall be a suspension, termination or reduction of the Funds funding this Contract as a result of which Funds are not available for some or all payments under this Contract, the Corporation shall so notify the Consultant and the Consultant shall, and agrees to, cease to perform the activities specified in the notice (permanently or temporarily, as specified in the notice) on the date set forth therein, which may be immediately. The Consultant shall assume no further binding obligations in connection with any Services specified in the notice to be stopped, after the date set forth in the notice, except that such cessation need only be for the period of suspension if the Services are suspended rather than terminated. The award of Funds funding this Contract may be suspended or terminated if the Consultant materially fails to

comply with any term of such award. The award may also be terminated for convenience in accordance with the Applicable Requirements and Applicable Agreements.

APPENDIX J**APPLICABLE REQUIREMENTS**

Applicable Requirements includes all Applicable Requirements and Legal Requirements related to any Funds provided for the Contract including, without limitation:

1. 40 CFR Part 31, incorporated by reference herein;
2. All requirements set forth in the Applicable Agreements.

APPENDIX K**APPLICABLE AGREEMENTS**

- 1.** Any agreement entered into by the City and US EPA related to US EPA Grant Funds provided for the Project including, without limitation, the following US EPA Cooperative Agreements with the following US EPA Assistance ID Nos. BF96281015, BF96281115, BF96287213, and BF96295712 (copies of which are appended as Appendix K.1 to the Contract;
- 2.** Any agreement entered into by the City and NYSDOS related to BOA Grant Funds or other funds provided for the Project including, without limitation, BOA Agreement No. C096013 appended as Exhibit 2 to this Appendix K to the Contract Draft; and
- 3.** Any agreement entered into by the City and NYSREDC related to environmental or other land management including, without limitation, the NYSREDC Grant Program;
- 4.** Any agreement entered into by the City and NYSDEC related to environmental or other land management including, without limitation, the Environmental Restoration Program and hazardous waste or other remediation; and
- 5.** Any other agreement entered into by or among NYCEDC, the City, OER, other city agency, US EPA, US Department of Housing and Urban Development, FEMA, US Army Corps of Engineers, NYSDEC, NYSDOS or any other entity providing Funds for the Project and/or the Contract Draft.

EXHIBIT 1 to APPENDIX K

[SEPARATE ATTACHMENTS]

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 96281015 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 09/16/2014
		TYPE OF ACTION New	MAILING DATE 09/23/2014
		PAYMENT METHOD: Advance	ACH# 20099
		RECIPIENT TYPE: Municipal	
RECIPIENT: City of New York 100 Gold Street, 2nd Floor New York, NY 10038 EIN: 13-6400434		PAYEE: City of New York 100 Gold Street, 2nd Floor New York, NY 10038	
PROJECT MANAGER Lee Ilan 100 Gold Street, 2nd Floor New York, NY 10038 E-Mail: lilan@cityhall.nyc.gov Phone: 212-788-2929		EPA PROJECT OFFICER Yocasta DeJesus 290 Broadway, ERRD/PSB New York, NY 10007-1866 E-Mail: DeJesus.Yocasta@epa.gov Phone: 212-637-4365	
EPA GRANT SPECIALIST Arlene Chin Grants and Audit Management Branch, OPM/GAMB E-Mail: Chin.Arlene@epa.gov Phone: 212-637-3408			
PROJECT TITLE AND DESCRIPTION NYC BF Hazardous Assessment FY14 Under this Cooperative Agreement, the City of New York will develop and implement a program to assess local "brownfields" properties, or properties whose expansion, redevelopment or reuse may be complicated by the presence of hazardous substances. The Community Wide Hazardous Substances Assessment Program will target vacant, abandoned and underutilized commercial and industrial sites to encourage redevelopment. The City of New York will select and assess sites believed to be contaminated specifically with hazardous substances throughout the city. The City of New York will involve residents and other stakeholders surrounding the sites by holding community meetings and sharing information.			
BUDGET PERIOD 10/01/2014 - 09/30/2017	PROJECT PERIOD 10/01/2014 - 09/30/2017	TOTAL BUDGET PERIOD COST \$200,000.00	TOTAL PROJECT PERIOD COST \$200,000.00
NOTICE OF AWARD			
<p>Based on your Application dated 07/03/2014 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$200,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$200,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866		ORGANIZATION / ADDRESS U.S. EPA, Region 2 Emergency and Remedial Response Division 290 Broadway New York, NY 10007-1866	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Richard Manna - Acting Assistant Regional Administrator for Policy and Management			DATE 09/16/2014

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 200,000	\$ 200,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 200,000	\$ 200,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1402HE0355	14	E4	02D0AG7	301D79	4114	G200NY00		200,000
									200,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$10,230
2. Fringe Benefits	\$5,115
3. Travel	\$3,000
4. Equipment	\$0
5. Supplies	\$500
6. Contractual	\$163,655
7. Construction	\$0
8. Other	\$17,500
9. Total Direct Charges	\$200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$200,000
12. Total Approved Assistance Amount	\$200,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$200,000
15. Total EPA Amount Awarded To Date	\$200,000

Administrative Conditions

GENERAL TERMS AND CONDITIONS

The recipient agrees to comply with the current EPA general terms and conditions available at: http://www.epa.gov/ogd/tc_jan_2014.pdf. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

The EPA repository for the general terms and conditions by year can be found at: <http://www.epa.gov/ogd/tc.htm>.

GRANT-SPECIFIC ADMINISTRATIVE CONDITIONS

A. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **New York State Department of Environmental Conservation** as follows:

Construction - Minority and Women Business Enterprise (MBE/WBE) Participation Goals:

Combined MBE/WBE statewide 20%

Non-Construction – Minority and Women Business Enterprise (MBE/WBE) Participation Goals:

(For all other professional and contractual services; supplies and equipment)

Combined MBE/WBE statewide 20%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **New York State Department of Environmental Conservation**.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

MBE/WBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

- (a) there are any funds budgeted in the contractual, equipment or construction lines of the award;
- (b) \$3,000 or more is included for supplies; or
- (c) there are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as described in items (a) and (b).

Based on EPA's review of the proposed budget, this award likely meets one or more of the conditions as described above, therefore, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis.

However, if this award does not meet the conditions as described above, the recipient should provide Michele Junker (Junker.Michele@epa.gov) with a justification and budget details indicating that based on the planned budget, this award is **not** subject to the DBE reporting requirements.

When completing the annual report, recipients are instructed to check the box titled “annual” in section 1B of the form. For the last report, recipients are instructed to check the box indicated for the “last report” of the project in section 1B of the form. Annual reports are due by October 30th of each year. Last reports are due 90 days after the end of the project period.

The reporting requirement is based on planned procurements. Recipients with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to the Region 2 Grants Mailbox (Region2_GrantApplicationBox@epa.gov) with a courtesy copy to the Grants Specialist and the Region 2 DBE Coordinator, Michele Junker (Junker.Michele@epa.gov). The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program’s Home Page at http://www.epa.gov/osbp/dbe_reporting.htm

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

B. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and either emailing or faxing it to the Las Vegas Finance Center at LVFC-grants@epa.gov or 702-798-2423. This form can be found at www.epa.gov/ogd/forms/forms.htm. All email attachments must be sent in pdf format.

C. INTERIM FEDERAL FINANCIAL REPORT AND CLOSE-OUT INSTRUCTIONS

1. Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423, emailed to

LVFC-grants@epa.gov, or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

2. Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

D. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to the Las Vegas Finance Office at LVFC-grants@epa.gov or 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

Programmatic Conditions

GRANT-SPECIFIC PROGRAMMATIC CONDITIONS

Assessment Terms and Conditions

I. GENERAL FEDERAL REQUIREMENTS

NOTE: For the purposes of these Terms and Conditions the term "assessment" includes, eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment,

and planning relating to brownfield sites as described in the EPA approved work plan.

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2014 competition for Brownfields assessment cooperative agreements.
 - b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.
 - c. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC § 327-333) the Anti Kickback Act (40 USC § 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.
 - d. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration and repair contracts and subcontracts awarded with funds provided under this agreement. Activities conducted under assessment grants generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon Act. The recipient must contact EPA's Project Officer if there are unique circumstances (e.g. removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. The Agency will provide guidance on Davis-Bacon Act compliance if necessary.

B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, whether the CAR is the potentially responsible party under CERCLA 107 and/or has defenses to liability.
 - b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination. In their request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment Grants* dated September 2011 for discussion of this element) documenting

that:

- (1) a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
- (2) the State determines there is “no viable responsible party” for the site;
- (3) the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
- (4) the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

- b. Documentation must include (1) the identity of the State program official contacted, (2) the State official’s telephone number, (3) the date of the contact, and (4) a summary of the discussion relating to the state’s determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
- c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary or EPA to make the requisite determinations.
- d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of this agreement is three years from the start date of the budget/project period, unless otherwise extended by EPA at the CAR’s request.
2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA PO or EPA may terminate this agreement for material non-compliance with its terms. For purposes of assessment grants, the recipient demonstrates “sufficient progress” when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition grants “sufficient progress” is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement (for Assessment Coalitions) is in place.
3. Assessment funding for an eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed \$350,000 at the site.

B. Substantial Involvement

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

- a. Substantial involvement by EPA generally includes administrative activities such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.
 - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under § 107 of CERCLA. (See Section II.C.3 for more information on subgrants.)
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
 - d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.
 - b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.
 - c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under 2 CFR Part 225 (for state, local and tribal governments) as applicable..

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors comply with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.36. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.
4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant

does not exceed the \$200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.

5. CARs expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.

D. Quarterly Progress Reports

1. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. (Due each January 31, April 30, July 31, and October 31 for the duration of the agreement). Quarterly progress reports must include:
 - a. Summary of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of problems encountered during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.
 - b. An update on project schedules and milestones.
 - c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.
 - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, cleanup required, contaminants, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report due 90 days after the project period end date in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:
 - a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k);
 - b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
 - c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section III.B.
 - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
 - a. Cleanup activities;
 - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
 - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
 - d. To pay for a penalty or fine;
 - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
 - f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA § 107;
 - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
 - h. Unallowable costs (e.g., lobbying and fund raising) under 2 CFR Part 225 for state, local and tribal governments, as applicable. .
2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under 2 CFR Part 225 for state, local and tribal governments, as applicable..
 - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are

ineligible even if the grant recipient is required to carry out the activity under the grant agreement.

- b. Ineligible grant administration costs include direct costs for:
 - (1) Preparation of applications for brownfields grants;
 - (2) Record retention required under 40 CFR 31.42;
 - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
 - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
 - (5) Maintaining and operating financial management systems required under 40 CFR 31;
 - (6) Preparing payment requests and handling payments under 40 CFR 31.21;
 - (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
 - (8) Close out under 40 CFR 31.50.
3. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
 - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

C. Interest -Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.
2. The CAR must deposit advances of grant funds and program income (i.e. fees) in an interest bearing account.
 - a. For interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
 - b. Interest earned on program income is considered additional program income.

- c. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 40 CFR 31.21(f).

IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental data are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.
2. The CAR shall prepare a QA plan and submit such plan to the EPA Project Officer for approval. The PO will review the QA plan to insure that it meets programmatic needs and to insure that all of the required elements of the QA plan are included. Once approved by the PO, the QA plan is forwarded to the EPA QA staff for their review and approval. The CAR may not perform work at any site under this cooperative agreement until EPA has approved the QA plan in writing.

C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-13 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule "All Appropriate Inquiries Rule: Reporting Requirements Checklist for Assessment Grant Recipients", (Publication Number: EPA 560-R-11-030). This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.
2. All Appropriate Inquiries (AAI) final reports produced with funding from this agreement must comply with 40 C.F.R. Part 312 and must, at a minimum, include the information below. All AAI reports submitted to EPA Project Officers as deliverables under this agreement must be accompanied by a completed "Reporting Requirements Checklist" that EPA's Project Officer will provide to the recipient. The checklist also is available to grantees on the EPA website at www.epa.gov/brownfields.
 - a. An *opinion* as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and

- contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.
- b. An identification of **“significant” data gaps** (as defined in 40 C.F.R. 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.
 - c. **Qualifications and signature** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:
 - *“[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part.”*
 - *“[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”*

Note: Please use either “I” or “We.”

- d. In compliance with §312.31(b), the environmental professional must include in the final report an **opinion regarding additional appropriate investigation**, if the environmental professional has such an opinion.
3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR part 312 (or comparable requirements for those using ASTM Standard 1527-13). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 40 CFR 31.43(a)(2). If a recipient willfully fails to correct the deficiencies the Agency may consider other available remedies under 40 CFR 31.43 and 2 CFR Part 180.

V. Conflict of interest: Appearance of lack of Impartiality

A. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR’s appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
 - (i) The affected party,
 - (ii) Any member of his immediate family,
 - (iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VI. PAYMENT AND CLOSEOUT

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c)

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.
2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in II.F.
2. A Final Federal Financial Report (FFR - SF425). Submitted to:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119
Fax: (702) 798-2423
<http://www.epa.gov/ocfo/finservices/payinfo.html>

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.
- b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.
- c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 96287213 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 09/11/2013
		TYPE OF ACTION New	MAILING DATE 09/18/2013
		PAYMENT METHOD: Advance	ACH# PEND
		Send Payment Request to: Las Vegas Finance Center	
RECIPIENT TYPE: Municipal		PAYEE:	
RECIPIENT: City of New York 100 Gold Street, 2nd Floor New York, NY 10038 EIN: 13-6400434		City of New York 100 Gold Street, 2nd Floor New York, NY 10038	
PROJECT MANAGER Lee Ilan 100 Gold Street, 2nd Floor New York, NY 10038 E-Mail: lilan@cityhall.nyc.gov Phone: 212-788-2929		EPA PROJECT OFFICER Benny Hom 290 Broadway, ERRD/PSB New York, NY 10007-1866 E-Mail: Hom.Benny@epamail.epa.gov Phone: 212-637-3964	
EPA GRANT SPECIALIST Gina Nappi Grants and Audit Mgt Branch, OPM/GAMB E-Mail: nappi.gina@epa.gov Phone: 212-637-3422			
PROJECT TITLE AND DESCRIPTION City of New York FY13 Brownfields RLF Under this cooperative agreement the City of New York will manage a Revolving Loan Fund with the intent to make loans and subgrants to eligible entities to perform environmental cleanups of hazardous substances at eligible brownfields sites. The Revolving Loan Fund is designed to provide financial resources to selected business owners or real estate developers engaged in cleanup of brownfields sites as part of economic expansion projects. "Brownfields" are properties, whose expansion, redevelopment or reuse may be complicated by the presence of petroleum and hazardous substances, or other pollutants or contaminants.			
BUDGET PERIOD 10/01/2013 - 09/30/2018	PROJECT PERIOD 10/01/2013 - 09/30/2018	TOTAL BUDGET PERIOD COST \$960,000.00	TOTAL PROJECT PERIOD COST \$960,000.00
NOTICE OF AWARD			
<p>Based on your Application dated 07/19/2013 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$800,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$800,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866		ORGANIZATION / ADDRESS U.S. EPA, Region 2 Emergency and Remedial Response Division 290 Broadway New York, NY 10007-1866	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Donna J. Vizian - Assistant Regional Administrator for Policy and Management			DATE 09/11/2013

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 800,000	\$ 800,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$ 160,000	\$ 160,000
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 960,000	\$ 960,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
NYC	1302HE0348	13	E4	02D0AG7	301D79	4114	G200OL00		800,000
									800,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$29,300
2. Fringe Benefits	\$14,650
3. Travel	\$4,000
4. Equipment	\$0
5. Supplies	\$800
6. Contractual	\$41,700
7. Construction	\$0
8. Other	\$869,550
9. Total Direct Charges	\$960,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient 16.67% Federal 83.33 %.)	\$960,000
12. Total Approved Assistance Amount	\$800,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$800,000
15. Total EPA Amount Awarded To Date	\$800,000

Administrative Conditions

1. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **New York State Department of Environmental Conservation** as follows:

Construction -	Minority Business Enterprise (MBE) Participation Goals:	
	New York City	17%
	Downstate *	10%
	Upstate	9%

Construction -	Women Business Enterprise (WBE) Participation Goals:	
	New York City	8%
	Downstate *	6%
	Upstate	5%

Non-Construction Minority and Women Business Enterprise (MBE/WBE)
Participation Goals:
(For all other professional and contractual services; supplies and equipment)

Combined MBE/WBE statewide	10%
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* The counties included in the downstate area are as follows: Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as the **New York State Department of Environmental Conservation**.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified

MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Objective/Goals of Loan Recipients

As a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The recipient agrees that if procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure Disadvantaged Business Enterprises (DBE) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum

participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reporting period is **semiannual**, with reporting periods ending March 31st and September 30th. The reports must be submitted within 30 days of the end of the semiannual reporting periods, **April 30th and October 30th**.

Recipients of financial assistance agreements that capitalize revolving loan programs agree to require entities receiving identified loans to submit their MBE/WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <http://www.epa.gov/osbp/grants.htm>.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The recipient also agrees to ensure that recipients of identified loans also comply with provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

2. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and either emailing or faxing it to the Las Vegas Finance Center at LVFC-grants@epa.gov or 702-798-2423. This form can be found at www.epa.gov/ogd/forms/forms.htm. All email attachments must be sent in pdf format.

3. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rgn=div5&view=text&node=2:1.2.11.11.2&idno=2>.

4. ELECTRONIC TRANSFER OF FUNDS

The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic mechanisms available to them:

A) Automated Standard Application for Payments (ASAP)

The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If your organization uses multiple bank accounts for EPA grants/cooperative agreements, you must enroll in ASAP. If you are interested in requesting and receiving funds paperless and electronically via ASAP, please complete the ASAP Initiate Enrollment form located at <http://www.epa.gov/ocfo/finservices/forms.htm> and fax it to LVFC at 702-798-2423 or email it to LVFC-grants@epa.gov.

Under this payment mechanism, the Recipient initiates, via ASAP, an electronic payment request which is approved or rejected based on the amount of available funds authorized by EPA in the Recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at LVFC-grants@epa.gov, or (702)

798-2485, or by visiting www.fms.treas.gov/asap.

B) Electronic Funds Transfer (EFT)

Under this payment mechanism, the EPA Las Vegas Finance Center will obtain your organization's banking information from your System for Award Management (SAM) registration. Upon completion of required Regional training and receipt of the award affirmation, a Las Vegas Finance Center Representative will send you an email message with your EFT Control Number and payment information. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center at LVFC-grants@epa.gov, or (702) 798-2485, or by visiting <http://www.epa.gov/ocfo/finservices/payinfo.htm>

NOTE: If your banking information is not correct or changes at any time prior to the end of your agreement, please update your SAM registration and notify the EPA Las Vegas Finance Center as soon as possible so the new banking information can be retrieved. This is vital to ensure proper and timely deposit of funds.

In accepting this assistance agreement, the recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

5. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423, emailed to LVFC-grants@epa.gov, or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC

6. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

7. LOBBYING AND LITIGATION - ALL RECIPIENTS

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

8. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

9. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE (PART 31)

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to the Las Vegas Finance Office at LVFC-grants@epa.gov or 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

10. RECYCLING AND WASTE PREVENTION

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

11. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

12. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site:
<http://harvester.census.gov/fac/>

13. SUBAWARD POLICY

- a. The recipient agrees to:
 1. Establish all subaward agreements in writing;
 2. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
 3. Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
 4. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
 5. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
 6. Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
 7. Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and

8. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

14. SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

15. TRAFFICKING IN PERSONS

a. Provisions applicable to a recipient that is a private entity

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not:
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this

award term through conduct that is either:

- A. Associated with performance under this award; or
- B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity:

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR 1532

c. Provisions applicable to any recipient

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

- ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
- 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

16. DUNS AND CCR/SAM REQUIREMENTS

Central Contractor Registration/System for Award Management and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;

- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

17. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to www.fsr.gov.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsr.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding

completed fiscal year, if –

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration Central Contractor Registration/System for Award Management profile available at <http://www.sam.gov>

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see

Sec.____.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient’s or subrecipient’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus.*
- ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

18. CIVIL RIGHTS OBLIGATIONS

GENERAL

This term and condition incorporates by reference the signed assurance provided by the recipient’s authorized representative on: 1) EPA Form 4700-4, “Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance”; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

STATUTORY REQUIREMENTS

In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities

receiving Federal financial assistance.

- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

REGULATORY REQUIREMENTS

The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "*Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*" The guidance can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&doc_id=fr25jn04-79.pdf
- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance

for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.

- In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

Programmatic Conditions

Revolving Loan Fund (RLF) Terms and Conditions

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2013 competition for Brownfields RLF cooperative agreements.
2. In implementing this agreement, the cooperative agreement recipient shall comply with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.
3. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY

A. Brownfields Site Eligibility

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement. The information that must be provided includes whether or not the site meets the definition of a brownfield

site as defined in § 101(39) of CERCLA, whether the CAR is the potentially responsible party under CERCLA 107 and/or has defenses to liability.

2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination. In their request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
3. For any petroleum-contaminated brownfields site, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to EPA's *Proposal Guidelines for Brownfields Revolving Loan Fund Grants* dated September 2012 for discussion of this element) documenting that:
 - a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
 - b. the State determines there is "no viable responsible party" for the site;
 - c. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
 - d. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate state petroleum program official.

4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
6. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in "3" above.

B. Borrower and Subgrant Recipient Eligibility

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded. Eligible subgrant recipients include eligible entities as defined under CERCLA § 104(k)(1) and nonprofit organizations as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.
2. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. For the purposes of this agreement, the term “owns” means fee simple title unless EPA approves a different arrangement. **However, the CAR may not provide a subgrant to itself or another component of its own unit of government or organization.**
3. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. **Private, for-profit entities are not eligible for discounted loans.**
4. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the subgrant recipient’s or borrower’s counsel. However, the CAR must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient’s or borrower’s counsel is not binding on the Federal Government.
5. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.
6. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.
7. A borrower or subgrant recipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subgrant recipient as a cleanup and business risk.

8. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

C. Obligations for Grant Recipients, Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA § 107

1. Grant recipients, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a grant, loan, or subgrant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the “landowner liability protections”), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subgrantee. These include, but are not limited to the following:
 - a. All grant recipients, borrowers, or subgrantees asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.
 - b. Grant recipients, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be potentially liable, or affiliated with any other person that is potentially liable for response costs at the facility through;
 - (a) any direct or indirect familial relationship; or
 - (b) any contractual, corporate, or financial relationships; or
 - (c) a reorganized business entity that was potentially liable or otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.
 - c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
 - i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
 - ii. taking reasonable steps to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;
 - iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
 - iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
 - v. complying with legally required notices (again, applies to

bona fide prospective purchasers and contiguous property owners) [see CERCLA §§ 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].

- d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years from the project and budget start date, unless otherwise extended by EPA at the CAR's request.
2. If after 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. Sufficient progress is indicated by the grantee having made loan(s) and/or subgrant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subgrants.

B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; reviewing and approving of procedures for loan and subgrant recipient selection; review of project phases; and approving substantive terms included in professional services contracts.
 - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. under *EPA and/or State Approvals of Brownfields Sites* above. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition prohibits a grant or loan recipient from using grant funds to clean up a site if the recipient is potentially liable under §107 of CERCLA for that site.
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
 - d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.

- e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
 - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
 - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.
 - c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the Program and for coordinating the team's activities as outlined below.
2. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.
3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 40 CFR Part 31.
4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel should review all loan/subgrant agreements prior to execution.
5. The CAR is responsible for ensuring that borrowers and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrant recipients are consistent with the terms and conditions of this agreement.

D. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. (Due each January 31, April 30, July 31, and October 31 for the duration of the agreement). Quarterly progress report must include:
 - a. Summary of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the

- reporting quarter that may affect the project schedule.
 - b. An update on project schedules and milestones.
 - c. A list of the loans and/or sub-grants awarded during the reporting quarter.
 - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); cost share updates; and total remaining funds.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
 3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant (due within 90 days after the end of the budget/project period). This final report must capture what work was performed. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized. The Final Report must include:
 - a. Comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan.
 - b. Reasons for slippage if established outputs/outcomes were not met.
 - c. Additional pertinent information, including, when appropriate, analysis and information of cost overruns.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to

pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.
 - a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at brownfields sites.
 - b. At least 50% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s). (Note: cleanup subgrants are limited to \$200,000 per site). (Note: The CAR may request a waiver to the 50% cap on subgrant funds. Please consult with your Regional Project Officer for the waiver process.)
 - c. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):
 - i. The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
 - ii. The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
 - iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and
 - iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic

expenses. Eligible programmatic expenses may include direct costs for:

- a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k);
- b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
- c. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed;
- d. Preparing an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
- e. Ensuring that public participation requirements are met. This includes preparing a community relations plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments;
- f. Establishing an administrative record for each site;
- g. Developing a Quality Assurance Project Plan (QAPP) as required by Part 31 and Part 30 regulations. The specific requirement for a QAPP is outlined in U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000;
- h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable Federal and State environmental requirements;
- i. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;
- j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section C.
- k. Any other eligible programmatic costs including costs incurred by the

recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and

- I. Subgrantee progress reporting to the CAR is an eligible programmatic cost.
3. No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfield program development and implementation (including monitoring of health and institutional controls). The CAR must maintain records on the funds to ensure that no more than 10% of its funds are used for brownfield program development and implementation (including monitoring of health and institutional controls).
 4. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrant recipient for any of the following activities:
 - a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
 - c. Construction, demolition, and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use.
 - d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
 - e. To pay for a penalty or fine.
 - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
 - g. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107.

are those incurred for loan administration and overhead costs.

- d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:
 - i. Preparation of applications for loans and loan agreements;
 - ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
 - iii. Maintaining and operating financial management and personnel systems;
 - iv. Preparing payment requests and handling payments; and
 - v. Audits.
 - e. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:
 - i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
 - ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
 - iii. Supplies and equipment not used directly for cleanup at the site.
 - iv. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
 - v. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.
4. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except land held in trust by the United States government for an Indian tribe; or

- d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

D. Use of Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
2. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.
3. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.
4. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.
5. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

E. Post Cooperative Agreement Program Income

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a "close out" agreement negotiated with EPA. In accordance with 40 CFR 31.42(c)(3), the CAR shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to

verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.

F. Interest-Bearing Accounts

1. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.
2. Interest earned on advances, CARs and subgrant recipients are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.
3. Interest earned on program income is considered additional program income.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

2. The CAR shall prepare a QA plan and submit such plan to the EPA Project Officer for approval. The PO will review the QA plan to insure that it meets programmatic needs and to insure that all of the required elements of the QA plan are included. Once approved by the PO, the QA plan is forwarded to the EPA QA staff for their review and approval. The CAR may not perform work at any site under this cooperative agreement until EPA has approved the QA plan in writing.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include the analysis of brownfield cleanup alternatives; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the borrower or subgrant recipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.
2. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible costs until an RLF grant has been submitted to and approved by U.S. EPA. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:
 - a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any subgrants competitively, it must document the basis for that decision and inform EPA.
 - b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
 - c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrant recipients receive RLF financing.
 - d. Developing a formal protocol for potential borrowers or subgrant recipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrant recipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrant recipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
 - e. Requiring that borrowers or subgrant recipients submit information describing the borrower's or subgrant recipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
 - f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
 - g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrant recipient.

B. Inclusion of Special Terms and Conditions in RLF Loan and Subgrant Documents

1. The CAR shall ensure that the borrower or subgrant recipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subgrant awards:
 - a. Borrowers or subgrant recipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.
 - b. Borrowers or subgrant recipients shall ensure that the cleanup protects human health and the environment.
 - c. Borrowers or subgrant recipients shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subgrant recipient maintain separate records for costs incurred at that site(s).
 - d. Borrowers or subgrant recipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subgrant recipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government.
 - e. Borrowers or subgrant recipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
 - f. Borrowers or subgrant recipients shall certify that they are not potentially liable under § 107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrant recipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, borrowers or subgrant recipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.
 - g. Borrowers or subgrant recipients shall conduct cleanup activities as required by the CAR.
 - h. Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.
 - i. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or

- when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of subgrants and 40 CFR 30 and OMB Circular A-21 for educational institutions that are recipients of subgrants.
- j. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon, please see the Davis- Bacon Addendum to these terms and conditions.
 - k. Federal cross-cutting requirements include, but are not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
 - a. The affected party,
 - b. Any member of his immediate family,
 - c. His or her partner, or

- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply: “payment” is the U.S. EPA’s transfer of funds to the CAR; the CAR incurs an “obligation” when it enters into a loan agreement with the borrower or subgrant recipient; “disbursement” is the transfer of funds from the CAR to the borrower or subgrant recipient. “Close out” refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR. §31.21(c) after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subgrant recipient to pay costs incurred or to meet a “progress payment” schedule. The recipient may request payments when it receives a disbursement request from a borrower or subgrant recipient based on the borrower or subgrant recipient’s incurred costs under the “actual expense” method or the schedule for disbursement under the “schedule” disbursement method. The CAR shall disburse accrued program income to meet all or part of this obligation or eligible programmatic expenses prior to requesting payment from EPA. A waiver from this requirement may be granted by EPA after a written request is submitted that adequately justifies drawing down cooperative agreement funds prior to accrued program income.

B. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower by means of ‘actual expense’ or ‘schedule.’ If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower’s incurred costs.
 - a. An ‘actual expense’ disbursement approach requires the borrower to submit documentation of the borrower’s expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.
 - b. A ‘schedule’ disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the

schedule minimizes the time elapsing between disbursement by the CAR and the subgrant/loan recipient's payment of costs incurred in carrying out the subgrant/loan. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.

- c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.
- d. Subgrant funds must be disbursed to the subgrant recipient in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.

C. Schedule for Closeout

1. There are two fundamental criteria for closeout:
 - a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and
 - b. Completion of all cleanup activities funded by the amount of the award.
2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.
3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include continuing to operate an RLF for brownfields cleanup and/or other brownfields activities.
4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA § 107 prohibitions and site eligibility limitations for the effective period of the closeout agreement.

D. Compliance with Closeout Schedule

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subgrant recipient may be subject to federal recovery, and the cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement.

E. Final Requirements

1. The CAR, within 90 days after the expiration or termination of the grant, must

submit all financial, performance, and other reports required as a condition of the grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in III.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119
<http://www.epa.gov/ocfo/finservices/payinfo.html>

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423.
All email attachments must be sent in pdf format.

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region

F. Recovery of RLF Assets

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under 40 CFR 31.43 and CERCLA § 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

VIII. FOOD AND REFRESHMENTS

1. FOOD AND REFRESHMENTS

Unless the event(s) and all of its components (i.e., receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event.
- (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

IX. ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY

Recipients and subrecipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0(see <http://www.access-board.gov/sec508/guide/index.htm>).

X. DAVIS BACON REQUIREMENTS

- 1. See the attached file**

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 96281115 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 09/16/2014
		TYPE OF ACTION New	MAILING DATE 09/23/2014
		PAYMENT METHOD: Advance	ACH# 20099
		RECIPIENT TYPE: Municipal	
RECIPIENT: City of New York 100 Gold Street, 2nd Floor New York, NY 10038 EIN: 13-6400434		PAYEE: City of New York 100 Gold Street, 2nd Floor New York, NY 10038	
PROJECT MANAGER Lee Ilan 100 Gold Street, 2nd Floor New York, NY 10038 E-Mail: lilan@cityhall.nyc.gov Phone: 212-788-2929		EPA PROJECT OFFICER Yocasta DeJesus 290 Broadway, ERRD/PSB New York, NY 10007-1866 E-Mail: DeJesus.Yocasta@epa.gov Phone: 212-637-4365	
EPA GRANT SPECIALIST Arlene Chin Grants and Audit Management Branch, OPM/GAMB E-Mail: Chin.Arlene@epa.gov Phone: 212-637-3408			
PROJECT TITLE AND DESCRIPTION NYC BF Petroleum Assessment FY14 Under this Cooperative Agreement, the City of New York will develop and implement a program to assess local "brownfields" properties, or properties whose expansion, redevelopment or reuse may be complicated by the presence of petroleum substances. The Community Wide Petroleum Substances Assessment Program will target vacant, abandoned and underutilized commercial and industrial sites to encourage redevelopment. The City of New York will select and assess sites believed to be contaminated specifically with petroleum substances throughout the city. The City of New York will involve residents and other stakeholders surrounding the sites by holding community meetings and sharing information.			
BUDGET PERIOD 10/01/2014 - 09/30/2017	PROJECT PERIOD 10/01/2014 - 09/30/2017	TOTAL BUDGET PERIOD COST \$200,000.00	TOTAL PROJECT PERIOD COST \$200,000.00
NOTICE OF AWARD			
<p>Based on your Application dated 07/03/2014 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$200,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$200,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866		ORGANIZATION / ADDRESS U.S. EPA, Region 2 Emergency and Remedial Response Division 290 Broadway New York, NY 10007-1866	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Richard Manna - Acting Assistant Regional Administrator for Policy and Management			DATE 09/16/2014

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 200,000	\$ 200,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 200,000	\$ 200,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1402HE0354	14	E4	02D0AG7	301D79XBP	4114	G200OR00		200,000
									200,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$14,190
2. Fringe Benefits	\$7,095
3. Travel	\$7,500
4. Equipment	\$0
5. Supplies	\$500
6. Contractual	\$148,215
7. Construction	\$0
8. Other	\$22,500
9. Total Direct Charges	\$200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$200,000
12. Total Approved Assistance Amount	\$200,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$200,000
15. Total EPA Amount Awarded To Date	\$200,000

Administrative Conditions

GENERAL TERMS AND CONDITIONS

The recipient agrees to comply with the current EPA general terms and conditions available at: http://www.epa.gov/ogd/tc_jan_2014.pdf. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

The EPA repository for the general terms and conditions by year can be found at: <http://www.epa.gov/ogd/tc.htm>.

GRANT-SPECIFIC ADMINISTRATIVE CONDITIONS

A. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **New York State Department of Environmental Conservation** as follows:

Construction - Minority and Women Business Enterprise (MBE/WBE) Participation Goals:

Combined MBE/WBE statewide 20%

Non-Construction – Minority and Women Business Enterprise (MBE/WBE) Participation Goals:

(For all other professional and contractual services; supplies and equipment)

Combined MBE/WBE statewide 20%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **New York State Department of Environmental Conservation**.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

MBE/WBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

- (a) there are any funds budgeted in the contractual, equipment or construction lines of the award;
- (b) \$3,000 or more is included for supplies; or
- (c) there are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as described in items (a) and (b).

Based on EPA's review of the proposed budget, this award likely meets one or more of the conditions as described above, therefore, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis.

However, if this award does not meet the conditions as described above, the recipient should provide Michele Junker (Junker.Michele@epa.gov) with a justification and budget details indicating that based on the planned budget, this award is **not** subject to the DBE reporting requirements.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the last report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Last reports are due 90 days after the end of the project period.

The reporting requirement is based on planned procurements. Recipients with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to the Region 2 Grants Mailbox (Region2_GrantApplicationBox@epa.gov) with a courtesy copy to the Grants Specialist and the Region 2 DBE Coordinator, Michele Junker (Junker.Michele@epa.gov). The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

B. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and either emailing or faxing it to the Las Vegas Finance Center at LVFC-grants@epa.gov or 702-798-2423. This form can be found at www.epa.gov/ogd/forms/forms.htm. All email attachments must be sent in pdf format.

C. INTERIM FEDERAL FINANCIAL REPORT AND CLOSE-OUT INSTRUCTIONS

1. Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423, emailed to

LVFC-grants@epa.gov, or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

2. Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

D. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to the Las Vegas Finance Office at LVFC-grants@epa.gov or 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

Programmatic Conditions

GRANT-SPECIFIC PROGRAMMATIC CONDITIONS

Assessment Terms and Conditions

I. GENERAL FEDERAL REQUIREMENTS

NOTE: For the purposes of these Terms and Conditions the term "assessment" includes, eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment,

and planning relating to brownfield sites as described in the EPA approved work plan.

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2014 competition for Brownfields assessment cooperative agreements.
 - b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.
 - c. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC § 327-333) the Anti Kickback Act (40 USC § 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.
 - d. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration and repair contracts and subcontracts awarded with funds provided under this agreement. Activities conducted under assessment grants generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon Act. The recipient must contact EPA's Project Officer if there are unique circumstances (e.g. removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. The Agency will provide guidance on Davis-Bacon Act compliance if necessary.

B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, whether the CAR is the potentially responsible party under CERCLA 107 and/or has defenses to liability.
 - b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination. In their request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment Grants* dated September 2011 for discussion of this element) documenting

that:

- (1) a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
- (2) the State determines there is “no viable responsible party” for the site;
- (3) the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
- (4) the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

- b. Documentation must include (1) the identity of the State program official contacted, (2) the State official’s telephone number, (3) the date of the contact, and (4) a summary of the discussion relating to the state’s determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
- c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary or EPA to make the requisite determinations.
- d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of this agreement is three years from the start date of the budget/project period, unless otherwise extended by EPA at the CAR’s request.
2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA PO or EPA may terminate this agreement for material non-compliance with its terms. For purposes of assessment grants, the recipient demonstrates “sufficient progress” when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition grants “sufficient progress” is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement (for Assessment Coalitions) is in place.
3. Assessment funding for an eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed \$350,000 at the site.

B. Substantial Involvement

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

- a. Substantial involvement by EPA generally includes administrative activities such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.
 - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under § 107 of CERCLA. (See Section II.C.3 for more information on subgrants.)
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
 - d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.
 - b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.
 - c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under 2 CFR Part 225 (for state, local and tribal governments) as applicable..

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors comply with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.36. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.
4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant

does not exceed the \$200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.

5. CARs expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.

D. Quarterly Progress Reports

1. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. (Due each January 31, April 30, July 31, and October 31 for the duration of the agreement). Quarterly progress reports must include:
 - a. Summary of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of problems encountered during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.
 - b. An update on project schedules and milestones.
 - c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.
 - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, cleanup required, contaminants, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report due 90 days after the project period end date in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:
 - a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k);
 - b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
 - c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section III.B.
 - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
 - a. Cleanup activities;
 - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
 - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
 - d. To pay for a penalty or fine;
 - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
 - f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA § 107;
 - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
 - h. Unallowable costs (e.g., lobbying and fund raising) under 2 CFR Part 225 for state, local and tribal governments, as applicable. .
2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under 2 CFR Part 225 for state, local and tribal governments, as applicable..
 - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are

ineligible even if the grant recipient is required to carry out the activity under the grant agreement.

- b. Ineligible grant administration costs include direct costs for:
 - (1) Preparation of applications for brownfields grants;
 - (2) Record retention required under 40 CFR 31.42;
 - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
 - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
 - (5) Maintaining and operating financial management systems required under 40 CFR 31;
 - (6) Preparing payment requests and handling payments under 40 CFR 31.21;
 - (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
 - (8) Close out under 40 CFR 31.50.
- 3. Cooperative agreement funds may not be used for any of the following properties:
 - a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
 - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

C. Interest -Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.
2. The CAR must deposit advances of grant funds and program income (i.e. fees) in an interest bearing account.
 - a. For interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
 - b. Interest earned on program income is considered additional program income.

- c. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 40 CFR 31.21(f).

IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental data are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.
2. The CAR shall prepare a QA plan and submit such plan to the EPA Project Officer for approval. The PO will review the QA plan to insure that it meets programmatic needs and to insure that all of the required elements of the QA plan are included. Once approved by the PO, the QA plan is forwarded to the EPA QA staff for their review and approval. The CAR may not perform work at any site under this cooperative agreement until EPA has approved the QA plan in writing.

C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-13 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule "All Appropriate Inquiries Rule: Reporting Requirements Checklist for Assessment Grant Recipients", (Publication Number: EPA 560-R-11-030). This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.
2. All Appropriate Inquiries (AAI) final reports produced with funding from this agreement must comply with 40 C.F.R. Part 312 and must, at a minimum, include the information below. All AAI reports submitted to EPA Project Officers as deliverables under this agreement must be accompanied by a completed "Reporting Requirements Checklist" that EPA's Project Officer will provide to the recipient. The checklist also is available to grantees on the EPA website at www.epa.gov/brownfields.
 - a. An *opinion* as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and

contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.

- b. An identification of **“significant” data gaps** (as defined in 40 C.F.R. 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.

- c. **Qualifications and signature** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

· *“[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part.”*

· *“[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”*

Note: Please use either “I” or “We.”

- d. In compliance with §312.31(b), the environmental professional must include in the final report an **opinion regarding additional appropriate investigation**, if the environmental professional has such an opinion.
3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR part 312 (or comparable requirements for those using ASTM Standard 1527-13). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 40 CFR 31.43(a)(2). If a recipient willfully fails to correct the deficiencies the Agency may consider other available remedies under 40 CFR 31.43 and 2 CFR Part 180.

V. Conflict of interest: Appearance of lack of Impartiality

A. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR’s appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
- (i) The affected party,
 - (ii) Any member of his immediate family,
 - (iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VI. PAYMENT AND CLOSEOUT

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c)

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.
2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in II.F.
2. A Final Federal Financial Report (FFR - SF425). Submitted to:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119
Fax: (702) 798-2423
<http://www.epa.gov/ocfo/finservices/payinfo.html>

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.
- b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.
- c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 96295712 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 10/03/2012
		TYPE OF ACTION New	MAILING DATE 10/10/2012
		PAYMENT METHOD: Advance	ACH#
		RECIPIENT TYPE: Municipal	
RECIPIENT: City of New York 100 Gold Street, 2nd Floor New York, NY 10038 EIN: 13-6400434		PAYEE: City of New York 100 Gold Street, 2nd Floor New York, NY 10038	
PROJECT MANAGER Lee Ilan 100 Gold Street, 2nd Floor New York, NY 10038 E-Mail: ilan@cityhall.nyc.gov Phone: 212-788-2929	EPA PROJECT OFFICER: Benny Horn 290 Broadway, ERRD/PSB New York, NY 10007-1866 E-Mail: Horn.Benny@epamail.epa.gov Phone: 212-637-3964	EPA GRANT SPECIALIST Gina Nappi Grants and Audit Mgt Branch, OPM/GAMB E-Mail: nappi.gina@epa.gov Phone: 212-637-3422	
PROJECT TITLE AND DESCRIPTION NYC Brownfields RLF Cooperative Agreement <i>Under this cooperative agreement the City of New York will manage a Revolving Loan Fund with the intent to make loans and subgrants to eligible entities to perform environmental cleanups of hazardous substances at eligible brownfields sites. The Revolving Loan Fund is designed to provide financial resources to selected business owners or real estate developers engaged in cleanup of brownfields sites as part of economic expansion projects. "Brownfields" are properties, whose expansion, redevelopment or reuse may be complicated by the presence of petroleum and hazardous substances, or other pollutants or contaminants.</i>			
BUDGET PERIOD 10/01/2012 - 09/30/2017	PROJECT PERIOD 10/01/2012 - 09/30/2017	TOTAL BUDGET PERIOD COST \$780,000.00	TOTAL PROJECT PERIOD COST \$780,000.00
NOTICE OF AWARD			
Based on your application dated 07/05/2012, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$650,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$650,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866		ORGANIZATION / ADDRESS U.S. EPA, Region 2 Emergency and Remedial Response Division 290 Broadway New York, NY 10007-1866	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Donna J. Vizian - Assistant Regional Administrator for Policy and Management			DATE 10/03/2012
AFFIRMATION OF AWARD			
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION			
SIGNATURE 	TYPED NAME AND TITLE Daniel Walsh, Director, Mayor's Office of Environmental Remediation		DATE 10/15/12

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 650,000	\$ 650,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$ 130,000	\$ 130,000
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 780,000	\$ 780,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
NYC	1202HE0449	12	E4	02D0AG7	301D79	4114	G200OL00		650,000
									650,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$39,200
2. Fringe Benefits	\$19,992
3. Travel	\$5,000
4. Equipment	\$0
5. Supplies	\$5,250
6. Contractual	\$21,125
7. Construction	\$0
8. Other	\$689,433
9. Total Direct Charges	\$780,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient 16.67 % Federal 83.33 %.)	\$780,000
12. Total Approved Assistance Amount	\$650,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$650,000
15. Total EPA Amount Awarded To Date	\$650,000

Administrative Conditions

1. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **New York State Department of Environmental Conservation** as follows:

Construction -	Minority Business Enterprise (MBE) Participation Goals:	
	New York City	17%
	Downstate *	10%
	Upstate	9%

Construction -	Women Business Enterprise (WBE) Participation Goals:	
	New York City	8%
	Downstate *	6%
	Upstate	5%

Non-Construction Minority and Women Business Enterprise (MBE/WBE) Participation Goals:
(For all other professional and contractual services; supplies and equipment)

Combined MBE/WBE statewide	10%
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* The counties included in the downstate area are as follows: Dutchess, Nassau, Orange, Putman, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as the **New York State Department of Environmental Conservation**.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified

MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency

Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.

The reports must be submitted **annually** for the period ending September 30th for:

- 40 CFR Part 30 Recipients (Non-profits and Institutions of Higher Education); and/or
- 40 CFR Part 35 Subpart A and Subpart B Recipients.

The reports are due within 30 days of the end of the annual reporting period (October 30th). Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

- Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and
- All other recipients not identified as annual reporters (40 CFR Part 30 and/or 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <http://www.epa.gov/osbp/grants.htm>.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

2. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of

those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and either emailing or faxing it to the Las Vegas Finance Center at LVFC-grants@epa.gov or 702-798-2423. This form can be found at www.epa.gov/ogd/forms/forms.htm. All email attachments must be sent in pdf format.

3. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rgn=div5&view=text&node=2:1.2.11.11.2&idno=2>.

4. ELECTRONIC TRANSFER OF FUNDS

The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic mechanisms available to them:

A) Automated Standard Application for Payments (ASAP)

The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If your organization uses multiple bank accounts for EPA grants/cooperative agreements, you must enroll in ASAP. If you are interested in requesting and receiving funds paperless and electronically via ASAP, please complete the ASAP Initiate Enrollment form located at <http://www.epa.gov/ocfo/finservices/forms.htm> and fax it to LVFC at 702-798-2423 or email it to LVFC-grants@epa.gov.

Under this payment mechanism, the Recipient initiates, via ASAP, an electronic payment request which is approved or rejected based on the amount of available funds authorized by EPA in the Recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at LVFC-grants@epa.gov, or (702) 798-2485, or by visiting www.fms.treas.gov/asap.

B) Electronic Funds Transfer (EFT)

Under this payment mechanism, the EPA Las Vegas Finance Center will obtain your organization's banking information from your Central Contractor Registry (CCR) registration. Upon completion of required Regional training and receipt of the award affirmation, a Las Vegas Finance Center Representative will send you an email message with your EFT Control Number and payment information. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center at LVFC-grants@epa.gov, or (702) 798-2485, or by visiting <http://www.epa.gov/ocfo/finservices/payinfo.htm>

NOTE: If your banking information is not correct or changes at any time prior to the end of your agreement, please update your SAM registration and notify the EPA Las Vegas Finance Center as soon as possible so the new banking information can be retrieved. This is vital to ensure proper and timely deposit of funds.

In accepting this assistance agreement, the recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

5. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423, emailed to LVFC-grants@epa.gov, or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 30.62 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

6. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18; if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

7. LOBBYING AND LITIGATION - ALL RECIPIENTS

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

8. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

9. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE (PART 31)

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to the Las Vegas Finance Office at LVFC-grants@epa.gov or 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by Fax to: 702-798-2423

10. RECYCLING AND WASTE PREVENTION

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of

an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

11. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

12. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site:
<http://harvester.census.gov/fac/>

13. SUBAWARD POLICY

a. The recipient agrees to:

1. Establish all subaward agreements in writing;
2. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
3. Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
4. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
5. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
6. Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
7. Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
8. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to

subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

14. SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

15. TRAFFICKING IN PERSONS

a. Provisions applicable to a recipient that is a private entity

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180; "OMB Guidelines to Agencies

on Governmentwide Debarment and Suspension
(Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532

c. Provisions applicable to any recipient

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

16. DUNS AND CCR/SAM REQUIREMENTS

Central Contractor Registration/System for Award Management and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>.

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

17. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).
2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to www.fsr.gov.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsr.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information,

see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. **Subrecipient** means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. *Salary and bonus* .
 - ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
 - v. *Above-market earnings on deferred compensation which is not tax-qualified* .
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

Programmatic Conditions

Revolving Loan Fund (RLF) Terms and Conditions

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. **Cooperative Agreement Recipients:** By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2012 competition for Brownfields RLF cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work-plan.

2. In implementing this agreement, the cooperative agreement recipient shall comply with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.

3. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.
4. Information submitted to EPA under this cooperative agreement may be subject to the Freedom of Information Act (FOIA). EPA recommends that recipients do not provide confidential business information ("CBI") to the Agency. However, if confidential business information is included, it will be treated in accordance with 40 CFR 2.203. Recipients must clearly indicate which portion(s) of the information submitted to EPA the recipient claims as CBI. EPA will evaluate such claims in accordance with 40 CFR Part 2. If no claim of confidentiality is made, EPA is not required to make the inquiry to the recipient otherwise required by 40 CFR 2.204(c)(2) prior to disclosure. Unless otherwise required by Federal, State, or local law, the CAR and its borrowers and subgrantees are not required to permit public access to their own records. 40 C.F.R. 30.53; 40 C.F.R. 31.42. See 40 C.F.R. part 2 for EPA's general information-disclosure procedures.

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY

A. Brownfields Site Eligibility

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.
2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
3. For any petroleum-contaminated brownfields site, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to EPA's *Proposal Guidelines for Brownfields Revolving Loan Fund Grants* dated September 2011 for discussion of this element) documenting that:
 - a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;

- b. the State determines there is "no viable responsible party" for the site;
- c. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
- d. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate state petroleum program official.

- 4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
- 5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
- 6. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in "3" above.

B. Borrower and Subgrant Recipient Eligibility

- 1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded. Eligible subgrant recipients include eligible entities as defined under CERCLA § 104(k)(1) and nonprofit organizations as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.
- 2. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement. **However, the CAR may not provide a subgrant to itself or another component of its own unit of government or organization.**
- 3. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible

entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. **Private, for-profit entities are not eligible for discounted loans.**

4. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the subgrant recipient's or borrower's counsel. However, the CAR must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient's or borrower's counsel is not binding on the Federal Government.
5. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.
6. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.
7. A borrower or subgrant recipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subgrant recipient as a cleanup and business risk.
8. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

C. Obligations for Grant Recipients, Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA § 107

1. Grant recipients, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a grant, loan, or subgrant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the "landowner liability protections"), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subgrantee. These include, but are not limited to the following:
 - a. All grant recipients, borrowers, or subgrantees asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.
 - b. Grant recipients, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be potentially liable, or affiliated with any other person that is potentially liable

for response costs at the facility through;

- (a) any direct or indirect familial relationship; or
- (b) any contractual, corporate, or financial relationships; or
- (c) a reorganized business entity that was potentially liable or otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.

c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:

- i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
- ii. taking reasonable steps to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;
- iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
- iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
- v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B)].

d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years from the start date of the project period, unless otherwise extended by EPA at the CAR's request.
2. If after 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. Sufficient progress is indicated by the grantee having made loan(s) and/or subgrant(s), but may also be demonstrated by a combination of all the following:

hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subgrants.

B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; reviewing and approving of procedures for loan and subgrant recipient selection; review of project phases; and approving substantive terms included in professional services contracts.
 - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. above. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition prohibits a grant or loan recipient from using grant funds to clean up a site if the recipient is potentially liable under §107 of CERCLA for that site.
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
 - d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.
 - e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
 - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
 - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.
 - c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the Program and for coordinating the team's activities as outlined below.

2. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.
3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 40 CFR Part 31.
4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel should review all loan/subgrant agreements prior to execution.
5. The CAR is responsible for ensuring that borrowers and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrant recipients are consistent with the terms and conditions of this agreement.

D. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. (Due each January 31, April 30, July 31, and October 31 for the duration of the agreement). Quarterly progress report must include:
 - a. Summary of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
 - b. An update on project schedules and milestones.
 - c. A list of the loans and/or sub-grants awarded during the reporting quarter.
 - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); cost share updates; and total remaining funds.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of

each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much funding was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized. See Section VII for more details on final report and closeout.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.
 - a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at brownfields sites.
 - b. At least 50% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s). (Note: cleanup subgrants are limited to \$200,000 per site). (Note: when implemented as a policy change, the CAR may request a waiver to the 50% cap on subgrant funds. Please consult with your Regional Project Officer.)
 - c. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):
 - i. The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for

nonprofit purposes;

- ii. The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
- iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and
- iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:
 - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k);
 - b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
 - c. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed;
 - d. Preparing an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action;
 - e. Ensuring that public participation requirements are met. This includes preparing a community relations plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments;
 - f. Establishing an administrative record for each site;
 - g. Developing a Quality Assurance Project Plan (QAPP) as required by Part 31 and Part 30 regulations. The specific requirement for a QAPP is outlined in U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000;
 - h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance

with applicable Federal and State environmental requirements;

- i. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;
 - j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section C.
 - k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and
 - l. Subgrantee progress reporting to the CAR is an eligible programmatic cost.
3. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients

- 1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrant recipient for any of the following activities:
 - a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
 - c. Construction, demolition, and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use.
 - d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
 - e. To pay for a penalty or fine.
 - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
 - g. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107.

are those incurred for loan administration and overhead costs.

- d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:
- i. Preparation of applications for loans and loan agreements;
 - ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
 - iii. Maintaining and operating financial management and personnel systems;
 - iv. Preparing payment requests and handling payments; and
 - v. Audits.
- e. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:
- i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
 - ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
 - iii. Supplies and equipment not used directly for cleanup at the site.
 - iv. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
 - v. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.
4. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody or control of the

United States government except land held in trust by the United States government for an Indian tribe; or

- d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.
5. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

D. Use of Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
2. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.
3. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.
4. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.
5. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

E. Post Cooperative Agreement Program Income

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a "close out" agreement negotiated with EPA. In accordance with 40 CFR 31.42(c)(3), the CAR shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.

F. Interest-Bearing Accounts

1. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.
2. Interest earned on advances, CARs and subgrant recipients are subject to the provisions of 40 CFR §31.21(i) and §30.22(i) relating to remitting interest on advances to EPA on a quarterly basis.
3. Interest earned on program income is considered additional program income.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The alternatives may – as national or regional policies direct - additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for

nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

2. The CAR shall prepare a QA plan and submit such plan to the EPA Project Officer for approval. The PO will review the QA plan to insure that it meets programmatic needs and to insure that all of the required elements of the QA plan are included. Once approved by the PO, the QA plan is forwarded to the EPA QA staff for their review and approval. The CAR may not perform work at any site under this cooperative agreement until EPA has approved the QA plan in writing.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include the analysis of brownfield cleanup alternatives; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the borrower or subgrant recipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.
2. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible costs until an RLF grant workplan has been submitted to and approved by U.S. EPA. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:
 - a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any subgrants competitively, it must document the basis for that decision and inform EPA.
 - b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
 - c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrant recipients receive RLF financing.
 - d. Developing a formal protocol for potential borrowers or subgrant recipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrant recipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrant recipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
 - e. Requiring that borrowers or subgrant recipients submit information describing the borrower's or subgrant recipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
 - f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
 - g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrant recipient.

B. Inclusion of Special Terms and Conditions in RLF Loan and Subgrant

Documents

1. The CAR shall ensure that the borrower or subgrant recipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subgrant awards:
 - a. Borrowers or subgrant recipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.
 - b. Borrowers or subgrant recipients shall ensure that the cleanup protects human health and the environment.
 - c. Borrowers or subgrant recipients shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subgrant recipient maintain separate records for costs incurred at that site(s).
 - d. Borrowers or subgrant recipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subgrant recipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government.
 - e. Borrowers or subgrant recipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
 - f. Borrowers or subgrant recipients shall certify that they are not potentially liable under § 107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrant recipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, borrowers or subgrant recipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.
 - g. Borrowers or subgrant recipients shall conduct cleanup activities as required by the CAR.
 - h. Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

- i. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of subgrants and 40 CFR 30 and OMB Circular A-21 for educational institutions that are recipients of subgrants.
- j. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon, please see the Davis- Bacon Addendum to these terms and conditions.
- k. Federal cross-cutting requirements include, but are not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
 - a. The affected party,
 - b. Any member of his immediate family,

- c. His or her partner, or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply:

"payment" is the U.S. EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into a loan agreement with the borrower or subgrant recipient; "disbursement" is the transfer of funds from the CAR to the borrower or subgrant recipient. "Close out" refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c) after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subgrant recipient to pay costs incurred or to meet a "progress payment" schedule. The recipient may request payments when it receives a disbursement request from a borrower or subgrant recipient based on the borrower or subgrant recipient's incurred costs under the "actual expense" method or the schedule for disbursement under the "schedule" disbursement method. The CAR shall disburse accrued program income to meet all or part of this obligation or eligible programmatic expenses prior to requesting payment from EPA. A waiver from this requirement may be granted by EPA after a written request is submitted that adequately justifies drawing down cooperative agreement funds prior to accrued program income.

B. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower by means of 'actual expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's incurred costs.
 - a. An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.
 - b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the

basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant/loan recipient's payment of costs incurred in carrying out the subgrant/loan. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.

- c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.
- d. Subgrant funds must be disbursed to the subgrant recipient in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.

C. Schedule for Closeout

1. There are two fundamental criteria for closeout:
 - a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and
 - b. Completion of all cleanup activities funded by the amount of the award.
2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.
3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include continuing to operate an RLF for brownfields cleanup and/or other brownfields activities.
4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA § 107 prohibitions and site eligibility limitations for the effective period of the closeout agreement.

D. Compliance with Closeout Schedule

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subgrant recipient may be subject to federal recovery, and the cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement.

E. Final Requirements

1. The CAR, within 90 days after the expiration or termination of the grant, must

submit all financial, performance, and other reports required as a condition of the grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in II.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to either LVFC-grants@epa.gov or the address below:

U.S. EPA Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119
Fax: (702) 798-2423
<http://www.epa.gov/ocfo/finservices/payinfo.html>

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region

F. Recovery of RLF Assets

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under 40 CFR 31.43 and CERCLA § 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

VIII. FOOD AND REFRESHMENTS

1. FOOD AND REFRESHMENTS

Unless the event(s) and all of its components (i.e., receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event.

(3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

VIII. DAVIS BACON REQUIREMENTS

1. see the attached file



- Davis Bacon Brownfields RLF 2-23-10.pdf

EXHIBIT 2 to APPENDIX K

[SEPARATE ATTACHMENT]



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

RUTH NOEMÍ COLÓN
ACTING SECRETARY OF STATE

February 9, 2011

Daniel Walsh
Director
Mayor's Office of Environmental Remediation
253 Broadway, 14th Floor
New York, NY 10007

**Re: BOA Agreement # C096013
City of New York, Step 1**

Dear Mr. Walsh:

Enclosed is a copy of the fully-executed Agreement between the City of New York and the Department of State (DOS) for the above cited project. Please contact Curtis Cravens at 212-417-5005 or curtis.cravens@dos.state.ny.us to discuss the next steps for this project.

Upon receipt of this executed contract, you may submit a New York State Standard Voucher and letter requesting a payment advance (25% of grant award). A sample letter and voucher may be downloaded from our website at: http://nyswaterfronts.com/Requesting_payments.asp.

If you have any questions regarding payments, please contact Vincent Sculco at (518) 473-2466 or vince.sculco@dos.state.ny.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Teshanna Brunner".

Teshanna Brunner
Administrative Professional
Office of Coastal, Local Government
and Community Sustainability

c: Curtis Cravens, DOS
Lee Ilan

FACE PAGE

STATE AGENCY: NYS Department of State One Commerce Plaza 99 Washington Avenue - Suite 1010 Albany, NY 12231-0001	NYS COMPTROLLER'S #: C096013 ORIG. AGENCY CODE: 19000 TYPE OF PROGRAM: Brownfield Opportunities Areas Program
INITIAL CONTRACT PERIOD: FROM: 10/07/09 TO 10/06/14	STATE SHARE FUNDING AMOUNT FOR INITIAL PERIOD \$1,230,000 LOCAL SHARE FUNDING AMOUNT FOR INITIAL PERIOD \$136,666
CONTRACTOR: New York City 253 Broadway, 14th Floor New York, NY 10007 Federal Tax Identification Number: 13-6460434 Municipal Code #: 600100000 000	CONTRACTOR STATUS: Sectarian Entity Yes ___ No <input checked="" type="checkbox"/> Not-for-Profit Organization. Yes ___ No <input checked="" type="checkbox"/> Charities Registration Number _____ / (E-1) - <u>3 A</u> Estates, Powers and Trusts Laws Reporting (E-2) - <u>02</u> If you did not claim an exemption to both of the items above, you must circle appropriate response in the following statement: Contractor has/has not timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.

APPENDICES ATTACHED TO AND PART OF THIS AGREEMENT

- APPENDIX A: Standard clauses as required by the Attorney General for all state contracts
- APPENDIX A1: Agency-specific clauses; including:
 - Attachment 1: Final Project Summary Report
 - Attachment 2: Minority and Women-owned Business Enterprises (MWBE) Program Quarterly Contractor Report
 - Attachment 3: Project Status Form
 - Attachment 4: Procurement Certification
- APPENDIX B: Budget
- APPENDIX C: Payment and Reporting Schedule
- APPENDIX D: Program Work Plan
 - Attachment A: Document Style Requirements
 - Attachment B: Information Sources for Descriptive Profiles
 - Attachment C: Descriptive Profile of Brownfield & Underutilized Properties
- APPENDIX E: Charities Bureau Registration and Reporting Exemptions
- APPENDIX F: Notices
- APPENDIX G: Electronic Payments
- APPENDIX X: Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

CONTRACTOR

Contract No. C096013

New York City

By:

Daniel C. Walsh
DANIEL C. WALSH

(Print Name)

Title: Director, Mayor's Off. of Environmental Remediation

Date: 11-12-10

ACKNOWLEDGMENT

State of New York)

County of New York)ss:

On this 12th day of November, in the year 20 10, before me personally appeared Daniel C. Walsh, to me known, who being by me duly sworn, did depose and say that he/she is the Director of MOER, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

Mark P. McIntyre
NOTARY PUBLIC

MARK P. McINTYRE
Notary Public, State of New York
No. 02MC6072151
Qualified in Kings County
Commission Expires 04/01/2014

STATE AGENCY:

New York State Department of State

Contract No. C096013

By:

Judith E. Kenny

Judith E. Kenny
(Print Name)

DOS Director of Administration
and Management

Title:

Date:

1/3/11

State Agency Certification

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

Approved:
Attorney General:

APPROVED AS TO FORM
NYS ATTORNEY GENERAL

JAN 10 2011

By:

Lorraine I. Remo

LORRAINE I. REMO
ASSOCIATE ATTORNEY

Date:

Approved:

Thomas P. DiNapoli
State Comptroller

By: _____

Date:

APPROVED
DEPT. OF AUDIT & CONTROL
JAN 31 2011
Patricia McQuinn
FOR THE STATE COMPTROLLER

STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the Face Page hereof.

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

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

I. Conditions of Agreement

A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.

B. Funding for the first PERIOD shall not exceed the funding amount specified on the Face Page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.

C. This AGREEMENT incorporates the Face Page attached and all of the marked appendices identified on the Face Page hereof.

D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Work Plan (Appendix D) in accordance with: provisions of this AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.

G. Appendix A. (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of this AGREEMENT.

II. Payment and Reporting

A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the Face Page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

III. Terminations

A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.

B. The STATE may terminate this AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.

D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with terms of the notice.

E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.

F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of this AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

IV. Indemnification

A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

V. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

VI. Safeguards for Services and Confidentiality

A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under this Agreement and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.

APPENDIX A
STANDARD CLAUSES FOR NYS CONTRACTS
 (June 2006)

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that

neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for

the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. 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.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor

hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162(4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

APPENDIX A1
AGENCY-SPECIFIC CLAUSES

- I. This Agreement has been entered into pursuant to the following understandings:
- A. General Municipal Law §970-r (State assistance for Brownfield Opportunity Areas) provides State assistance for the cost of plans for areas affected by brownfield sites and economic distress.
 - B. The Department of State (Department) is authorized by such Law to evaluate and determine eligibility of applications for funding of projects.
 - C. Based upon information, representations and certifications contained in Contractor's application for funding, including the Program Work Plan as set forth in Appendix D, the Department has made a determination of eligibility of funding for Contractor's project under such Law.
 - D. State funds (Funding Amount set forth on the Face Page) for this Project (Appendix D Program Work Plan) are provided pursuant to a reappropriation of funds originally made by Section 970-r of the General Municipal Law.
 - E. The Contractor has demonstrated its ability to finance its share of the Project and has agreed to fund its portion of the cost of the Project.
- II. General
- A. For the purposes of this Agreement, the terms "State" and "Department" are interchangeable, unless the context requires otherwise. In addition, the terms "Agreement" and "Contract" are interchangeable, unless the context requires otherwise.
 - B. The contract period as set forth on the Face Page is the inclusive period within which the provisions of this Agreement shall be performed.
 - C. No liabilities incurred prior to the contract period will be eligible under this Agreement.
 - D. No liabilities are to be incurred beyond the contract period and no costs will be reimbursed for such liabilities unless: 1) funds have been reappropriated for the Project in the subsequent State fiscal year, 2) the Department determines that it is in the best interest of the Department and the State to provide additional time to complete the Project and 3) an extension agreement is approved in accordance with Section IA. of the Agreement.
 - E. Subject to the availability of funds, determination by the Department that it is in the best interest of the State, and upon mutual written consent of the parties, the Initial Contract Period of this Agreement may be extended by up to two contract periods not to exceed twelve months each. The parties shall revise or complete the appropriate appendix form(s), which may be subject to approval of the Office of the State Comptroller.
 - F. To modify any terms of this Agreement within an existing period, the parties shall revise or complete the appropriate appendix form(s), which may be subject to approval of the Office of the State Comptroller.
 - G. The Department shall not be liable for expenses of any kind incurred in excess of the State Funds as set forth on the Face Page, and shall not be responsible for seeking additional appropriations or other sources of funds for the Project.
 - H. The Contractor shall perform all services to the satisfaction of the Department. The Contractor shall provide all services and meet the program objectives described in Appendix D in accordance

with: provisions of this Agreement; relevant State, federal and local laws, rules and regulations, administrative and fiscal guidelines; where applicable, operating certificates for facilities or licenses for an activity or program, and conditions of applicable permits, administrative orders and judicial orders.

- I. The Contractor shall submit with its request for final payment a Final Project Summary Report in the format described in Appendix A1, Attachment.
- J. The Contractor agrees to proceed expeditiously with the Project and to complete the Project in accordance with the timetable set forth in the Work Plan (Appendix D) as well as with the conditions of any applicable permits, administrative orders, or judicial orders and this Agreement.
- K. The Contractor shall submit a Quarterly Contractor Report (Appendix A1, Attachment 2) pursuant to the Department's Minority and Women-owned Business Enterprises Program. In the event Contractor utilizes Minority and Women-owned Business Enterprises as discussed in Section XIV in Appendix A1, such report shall be provided to the Department at the address on the Quarterly Contractor Report.
- L. The Contractor shall submit a "Project Status Report" (Appendix A1, Attachment 3) on a six month basis for the periods ending June 30 and December 31. Reports are due no later than 30 days following the end of each reporting period.

III. Additional Requirements for Construction Projects [Intentionally left blank]

IV. Reports, Documents and Maps

The Contractor shall, where appropriate, identify documents, reports, and maps produced in whole or in part under this Agreement by endorsing on said documents, reports, and maps the following:

"This (document, report, map, etc.) was prepared for the New York State Department of State with funds provided under the Brownfield Opportunities Area Program."

V. License to use and reproduce documents and other works:

By acceptance of this Agreement, Contractor transfers to the Department a nonexclusive license to use, reproduce in any medium, and distribute any work prepared for or in connection with the Project, including but not limited to reports, maps, designs, plans, analysis, and documents regardless of the medium in which they are originally produced. Contractor warrants to the Department that it has sufficient title or interest in such works to license pursuant to this Agreement. Such warranty shall survive the termination of this agreement. Contractor agrees to provide the original of each such work, or a copy thereof which is acceptable to the Department, to the Department before payments shall be made under this Agreement.

VI. Contractors Insurance Requirements

- A. Prior to the commencement of the work, the Contractor shall file with the Department of State, Certificates of Insurance evidencing compliance with all requirements contained in this Agreement. Such certificate shall be of form and substance acceptable to the Department.
- B. Acceptance and/or approval by the Department does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Agreement.

- C. All insurance required by the Agreement shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing to any insurance or self insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail which shall be sent to New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231-0001; and shall name the People of the State of New York and their directors officers, agents, and employees as additional insured thereunder.
- D. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject.
- E. Each insurance carrier must be 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 Department and rated at least "A" Class "VII" in the most recently published Best's Insurance Report.
- F. The Contractor shall cause all insurance to be in full force and effect as of the date of this Agreement and to remain in full force and effect throughout the term of this Agreement and as further required by this Agreement. The 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 date or renewal date, the Contractor shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.
- H. Unless the Contractor is self-insured, Contractor shall, throughout the term of the Agreement or as otherwise required by this Agreement, obtain and maintain in full force and effect the following insurance with limits not less than those described below and as required by the terms of this Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies). Where Contractor is self-insured, the Contractor shall provide suitable evidence of such to the Department relating to the risks and coverage amounts as provided hereunder.
1. Comprehensive Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such liability shall be written on the Insurance Service Office's (ISO) occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, owners & contractors protective, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
 - a. If such insurance contains an aggregate limit, it shall apply separately to this location.
 - b. Products and Completed Operations coverage shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the owner of all of contractor's work.
 2. Where the Project described in Appendix D includes the construction of any structure or building, a Builder's Risk Policy until the Project is completed and accepted in the amount of the total project cost.

3. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. Workers Compensation Policy shall include the U.S. Longshore & Harbor Workers' Compensation Act endorsement.
 4. Comprehensive Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.
 5. Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Clauses of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of the Department held in their care, custody and/or control.
 6. An Owner's Protective Liability Policy with limits no less than \$1,000,000 in the name of the Contractor.
- I. Professional consultants retained by the Contractor in connection with the Project shall show evidence of professional liability insurance with limits no less than \$1 million.

VII. Property

- A. Pursuant to the provisions set forth in Section V, Page 3 of this Agreement, the ownership of all property described therein shall reside with the Contractor unless otherwise specified in writing by the Department at any time during the term of this Agreement and up to thirty (30) days following the issuance of the final payment.
- B. Contractor warrants that it has fee simple or such other estate or interest in the site of the Project, where the Project is undertaken at a site, including easements and /or rights-of-way sufficient to assure undisturbed use and possession for the purposes of construction and operation for the estimated life of the Project. Contractor further acknowledges that where such project is undertaken on or involves the use of lands for active or passive recreational use, it is a material term of this Agreement that such lands shall be available for such recreational use by the People of the State of New York. Additionally, Contractor shall not limit access or discriminate on the operation of the facilities against any person on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status.

VIII. Date/Time Warranty

- A. Contractor warrants that product(s) furnished pursuant to this contract shall, when used in accordance with the product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products must perform as a package or system, this warranty shall apply to the products as a system.
- B. Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for

damages resulting from any delays, errors or untimely performance resulting there from, including but not limited to the failure or untimely performance of such services.

- C. This Date/Time Warranty shall survive beyond termination or expiration of this contract through:
 a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this contract for breach of warranty.

IX. Fees [Intentionally left blank]

X. Alienation [Intentionally left blank]

XI. Subcontracting Requirements

- A. The Contractor may subcontract for all or any portion of the activities covered by this Agreement as provided for in Appendix D, subject to prior written approval by the Department of any subcontractor and the terms of any subcontract. Subcontractors shall comply with all applicable requirements of the Agreement between the Contractor and the State.

XII. Compliance with Procurement Requirements

- A. All contracts by municipalities for service, labor, and construction involving not more than \$35,000 and goods and equipment involving not more than \$10,000 are subject to the requirements of General Municipal Law §104-b, which requires such contracts to comply with the procurement policies and procedures of the municipality involved. All such contracts shall be awarded after and in accordance with such municipal procedures, subject to any additional requirements imposed by the State as set forth in Appendix D hereof.
- B. The municipal attorney, chief legal officer or financial administrator of the Contractor shall certify to the Department of State that applicable public bidding procedures of General Municipal Law §103 were followed for all service, labor, and construction contracts involving more than \$35,000 and all goods and equipment contracts involving more than \$10,000. In the case of contracts by municipalities for service, labor, and construction involving not more than \$35,000 and goods and equipment contracts involving not more than \$10,000, the municipal attorney, chief legal officer or financial administrator shall certify that the procedures of the municipality established pursuant to General Municipal Law §104-b were fully complied with.
- C. All contracts by non-municipal entities such as a community-based organization, shall have its chief legal officer or financial administrator certify to the State that alternative proposals and quotations for professional services were secured by use of written requests for proposals through a publicly advertised process to ensure the prudent and economical use of public funds for professional services of maximum quality at reasonable cost.

XIII. Requirements for Contract GIS Products (2/04) [Intentionally left blank]

XIV. Payment and Records Retention

- A. Payments shall be made as set forth in Appendix C.
- B. The Contractor shall maintain, at its principal place of business, detailed books and accounting records supported by original documentation relating to the incurring of all expenditures, as well as payments made pursuant to this Agreement. The Contractor shall make such records available for review by the Department upon request at any time. The Department shall have the right to conduct progress assessments and review books and records as necessary. The Department shall

have the right to conduct an on-site review of the Project and/or books and records of the Contractor prior to, and for a reasonable time following, issuance of the final payment. The Department shall be entitled to disallow any cost or expense, and/or terminate or suspend this Agreement, if the Contractor has misrepresented any expenditures or Project activities in its application to the Department, or in this Agreement, or in any progress reports or payment requests made pursuant hereto. The Contractor shall maintain such books and accounting records in a manner so that reports can be produced therefrom in accordance with generally accepted accounting principles. The Contractor shall maintain separate fiscal books and records for all funds received through the Department pursuant to this Agreement.

- C. During the term of this Agreement and for a period of six years after its termination, the Contractor shall make all such books and records available to the Department and the Office of the State Comptroller, or their designated representatives, for inspection and audit.

XV. Equal Employment Opportunity

The Contractor hereby assures that it is, and shall be for the duration of this Agreement, in compliance with the Federal Equal Employment Opportunity Act of 1972 (Public Law 92-261), as amended.

XVI. Article 15-A of The New York State Executive Law

The Department of State administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A of the New York State Executive Law. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises. Under this law, all state agencies must, subject to certain exceptions, establish goals for minority and women-owned business participation in certain state contracts and grants. Where MWBE goals are required, even in circumstances where this goal is zero, a Quarterly Contractor Report is required to be submitted to the Minority and Women-owned Business Program of the Department on forms provided by the Department, as set forth in Appendix A1, Attachment 2.

Article 15-A requires that rules and regulations be established for contracts entered into by the Department. In accordance with Article 15-A, goals must be set for contracts entered into by the Department in excess of \$25,000 for labor, services, supplies, equipment, and materials, or any combination of the foregoing, and for contracts entered into by the Department in excess of \$100,000 for acquisition, construction, demolition, replacement, major repair, renovation or improvement of real property. In applying these rules and regulations, the Department must consider the availability of certified minority and women-owned businesses in the region in which the state contract will be performed, the total dollar value of the contract, the scope of work to be performed, and the project size and term.

The contractor will, when required as a part of the bid or proposal, submit a Staffing Plan on the form provided by the Department. This Plan will detail the work force anticipated in the performance of the state contract, reported by ethnic background, gender, and Federal Occupational Categories.

After a bid opening and prior to the award of a state contract, the contractor will submit an Equal Employment Opportunity (EEO) Policy Statement to the Department within the time frame established by the Department. The law requires that, as a precondition to entering into a valid and binding state contract, the contractor will agree to the following stipulations and will include them in the EEO Policy Statement:

- 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.
- The contractor will undertake or continue existing programs of affirmative action 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, affirmative action applies in areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

- The contractor will make active and conscientious efforts to employ and to utilize minority group members and women at all levels and in all segments of its work force on state contracts, and the contractor will document these efforts.
- The contractor will state in all solicitations and advertisements for employees that, in the performance of the state contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- The contractor will, at the request of the Department, 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 because of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- The contractor will include the provisions regarding the EEO Policy Statement and the Staffing Plan enumerated above in each and every subcontract of a state contract in such a manner that the subcontractor is bound by these requirements.
- Failure to provide an EEO Policy Statement and a Staffing Plan without reasonable written justification or commitment to provide these requirements by a specified date will result in rejection of the contractor's bid or proposal.
- After the award of a state contract, the contractor will submit to the Department a Workforce Employment Utilization Report, on the form supplied by the Department, detailing the work force actually utilized on the state contract, by ethnic background, gender and Federal Occupational Categories, as specified on the form. This Report will be submitted to the Department on a quarterly basis throughout the life of the contract.
- The contractor, and any of its subcontractors, may be required to submit compliance reports relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the state contract is executed.

Questions regarding this program should be directed to the Department's Minority and Women-owned Business Program by calling (518) 474-5741. Potential contractors can access the NYS Directory of Certified Minority and Women-owned Business Enterprises on-line through the Empire State Development website at: <http://www.empire.state.ny.us> and click on NY BIZ. From the list on the top left of the page, click on Small and Growing Business and, from that drop-down menu, click on: Minority and Women-Owned Business. On the top of the page click on the heading "MWBE Directory."

The Department makes no representation with respect to the availability or capability of any business listed in the Directory.

XVII. Notice of Public Proceedings

The Contractor agrees to provide the Department with prompt and timely written notice at least two weeks in advance of all public proceedings, including, but not limited to; public meetings or hearings, relating to the Project.

XVIII. Submission of all correspondence and documentation

- A. Unless otherwise stated in Appendix D, the Contractor agrees to provide the Department with the required products in the following formats. All products shall include the NYS Comptroller's # as indicated on the Face Page of this Agreement and where applicable, reflect the Task # it relates to in the Appendix D.
1. Draft products: two paper copies of each product must be submitted.
 2. Final products: two paper copies of each product must be submitted. In addition all final products (including reports, designs, maps, drawings, and plans) must be submitted as an electronic copy (in Adobe® Acrobat® Portable Document Format - PDF), created using 300 dpi scanning resolution, and be submitted on a labeled CD-R type CD. The CD must be labeled with the contractor name, contract #, and project title.
 3. Pictures and photographs must be dated and captioned with the location and a brief description of the activity being documented.
- B. Contractor agrees to provide the Department with original and one copy of payment request documentation as described in Appendix C.

XIX. Environmental Review

- A. Contractor agrees to provide the Department, in a timely manner, with all documentation, including but not limited to, permit applications, environmental assessments, designs, plans, studies, environmental impact statements, findings, and determinations, relating to the Project.
- B. Contractor acknowledges that compliance with the State Environmental Quality Review Act is a material term and condition of this Agreement. In no event shall any payments be made under this Agreement until Contractor has provided Department with appropriate documentation that contractor has met any requirements imposed on Contractor by the State Environmental Quality Review Act.

XX. Default and Termination

- A. The Department may terminate the Agreement in accordance with the terms and conditions in Section III of the Agreement.
- B. In addition to whatever other reserved rights it has to terminate the Agreement, the Department may terminate the Agreement when it is in the best interests of the State or (1) for cause, (2) for convenience, or (3) due to unavailability of funds.
- C. If the Department determines the Contractor has breached a term of the Agreement and if the Department determines the defect can be remedied, it may issue a written notice providing the Contractor with a minimum of 30 days to correct the defect and the notice may include a prospective termination date. If the Contractor fails to correct the defect or fails to make a good faith effort to do so as determined by the Department to the Department's satisfaction, the Department may terminate the Agreement for cause.
- D. The Department shall also have the right to postpone or suspend the Agreement or deem it abandoned without this action being a breach of the Agreement. The Department shall provide

written notice to the Contractor indicating the Agreement has been postponed, suspended or abandoned. During any postponement, suspension or abandonment the Contractor agrees not to do any work under the Agreement without prior written approval of the Department.

- E. In the event the Agreement is postponed, suspended, abandoned or terminated, the Department shall make a settlement with the Contractor upon an equitable basis in good faith and under the general compensation principles and rates established in the Agreement by the Department. This settlement shall fix the value of the work which was performed by the Contractor to the Department's satisfaction prior to the postponement, suspension, abandonment or termination of the Agreement.
- F. Any funds paid to the Contractor by the Department which are not expended under the terms of the Agreement shall be repaid to the Department.

XXI. Fully-Executed Agreement or Amendment Thereto

- A. If this Agreement, or amendments thereto, allocates funds totaling \$50,000 or less, it shall be deemed to be fully executed when approved and signed by the Contractor and the Department.
- B. If this Agreement, or amendments thereto, allocates funds totaling more than \$50,000, it shall be deemed to be fully executed when approved by the Office of the State Comptroller.

FINAL PROJECT SUMMARY REPORT

Final payment of the grant is dependent upon the satisfactory completion and acceptance by the Department of State, *Office of Coastal, Local Government and Community Sustainability* of this FINAL PROJECT SUMMARY REPORT along with the requisite documentation. In addition to the other requirements of the contract, the grant recipient is responsible to relay the importance, the significance and the value of the completed project to the community, the region and the state through the completion of the report.

The following outline should be used to complete the FINAL PROJECT SUMMARY REPORT:

1. Project Title: _____
2. Name of Municipality: _____
3. Actual Project Costs:
 - a. State funds expended (identify source, eg. EPF, Clean Water/ Clean Air Bond Act, etc.): _____
 - b. Local funds expended: _____
 - c. Other funds expended: _____
4. Project Manager: Name: _____
 Title: _____
 Mailing address: _____

 Tel. number: () _____
 Fax number: () _____
 E-mail address: _____
5. Federal Tax Identification Number: _____
6. Project Background (briefly explain in a short paragraph why this project was necessary, what its value is and/or its importance to the community):
7. Project Work (briefly describe the work that was done to complete the project):
8. Project Descriptions (use the following guidelines to describe the project and please be concise in the description):
 - a. For a Planning Project describe the findings or recommended strategies.
 - b. For a Design Project describe what is to be built.
 - c. For a Construction Project describe what was built.
9. Project Measurable Results: To be completed on forms attached.
10. Project Documentation: The Department of State, *Office of Coastal, Local Government and Community Sustainability* requires a visual documentation of the Environmental Protection Fund projects. Project products should be visually documented using a 35mm camera or a digital camera. The 35mm color slides and/or digital camera disc should be labeled and dated when submitted along with the completed FINAL PROJECT SUMMARY REPORT.

Visuals should illustrate the final project product and, as appropriate, activities undertaken to complete the project. For example, some projects would call for visuals that include photographs of volunteers participating in a wetland restoration project (planting Spartina); photographs of historical signs markers, kiosks, etc. being placed; or photographs of an artist's rendering of a waterfront design.

Design, planning, and construction projects call for different visual documentation. Therefore, the following guidelines are suggested:

- For design projects, visuals of renderings and/or graphics that depict the final product.
- For planning projects, visuals of any graphics, where appropriate, that illustrate the final product.
- For construction projects, visuals of work in progress and the finished project.

In addition to the 35mm color slides/digital camera disc, a video (vhs format) of the project with a verbal description is desirable but not mandatory. The video may be used in a future documentary.

NYS Department of State • Minority and Women-owned Business Enterprises Program
 99 Washington Avenue Albany NY 12231-0001 • (518) 474 - 5741

Minority and Women-owned Business Enterprises (MWBE) Program Quarterly Contractor Report

INSTRUCTIONS:

1. Please prepare reports based on calendar quarters, or prepare one annual report.
2. Use a separate Report sheet for each contract or program area
3. Record the amount paid for each service/product for the time period identified below.
4. Send completed reports to the Minority and Women-owned Business Enterprises Program at the above address.

REPORT PERIOD

Report should cover a calendar quarter OR the program year. FROM: TO:
 Enter the inclusive dates of the quarter or for the program year. / / /

<i>CONTRACTOR NAME</i>		<i>PROGRAM</i>	<i>DOS CONTRACT NUMBER</i>	
<i>CONTRACTOR ADDRESS</i>			<i>Service Area of Contract Work</i>	
<i>NAME and TITLE of CONTACT PERSON (Please Print)</i>			<i>() TELEPHONE NUMBER</i>	
VENDOR NAME and ADDRESS	TYPE of VENDOR	DESCRIPTION of SERVICE/PRODUCT	AMOUNT PAID THIS PERIOD	COMMENTS
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE		\$	
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE			
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE			
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE			
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	<input type="checkbox"/> MBE <input type="checkbox"/> WBE			

Project Status Form

RECIPIENT _____ CONTRACT # _____

PROJECT TITLE _____

Status Report Date: _____

<u>Task #</u>	<u>Brief Task Description</u>	<u>A/T</u>	<u>Date of Completion</u>	<u>Percent of Completion</u>	<u>Task Accomplishments</u>	<u>Product Submitted to DOS</u>
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ADJUSTMENTS - Please indicate proposed adjustment(s) to work program/schedule, reason(s) for the proposed adjustment(s), and any other problems encountered during this reporting period:

Person to contact if we have questions about the information provided on this form:

Name: _____ Email Address: _____

Title: _____ Affiliation: _____

Phone: _____ Fax: _____

Certification to New York State Department of State that all State and Local and Private Procurement Requirements Have Been Met

(Check the paragraph that applies)

I hereby certify that I am the municipal attorney, chief legal officer or financial administrator for the _____ and that the contract/procurement with _____, appended hereto pursuant in whole or in part to NYS Department of State Contract No. _____, was awarded in accordance all requirements of law and the following provisions:

1. For Municipal Entities (except NYC or Borough):

_____ Applicable public bidding procedures of General Municipal Law §103 relating to the procurement for service, labor, and/or construction involving more than \$35,000 or goods and equipment involving more than \$10,000.

_____ Procedures established by this municipality pursuant to the General Municipal Law §104-b relating to the procurement for service, labor, and/or construction involving not more than \$35,000 or goods and equipment involving not more than \$10,000.

2. For New York City or Borough:

_____ Applicable public bidding procedures of General Municipal Law §103 and regulations of the Procurement Policy Board relating to the procurement for service, labor, and/or construction involving more than \$35,000 or goods and equipment involving more than \$10,000.

BUDGET SUMMARY

A. Salaries & Wages (including Fringe Benefits)	\$373,845.00
B. Travel	\$2,000.00
C. Supplies/Materials	\$4,000.00
D. Equipment	\$0.00
E. Contractual Services	\$986,821.00
F. Other	\$0.00
TOTAL PROJECT COST	\$1,366,666.00
State Assistance Amount (90 % of Total)	\$1,230,000.00
Local Share (10 % of Total)	\$136,666.00

Explanation of local share:

Staff time and expenses to establish vacant parcel database
 Furthermore, in-kind staff time will be spent to support this project through project management and administration to meet the 10% local share.

(Budget Detail Sheet)

A. SALARIES & WAGES		
<u>TITLE</u>	<u>ANNUAL SALARY</u>	<u>AMOUNT CHARGED TO THIS PROJECT</u>
Project Director	\$136,500	\$41,223
Project Attorney	\$122,000	\$55,239
Project Managers (2)	\$91,000	\$126,840
Contract Manager	\$63,700	\$19,237
Fiscal Coordinator	\$68,778	\$10,385
Technical Manager	\$63,700	\$38,475
Technical Intern	\$23,660	\$21,436
Outreach Assistant	\$21,840	\$19,787
Project Coordinator	\$45,500	\$41,223
Fringe Benefits Rate	51%	
Total Salaries, Wages and Fringe		\$373,845

SUBTOTAL \$373,845.00

B. TRAVEL

Allowance for travel to and from DOS/BOA/Brownfield conferences and meetings.

SUBTOTAL \$2,000.00

C. SUPPLIES/MATERIALS

Room rentals for workshops/training, equipment rental for workshops/training, training supplies, allowance for consultant overage regarding materials for deliverables involved in tasks 2.1, Component 4, Component 6 and Component 7.

SUBTOTAL \$4,000.00

D. EQUIPMENT

SUBTOTAL \$ 0.00

E. CONTRACTUAL SERVICES	
Task 2.1 Develop web-based portal for benefit of BOA grantees	\$155,490.36
Task 2.4 Web-based Financial Incentives Application	\$100,000.00
Task 2.6 - Place-Based Regional Collaboration Pilot	\$75,000.00
Component 4: Draft Pre-Nomination Analysis	\$203,239.00
Component 6: Small parks and Green Spaces Analysis	\$295,891.64
Component 7: Techniques and Analysis to Advance Redevelopment of BOA Strategic Sites	\$157,200.00

SUBTOTAL \$986,821.00

F. OTHER

SUBTOTAL \$0.00

APPENDIX C
PAYMENT AND REPORTING SCHEDULE

I. Payment Schedule

- A. Upon approval of the Agreement by the Office of the State Comptroller, an advance of up to 25% of the State Funds may be requested by the Contractor.
- B. The Department shall make interim payments for eligible costs incurred up to an amount not to exceed 90% of the State Share Funding Amount. The final payment will be made upon satisfactory completion of the Project.
- C. Not more frequently than once every 30 days, a properly executed payment request, on forms as prescribed by the Department documenting total project costs incurred to date, may be submitted.
 - 1. Payment provided above shall be made to the Contractor upon the submission by the Contractor of properly executed payment request. Such request shall contain the following: (1) "Summary Sheet Documentation Forms" as provided by the Department, for reimbursement of actual and eligible expenditures, (2) the required work products, and (3) a properly executed State Voucher.
 - 2. Payment requests will be reviewed in accordance with the terms and conditions of this Agreement to determine total allowable project costs incurred and the number and percentage of allowable project tasks completed to date. For the purpose of determining the level of reimbursement, otherwise allowable project costs may be reduced if the percentage of task completion is deemed insufficient.
 - 3. Total allowable project costs, adjusted pursuant to 2. above, will be prorated between State Share and Local Share costs in the same proportions as Total State Share is to Total Local Share as set forth on the Face Page.
 - 4. Interim payments will be issued in amounts equal to the State Funds calculated in 3. above, less outstanding advance payments.
 - 5. The final payment will be issued upon receipt and approval of a payment request marked "FINAL" documenting all project costs incurred and tasks completed and submission of the Final Project Summary Report. Such final payment request shall be submitted within 60 days following the ending date of this Agreement.
 - 6. In the event that the Contractor does not document expenditures of the total State Funds allocated for the project upon submission of the Final payment request, as much of the calculated payment amount as necessary will be applied to the undocumented advance and any remaining undocumented advance balance shall be immediately due and owing to the Department.

II. Reporting

- A. Payment requests as described in I.B. above shall be certified by a duly authorized representative of the Contractor as accurately representing such accomplishments and expenses as recorded in the Contractor's accounting records, including, where goods or services are provided by third parties not party to this Agreement, a certification that any payment obligations arising from the provision of such goods or services have been paid by the Contractor and do not duplicate reimbursement or costs and services received from other sources.
- B. Notwithstanding the above requirements, upon written notification by the Department, the Contractor

may be required to submit source documentation and additional verification of allowable expenditures.

- C. Payment requests shall be submitted to:

New York State Department of State
Office of Coastal, Local Government & Community Sustainability
One Commerce Plaza - Suite 1010
Albany, New York, 12231-0001

- D. Claimed expenditures must be in accordance with the project budget in Appendix B. Any changes to the cost categories contained in the Budget, Appendix B, in excess of 10% will require prior approval of the Department. If the total Contract amount is in excess of \$50,000, approval will also be required by the Office of the State Comptroller. No expenditures shall be allowed for items not set forth in the project budget.

III. Other

- A. Notwithstanding the submission of timely and properly executed payment requests, the Department shall be under no obligation to make payment for expenditures incurred without the prior Department approvals and/or amendments required under this Agreement and, further, shall have the right to withhold any such payment pending the execution of such approval and/or amendment.
- B. Interest income earned on funds received pursuant to this Agreement shall be used to further the purpose of this Project or shall be deducted from total eligible cost to determine the net eligible costs to be reimbursed by the Department.
- C. The Department shall have the right to conduct on-site progress assessments and reviews of the Project and Contractor's books and records during the life of this Agreement and for a reasonable time following issuance of the final payment. The Contractor shall furnish proper facilities, where necessary or useful, for such access and inspection.
- D. The Department shall be entitled to disallow any cost or expense, or terminate or suspend this Agreement, if found that the Contractor has misrepresented any expenditures or project activities in this Agreement, or in any progress reports or payment requests made pursuant hereto.
- E. The Contractor shall maintain separate fiscal books and records for all funds received through the Department and project activities conducted pursuant to this Agreement, and shall make all such books and records available to the Department, the Office of the State Comptroller, or their designated representatives for inspection and audit for a period of six years following termination of this Agreement.

APPENDIX D***Brownfield Opportunity Areas Program***

The following components will result in a BOA Program Pre-Nomination Analysis.

***New York City Mayors Office of Environmental Remediation
Step 1: Pre-Nomination Analysis***

- Project Components
- Component 1: Project Start-up
- Component 2: Web- Based Portal
- Component 3: Draft Pre-Nomination Cluster Analysis
- Component 4: Completion and Approval of the Pre-Nomination Analysis
- Component 5: Small Parks and Greenspace Analysis
- Component 6: Assessment and Analysis of Opportunities to Advance
Redevelopment of BOA Sites
- Component 7: Project Reporting

PRE-NOMINATION ANALYSIS WORK PLAN

Contractor: City of New York
 Project Name: New York City Step 1
 Contract Number: C096013

New York City Office of Environmental Remediation

1. Project Description

The City of New York's Office of Environmental Remediation (OER) oversees the newly established Local Brownfield Cleanup Program and the NYC Brownfield Incentive Grant (BIG) Program among others. OER is committed to assisting property owners, developers, BOA grantees and other NYC Brownfield stakeholders with the identification and cleanup of brownfield sites and will undertake a Pre-Nomination project, with current and future BOA recipients in New York City. Specific activities and products to be undertaken include:

- Development and delivery of a BOA Web-Based Portal to provide expanded and customized data analysis and access for each community based BOA grantee in New York City to assist BOA grantees in the development and implementation of BOA plans.
- Development and execution of pre-nomination brownfield cluster analysis to identify property clusters in 8 -12 areas of NYC that are not currently participating in BOA program and to catalyze interest in developing new NYS DOS BOA applications by local community and stakeholder groups for these distinct clusters.
- A Small Parks and Green Space Analysis in conjunction with NYC Department of Parks and Recreation to identify small City-owned and potential brownfield sites that can be redeveloped as small parks and green spaces for community use and benefit.
- Economic, environmental, and redevelopment analysis of sites, including but not limited to, privately owned strategic sites in BOA catchments, including, outreach and education to BOA groups regarding how to advance redevelopment on strategic sites in BOA analysis areas.
- This project will aid and assist existing and future BOA grantees in the development of their BOA Plans and simultaneously assist in advancing PlanNY 2030 land use objectives related to brownfield redevelopment and reuse.
- Identify the multi-agency, private-sector, and other community partnerships necessary to inform the process and leverage assistance for revitalizing the community.

2. Project Attribution and Number of Copies

The OER must ensure that all materials printed, constructed, and/or produced acknowledge the contributions of the NYS Department of State, Office of Coastal, Local Government and Community Sustainability to the project. The materials must include the following acknowledgment:

"This (document, report, map, etc.) was prepared for (insert grantee name) and the New York State Department of State with state funds provided through the Brownfield Opportunity Areas Program."

In each of the following components and tasks, the NYS Department of State, Office of Coastal, Local Government and Community Sustainability is referred to as the "DOS" and the NYS Department of Environmental Conservation, Division of Environmental Remediation is referred to as "DEC".

The OER must ensure that all materials printed, constructed and/or produced with funding provided by the Brownfield Opportunity Areas Program form a unified and coherent report and include the components and products described in this work plan. Submission of pre-existing and stand alone data and reports are not acceptable as substitutes.

The OER shall prepare, or cause to be prepared, the following project components, tasks, and associated products.

3. Project Components

Component 1: Project Start-up

Task 1.1: Initial Organization Meeting

The OER and the DOS shall conduct an initial meeting with key project participants. The DEC may attend this meeting. The purpose of the meeting is to discuss the scope of the project, the type of services that are most appropriate, the OER procurement process, and how the budget should be directed. In addition, public participation techniques shall be discussed as well as any other information which would assist in project completion. A copy of the work plan and budget will be made available at the meeting. The OER shall complete and distribute a meeting summary.

Product: Meeting summary prepared and distributed to meeting participants.

Task 1.2: Solicitation of Consulting Services

Should the OER require the services of a consultant, there are two approaches that may be used to select a consulting firm:

- Request for Proposals (RFP) process can be used to select a consultant based on the submission of a full project proposal by a consultant.

- OR -

- Request for Qualifications (RFQ) process can be used to identify qualified consultants to receive a RFP. The RFP process can then be used to select a consultant based on the submission of a full project proposal in response to the RFP.

A. Request for Qualifications

If the OER elects to use the RFQ approach, the OER shall prepare a *request for qualifications* (RFQ) to solicit responses from qualified consultants for the project. After the DOS has reviewed and approved the *request for qualifications*, the OER shall advertise the *request for qualifications* in the NY State Contract

Reporter, a regional newspaper, or appropriate trade publication. In addition, the OER may directly notify, through e-mail or regular mail, potentially qualified consultants of the *request for qualifications*.

Product: An approved RFQ released and issued through appropriate means as described above.

B. Review Consultant Responses

If an RFQ has been advertised, the OER shall, in consultation with the DOS, review consultant responses to the request for qualifications and identify consultants most qualified to undertake the project.

Product: List of qualified consultants as prepared and distributed by the OER.

C. Request for Proposals

The OER shall draft a *request for proposals* (RFP), including a complete project description with site conditions, expected final results, and criteria for selecting a preferred proposal. The RFP shall be submitted to the DOS for review and approval prior to release for solicitation of proposals. After the DOS has reviewed and approved the *request for proposals*, the OER may directly notify, through e-mail or regular mail, potentially qualified consultants of the *request for proposals*. In addition, if no RFQ was advertised, the contract shall also advertise the *request for proposals* in the NY State Contract Reporter, a regional newspaper, or an appropriate trade publication.

Product: An approved RFP sent to qualified consultants.

Task 1.3: Consultant Selection

In consultation with the DOS, the OER shall review all proposals received as a result of the RFP. Based on the reviews of the consultant proposals, the OER shall organize and conduct interviews of the top-ranked candidate consultants. The DOS may participate in the interview process.

At a minimum, the following criteria are suggested for use in evaluating consultant responses:

- Quality and completeness of the response.
- Understanding of the proposed scope of work.
- Applicability of proposed alternatives or enhancements to information requested.
- Cost-effectiveness of the proposal.
- Qualifications and relevant experience with respect to the tasks to be performed.
- Reputation among previous clients.
- Ability to complete all project tasks within the allotted time and budget.

Incomplete proposals that do not address all of the requested components should not be accepted for review and consideration. The consultant selected is subject to DOS approval. If the OER is a municipality, the municipal attorney, chief legal officer, or financial administrator for the municipality (OER) shall certify to the Department of State that the procedures of the municipality, established pursuant to General Municipal Law, Section 104-b, were fully complied with for all contracts for professional services. (See Attachment A.)

Product: List of top-ranked candidates and letter from the OER to DOS indicating the selected consultant, and appropriate certification.

Task 1.4: Subcontract Preparation and Execution

The OER shall prepare a draft subcontract to conduct the work with the selected consultant. The contract shall contain a detailed work plan with adequate opportunity to review stages in completion of the Analysis, a payment schedule (payments must be tied to receipt of acceptable products in the work plan), and a project cost. The subcontract must specify: the professionals from the firm that will be directly involved in the project; the composition of the entire team, including firm name and area of responsibility/expertise; and the persons, including firm affiliation, that are assigned to undertake and complete specific tasks that are in the work plan. The OER shall submit the draft subcontract to the DOS for review and approval. A copy of the final subcontract, incorporating the DOS's comments on the draft, shall be provided to the DOS.

Product: Executed subcontract.

Task 1.5: Project Scoping Session with the Selected Consultant

The OER, DOS and the consultant shall hold an initial meeting to review project and contract requirements, site conditions and to transfer any information to the consultant which would assist in completing the project. The DEC may, and is encouraged to, attend this meeting. Topics shall include but are not limited to the following:

- project scope for each set of services and activities;
- community participation, workshops and outreach;
- project goal and objectives;
- existing relevant information (maps, reports, etc.);
- access to information on past or current projects related to the NYS Brownfield Cleanup Program, the Environmental Restoration Program, the Volunteer Cleanup Program, Superfund, and petroleum spills, including DEC's on-line databases, GIS maps, site summary sheets for key projects, etc.;
- responsibilities of the participants (OER, consultant, DOS and DEC);
- time frames and deadlines; and,
- expected products.

The OER shall prepare, or cause to be prepared, a brief meeting summary to clearly indicate the agreements/understandings reached at the meeting.

Product: Meeting summary prepared, with note of agreements/understandings reached, and distributed to scoping session participants.

Task 1.6: Project Outline

The OER shall provide, or cause to be provided, to the DOS, a project outline that reflects the outcome of the project scoping meeting and guides the preparation of the Brownfield Opportunity Areas Program report. The DOS shall review the project outline and may comment. The OER shall revise, or cause to be revised, the project outline to reflect the comments made by the DOS.

Product: Approved project outline completed and distributed to scoping participants.

Component 2: Web-Based Portal

Task 2.1: Develop web-based portal for benefit of BOA grantees

Facilitate development and implementation of community based BOA plans in New York City by expanding and improving access to OER web-based portal. This will include access and delivery of site and area specific data, electronic reports and training for each active BOA program grantee as mutually agreed upon by DOS and OER and will include, but not be limited to the items below.

Site specific data and other features:

- Ownership, zoning, environmental, topographic and acreage information for each vacant commercial or industrial site;
- New layers specifically for BOA needs such as, but not limited to: spill liens;
- Analysis of approximately 8-12 sites of interest focusing on historic; topographic; environmental information generated for each site, including property owner, address, BBL, lot area, year built and land use information;
- Environmental and land use data specific to each BOA area;
- Analysis of commercial and industrial properties as well as vacant properties;
- Information for all spills, MOSF, CBS, PBS, and E-Designation sites within the BOA boundary, identified by BBL or intersection, as appropriate;
- Data needs assessment for each BOA to identify additional needs and determine the best format for web-based access and delivery of information; and,
- Access to advanced data queries.

Electronic Reports and Bulletins:

- Electronic delivery of notices and fact sheets for brownfield sites within each BOA boundary;
- Customized report product containing information for all vacant industrial and commercially zoned sites within each BOA catchment; and,
- Electronic bulletin board with My BOA discussion feature.

Training:

- Development and delivery of online training modules to BOA representatives on access and use to web based portal and City applications, including but not limited to the WebMap applications.

Task 2.2: Expand database to identify and analyze new BOA clusters

Pre -Nomination analysis for 8 -12 brownfield clusters in New York City that have not been previously assessed through BOA program. The following will be included in each of the distinct Pre-Nomination analyses and will include but not be limited to following elements:

- A new query and analysis on OER's vacant property database layer of the SPEED portal to identify 8-12 clusters of vacant brownfield properties within the 5 boroughs that are not currently enrolled in the BOA program.;
- Assessment of the environmental and topographic history and geographic information;
- Preliminary land acreage and boundaries for each cluster;
- Demographic information;
- Ground truthing reconciliation between output of the query and reality in the field;
- Local zoning patterns;
- Existing land uses including occurrence of vacant commercial and industrial property;
- Land ownership patterns;
- Vacancy rates;
- Economic conditions;
- Existing transportation and infrastructure and development patterns in the area;
- Identification of whether the clusters are wholly or partially located in NYS Empire Zones or Environmental Zones;
- Identification within each cluster of the status of affordable housing stock;
- Existing open space and recreational opportunities and the status and proximity to natural resources; and,
- Inclusion of known plans for rezoning and other City Plans or designations such as IBZs.

Task 2.3: Design database to enable identification of parcels for Small Parks and Green Space Analysis:

- This task will initially design a query to identify, analyze, and screen small city-owned vacant properties with light to moderate levels of contamination that are potential brownfields and may be deemed suitable for development into small parks or green space for community use.;
- Identify City-owned parcels of interest within BOA boundaries and other areas, such as those within newly identified brownfield cluster areas, and other areas that advance PlaNYC's goal of having a park within a 10-minute walk for every New Yorker;
- Gather environmental, topographic and historic data for each City-owned site;
- Create a street-end layer in the Vacant Property Database to utilize in the selection criteria of available parcels;
- Create a search query using factors such as site size, site location, proximity to areas underserved by green space, City priorities and environmental site history; and,
- Add functionality to the result of the Vacant Property Database query through the creation of points, lines and polygons representing the potential sites under consideration.

Task 2.4: Web-based Financial Incentives Application:

Development of a web-based Financial Incentives Application with approximately 30 incentives in the database, for use by BOA grantees, strategic site owners and/or developers of sites in BOA catchments, BOA representatives and other Brownfield stakeholders.

The application will prompt users through a series of site-specific questions and then provide information regarding appropriate financial incentive opportunities including, but not limited to the following elements:

- brownfield investigation and/or remediation;
- waterfront revitalization;
- site redevelopment;
- land acquisition;
- business development;
- relocation and/or expansion;
- job growth and retention;
- technological innovation;
- on-site construction, energy savings, green building design and strategies and affordable housing projects;
- identify remedial programs most appropriate for the type of contamination at a site; and,
- Location of the site and whether it was located in specific geographic regions that offer additional incentives such as Empowerment Zones or Empire Zones.

Product: **Enhanced OER website including tasks listed above.**

Task 2.5: NYS Community Seminar Series

The OER shall participate in training sessions provided by the Brownfield Opportunity Area Program. The OER shall, in consultation with the DOS project manager, provide a list of appropriate training sessions to be attended throughout the course of the project.

The training program is designed to inform and educate grantees about community leadership, planning and development, brownfields and associated challenges and opportunities, community revitalization, remedial programs to clean-up brownfields, the tasks associated with each BOA program step and deliverables specified in the BOA contract work plan, and grant administrative and management. Specific objectives are to: enhance understanding of brownfields and community revitalization; enhance local capacity to administer and manage grants; ensure timely completion of planning and site assessment report products; and ensure effective implementation of BOA plans.

Training is available for up to three individuals per contract. Registration fees are waived for BOA grantees and travel costs associated with the Community Seminar Series are an eligible contract expense.

Product: **List of training sessions that the grantee will attend.**

Task 2.6: The NYC BOA Community Resilience Initiative Pilot

The contractor, in partnership with the Department of State, will undertake and advance the NYC BOA Community Resilience Initiative Pilot.

The intent of this regional collaborative is to ensure investments and programs that support community revitalization are better coordinated for more timely implementation of important projects. This collaboration will achieve the following:

- Unite local, state and federal agencies to identify significant community development and revitalization opportunities and projects within a region;

- Efficiently foster interagency collaboration and assistance for projects that are feasible and strategic;
- Align and leverage the complementary resources of local, state, and federal agencies and community organizations and foundations to accelerate project implementation; and,
- Ensure effectiveness through program assessment, evaluation and monitoring to continually improve the approach and process.

The selected sub-contractor will coordinate and work closely with selected Brooklyn BOA grantees to identify priorities (projects and issues) and prepare for and participate in interagency workshops with appropriate local, county, state, and federal agencies to advance implementation of locally driven BOA plans and priority projects. The selected sub-contractor will serve as an organizer and administrator at the request of the contractor and Department of State

Interagency workshops/meetings will be conducted to: improve communication and understanding among the agencies about the regional collaborative and specific projects or issues; gain an improved understanding of how the coordination of various government programs, services, and potential financing (grants and loans) could be beneficial to advancing the regional collaborative; obtain support and commitments from government agencies for permitting, technical assistance, and financing to advance key projects or to address certain issues; and to foster community revitalization and the redevelopment process.

Product: Pilot workshop preparation and participation.

A report that describe the primary outcomes of interagency workshops/communications including a description of priority projects or issues , commitments to action to address the issue or to advance projects, and appropriate next steps.

The final workshop report will be prepared for and must be acceptable to the OER and the Department of State.

Component 3: Draft Pre-Nomination Analysis

The OER shall prepare, or cause to be prepared, Pre-Nomination analysis of 8-12 new clusters of vacant properties within the 5 boroughs that are not currently enrolled in the BOA program. This analysis will consist of the following tasks.

Task 3.1: Complete Pre-Nomination Analysis for 8-12 New York City Brownfield Clusters

The OER shall prepare, or cause to be prepared distinct Pre –Nomination analysis for 8 -12 brownfield clusters in New York City that have not been previously assessed through BOA program.

The core of the cluster analysis will be based on the following databases:

- 3,150 vacant privately-owned commercial and industrial sites identified in OER's Vacant Property Database;
- Federal, State and City databases that identify, for example, spill sites, sites enrolled in government regulatory programs and E-Designated sites;

- Pending City agency concurrence, each Brownfield Cluster Report will include publically-owned vacant sites. Information on such sites will not include environmental information;
- Historic maps – these can, for example, identify areas of historic fill;
- Maps and aerial photographs;
- Consideration of the goals of PlaNYC, the City’s comprehensive sustainability plan for the City’s future;
- Solicitation and inclusion of feedback from key City agencies with knowledge of local development, planning and/or zoning patterns;
- Consideration of additional land use or other databases available from City agencies;
- In addition, if additional financial or database resources become available or known, OER will consider adding additional sites into the cluster analysis; and,
- One cluster analysis will be chosen by OER and DOS, as an example, to cost out how much additional funding would be needed to convert an OER draft cluster analysis to a stand-alone DOS-approvable Pre-Nomination Report. This task would focus on how much it would cost to purchase services from an environmental consultant to supplement the OER draft cluster analysis with additional sites of interest to DOS.

A. Community Overview and Description

A brief descriptive overview of the community where the identified cluster is located that includes, but is not limited to: geographic location in relation to the county and region; demographic, social, economic, and employment indicators; current community features and conditions; and current and historical economic and land use development trends. The description shall include the relationship of the area to any existing comprehensive plans and/or economic development reports or strategies.

Map Requirement - The community overview and description shall include a *Community Context Map* that shows the location and relationship of the community to the borough and New York City.

B. Project Overview and Description

A brief descriptive overview of the proposed Brownfield Opportunity Area (BOA) in terms of: existing land uses and development patterns; a summary of real or perceived brownfield sites and other abandoned, vacant, or partially developed sites located in the proposed BOA; and an overview of the area's potential in terms of providing new development and uses, businesses and housing, creating new employment opportunities, generating additional revenues, new public amenities or recreational opportunities, and improving environmental quality.

Map Requirement - The project overview and description shall include *Area Context Map* that shows the location of the BOA Cluster Analysis in relation to the municipality and region.

C. Brownfield Opportunity Area Boundary Description and Justification

A description of the proposed Brownfield Opportunity Area, and a justification of the proposed boundary. The borders should follow recognizable natural or cultural resources such as, but not limited to: highways, local streets, rail lines, municipal jurisdictions or borders, or water bodies. The Analysis area should range from 50-500 acres.

The borders must be justified in terms of:

- land uses that affect or are affected by identified potential brownfields.
- natural or cultural resources with a physical, social, visual or economic relationship to identified potential brownfields.
- areas necessary for the achievement of the expressed goals of the BOA.

Map Requirement - The Brownfield Opportunity Area boundary description shall include a Brownfield Opportunity Area Boundary Map that clearly shows and identifies the proposed location and boundaries of the Analysis area.

Task 3.2: Preliminary Analysis of the Brownfield Opportunity Area

The OER shall develop, or cause to be developed, a preliminary analysis of existing conditions, based on information from the database resources identified Task 3.1

Included in each of the distinct Pre-Nomination analysis will be:

A. Existing Land Use and Zoning

A descriptive overview of existing land use and zoning in the proposed Brownfield Opportunity Area including but not limited to:

- location of area as it relates to the community;
- total land area in acres and area of each sector or sub-area in acres located in the proposed Brownfield Opportunity Area;
- existing and adjacent land and water uses, including but not limited to, residential, retail, commercial, mixed-use, industrial/manufacturing, vacant or underutilized land, private and publicly owned land, dedicated parkland and open space, institutional uses and cultural uses;
- land area committed to each land use category;
- potential brownfield, underutilized, abandoned, or vacant properties that are privately owned; and,
- existing zoning and other relevant local laws or development controls guiding land use, including historic districts; and local, county, state or federal economic development designations such as but not limited to Urban Renewal Areas, NYS Empire Zones, Environmental Zones, Federal Enterprise Business Zones, Business Improvement Districts, Industrial Parks, Special Assessment Districts, etc.

Map Requirement - The description of existing land use and zoning shall include an Existing Land Use Map that shows the pattern of existing land use, and an Existing Zoning Map that shows the location and type of zoning districts.

B. Potential Brownfield, Abandoned, and Vacant Sites

A complete summary of relevant potential brownfield, abandoned, or vacant sites, including size and condition, and potential contamination issues based on: review of existing or historical records and reports, including existing remedial investigations, and aerial or regular site photographs; field observations from locations adjacent to or near the site, or, if permission is granted, from being present on the site.

For each relevant potential brownfield and abandoned or vacant site, complete descriptive profiles (see Attachment B) shall be provided and shall include, but not be limited to:

- site name and location, including owner, site address, size in acres, and map location;
- current use/status;
- environmental and land use history, including environmental reports; known or suspected contaminants, and the media which are known or suspected to have been affected (soil, groundwater, surface water, sediment, soil gas); and,
- A “brownfield” or “brownfield site” is defined in New York State law as any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant.

A list of potential information sources is provided as Attachment C. A description of the information sources used to create the site profiles shall be included within this section of the Pre-Nomination Analysis report.

Map Requirement - The description shall include an Underutilized Sites Location Map that clearly shows the location, borders, and size of brownfields sites and other underutilized, vacant or abandoned properties that are privately owned, with an identifying reference to the attached profiles.

C. Transportation and Infrastructure

A description of the types of transportation systems (vehicular, rail, subways, air, navigable waterways, esplanades) in the Analysis area, and the area's infrastructure (water, sewer, storm water, etc.) and utilities including location, capacity, and general condition.

Map Requirement - The description of transportation and infrastructure shall include a Transportation and Infrastructure Map that shows transportation systems and infrastructure.

D. Land Ownership

The private and public land ownership pattern including: land and acres held in public ownership (municipality, county, state, and federal); land held in private ownership; potential brownfields held in private ownership; and land committed to roads and rights-of-way.

Map Requirement - The description of land ownership pattern shall include a Land Ownership Patterns Map that shows the pattern of public and private land ownership.

E. Natural Resources

Natural resources and conditions including but not limited to: current groundwater use and conditions; surface waters and tributaries; wetlands; flood plains; erosion hazard areas; fish and wildlife habitats; visual quality; agricultural lands; air quality maintenance areas; and any locally, state, or federally designated resources and open space areas.

Map Requirement - The description of natural resources and conditions shall include a Natural Resources Map that shows existing natural resources and environmental features.

F. Summary of Preliminary Analysis and Recommendations

Description of key findings and preliminary recommendations for the agreed upon cluster areas will be provided including an identification of potential community based applicants that may be candidates for participation in the BOA program to further assess and plan for the revitalization and improvement of these areas. This will also include the outreach steps taken to engage these potential BOA grantees.

Map Requirement - The preliminary analysis and recommendations shall include a BOA Cluster Map that shows and illustrates the location of key clusters.

Product: Preliminary analysis and recommendations of the Brownfield Opportunity Area, including all of the Task 3.2 elements above and all required maps.

Component 4: Completion and Approval of the Pre-Nomination Analysis

Task 4.1: Draft Pre-Nomination Analysis

The OER shall prepare, or cause to be prepared, a draft Pre-Nomination Analysis, including all of the Tasks in Component 3, that reflects or addresses the ideas and views expressed during the community participation process. The document shall include, if necessary, a revised vision statement, goals and objectives, and provide a preliminary set of development and community revitalization opportunities to address the identified goals and objectives.

A limited edition of the draft shall be submitted to the DOS for review and comment. The OER must submit up to ten (10) copies of the draft Pre-Nomination Analysis, including three (3) electronic copies, consistent with Attachment D. No additional copies of the draft Pre-Nomination shall be printed or distributed without the approval of DOS.

Product: Draft Pre-Nomination Analysis

Task 4.2: Final Pre-Nomination Analysis

The OER shall prepare, or cause to be prepared, a final Pre-Nomination Analysis, reflecting the comments received from the DOS. The OER shall produce six (6) copies of the approved, final document, including three (3) paper copies and three (3) electronic copies, consistent with Attachment D. The final document shall be submitted to the DOS.

Product: Final Pre-Nomination Analysis

Task 4.3: Applications New BOA Projects

Upon completion of all tasks OER will inform viable candidates about funding opportunities that may be available to them for BOA Nomination Application Development through OER's Brownfield Incentive Grant (BIG) Program.

Product: Identify and inform BOA Nomination candidates of potential funding support through OER's Brownfield Incentive Grant (BIG) Program.

Component 5: Small Parks and Green Spaces Analysis

OER in partnership with New York City Department of Parks and Recreation (DPR) will identify and analyze city-owned properties with light to moderate levels of contamination in existing BOA areas that are potential brownfields and may be deemed suitable for development into small parks or green space for community use. Target parcels will be small properties for which complete cleanup can be accomplished with modest funding. The final product will include: a report that identifies and characterizes potential brownfield/vacant sites; pro forma analysis investigation, remediation, financing and construction costs for three to five sites; conceptual plans for priority parcels; and a marketing plan for priority sites. The order of priority will be as follows: sites in existing BOA catchments; brownfield clusters analysis areas outside BOA catchments; and sites outside areas of BOA analysis.

Task 5.1: Analysis of potential sites for parks and green space

Prioritize analysis of sites in the following order: existing BOA catchments; proposed cluster areas; and, finally, sites outside these areas. In addition to coordination with NYCDPR, OER and or OER's consultant(s) will coordinate with New York City Planning, DOS BOA and Local Waterfront Revitalization Program (LWRP) staff and the NYC Department of Transportation regarding the uses of mapped street ends

The analysis and description will include, but not be limited to the following:

- existing demographics data
- areas currently underserved by parks
- priorities and preferred land uses expressed by BOA grantees
- street ends
- waterfront parcels
- existing recreation facilities
- environmental data,
- description and physical characteristics of each site
- description of how each site relates to – or complements – adjacent properties
- description of how each site relates to existing BOA analysis area
- description of how each is appropriate for park use

Task 5.2: Estimate investigation & remediation costs

Produce site investigation and remediation cost estimate report that gathers and examines historic land use, environmental, financing, and construction estimates for priority sites to be established for park purposes.

Task 5.3: Conceptual Plans for Priority Sites

OER and OER's consultant(s) to develop informational materials and conceptual plans for each priority site.

Task 6.5: Marketing Plan for Priority Sites

OER and OER's consultant(s) to identify and match priority sites with potential funding sources including but not limited to New York State Environmental Protection Fund; federal and philanthropic grant programs; and models for developing open space in conjunction with real estate redevelopment projects in existing BOA Analysis areas. Facilitate and coordinate preparation of follow on funding applications.

Product: Product: Report that Identifies and Analyzes potential sites as park land and green space including all tasks in Component 5.

Component 6: Assessment and Analysis of Opportunities to Advance Redevelopment of BOA Sites.

This project will identify a limited number of strategic sites in BOA catchments that may benefit from neutral third-party real estate development advisory services. The purpose of this project is to enable informed discussions involving BOA grantees and property owners about realizing the redevelopment potential of certain strategic parcels so private property owners will be less recalcitrant and more inclined, engaged and cooperative to seek redevelopment consistent with the locally expressed community generated visions, goals and objectives.

This project will aim to achieve the following objectives:

- advance redevelopment and revitalization goals of local community, private property owners, city agencies consistent with an expressed community vision for revitalization;
- identify and better understand perceived and actual barriers that prevent successful redevelopment from the perspective of private property owners and BOA grantees;
- demonstrate and communicate the benefits of cleanup and redevelopment to property owners;
- overcome the resistance, suspicion and uncertainty of property owners regarding the redevelopment of potentially contaminated properties and associated environmental liability which is believed to be a primary barrier to revitalization of strategic sites identified in community based BOA planning projects in New York City;
- communicating the role of brownfield programs in eliminating environmental liability;
- assist BOA grantees in effectively engaging private property owners of strategic sites through specific discussion of redevelopment potential and how to overcome perceived and actual barriers to successful redevelopment; and,
- identify and test existing relevant BOA and MOER tools and incentives and other primary environmental and economic tools (from other city, state or federal programs) that are available through other state and federal programs that may provide additional incentives for property owners; and assess the potential for grant writing services to secure on-going funding in support of self-sustaining Real Estate Development Advisory Program.

A primary outcome will be a report product that includes:

- analysis and benefits associated with the economic, environmental and redevelopment potential of strategic brownfield parcels in BOA study areas;
- description of real or perceived issues, obstacles and solutions that were identified throughout the process;
- description of primary existing tools and techniques that are readily available that can be advantageous in discussions with private property owners;

- site specific real estate comparisons for use in discussions with property owners that provide tangible examples of revenue generating potential of comparable redevelopment sites in the neighborhood;
- Outcomes of consultations involving members of a real estate development advisory team and property owners of strategic sites;
- specific step-by-step guidance for BOA grantees to use in effectively engaging and persuading property owners of the value of redevelopment; and,
- outcomes, lessons learned, recommendations and next steps for successfully engaging private property owners to advance community driven and desired redevelopment projects.

Where additional or more in-depth analysis is determined to be catalytic and appropriate, funding may be sought through BOA Nomination (Step 2), BOA Implementation Strategy (Step 3), NYC Brownfield Incentive Grants, and other local, state and federal programs.

Task 6.1: Develop Site Selection Criteria

Prior to soliciting a limited list of sites from eligible BOA grantees, OER will develop criteria to help BOA grantees identify and guide the selection of the most promising strategic sites for advanced real estate advisory services. The criteria may include but not be limited to:

- the site is a strategic site and priority for the community
- Input of City agencies
- Enrollment in existing remedial programs
- Land use characteristics and conditions adjacent to the site
- Existing level of engagement with property owner
- Potential increase in property value
- Potential increase in return on investment
- Potential for job creation and tax revenue increase
- Potential to advance and implement community vision and revitalization strategy
- Overall benefit to community
- Other grantee justification

Product: Criteria to be used by BOA grantees to guide the selection of sites as candidates for real estate development advisory services.

Task 6.2: Solicit Strategic sites from BOA Grantees

OER will solicit from BOA grantees a limited number of strategic sites that are identified and described in completed Pre-Nomination or substantially completed or complete Nomination report products. These sites will be candidates for advanced real estate advisory services.

Product: List of Candidate Sites as Identified by BOA Groups.

Task 6.3: Consultations to inform and better understand barriers and successful approaches to engaging private property owners to achieve successful redevelopment

OER will consult with BOA grantees and other community based organizations and local development corporations to share their experiences in working with private property owners and to better understand actual and perceived barriers to working cooperatively with private property owners to achieve successful redevelopment.

These groups have various levels of capacity, experience as well as successes and can provide helpful insights regarding barriers and successes regarding redevelopment projects and achieving community revitalization.

Product: Summary of consultations with NYC BOA grantees and other community based organizations and local development corporations regarding barriers to successful redevelopment as well as successful techniques and approaches that have been employed to achieve redevelopment.

Task 6.4: Identification of Strategic Sites for Demonstration

Based on the tasks above, OER in collaboration with DOS and BOA grantee will further evaluate the sites submitted and select four to six strategic sites for advanced real estate development advisory services.

Product: Selection of Properties for Real Estate Development Advisory Services.

Task 6.5: Identification and Description of Existing Tools and Techniques to Advance Redevelopment

Identify and describe available tools and techniques that may be advantageous in discussions with private property owners to advance and implement community desired or driven redevelopment projects. Primary tools and techniques that are currently available through the private sector and city, state and federal programs will be identified and described.

The description of tools and techniques will be used in briefings that include representatives from the real estate advisory services team, MOER and BOA Program. These briefings will be used to prepare for the sessions that will involve the representatives from the real estate advisory team that will be assembled to engage and advise property owners regarding redevelopment.

Product: Description of primary tools and techniques that can be advantageous to private property owners.

Task 6.6: Provide Real Estate Development Advisory Services to Private Property owners

For agreed upon properties, site and use specific real estate advisory services will be provided by sub-consultant (s) for four to six strategic sites in an effort to inform owners about: increasing the value of their property; range of redevelopment options; potential benefits associated with redevelopment; contamination issues, clean-up options, and remedial programs; environmental liability; project financing; and techniques to consider to catalyze redevelopment project.

Specific recommendations for additional or more in-depth analytic activities to be funded through additional funding from sources such as BOA Nomination (Step 2); BOA Implementation Strategy (Step3); NYC Brownfield Incentive Grant Program; and other local, state or federal programs.

Product: Outcomes of Real Estate Advisory Consultations with Private Property Owners

Task 6.7: Economic and Financial Analysis

Develop integrated economic, remediation, and redevelopment model for strategic BOA sites using data from BOA strategic sites, sites within BOA boundaries and additional sites all of which must have completed a recognized BCP including for example, the NYS BCP, NYS VCP, NYC BCP or NYC's E-Designation program.

Develop Economic Analysis Matrix that focuses on indicators such as the increase in property value, the return on investment, the number of jobs created and the tax revenue produced.

Product: Economic, Remediation, and Redevelopment Report for privately held Strategic Sites.

Task 6.8: Report including Lessons Learned and Recommendations

A draft report including the outcomes and lessons learned from the tasks above will be produced for review by OER and DOS. The report will include recommendations including immediate next steps which may include priority items for research. The report will be provided to OER and DOS for review and comment.

Any comments which may be provided by OER or DOS will be adequately addressed and reflected in the final report product.

Product: Report including outcomes, lessons learned and recommendations to advance to next step.

Task 6.9: Presentation of Outcomes and Results to BOA Grantees

Based on favorable project outcomes and consultation with DOS, OER will present the outcomes and results of Component 6 to BOA grantees and other audiences that may be appropriate.

Product: Presentation of Outcomes.

Component 7: Project Reporting

Task 7.1: Project Summary

The OER shall draft a brief, one- or two-page summary of the project to be used in presentations to various stakeholders. The project summary shall follow the format and content provided by the DOS to be consistent with other such summaries produced by other participating communities, and shall include the range of service the OER grant will provide to the New York City BOA Community.

Product: Completed project summary in a format provided by the DOS.

Task 7.2: Semi-annual Reports

The OER shall submit to the DOS semi-annual reports on the form provided, including the extent of work accomplished, any problems encountered, and any assistance needed. If a payment request is submitted, the semi-annual report may be submitted as part of the payment request.

Products: Completed semi-annual reports during the life of the contract.

Task 7.3: Progress Report on Actions Taken to Advance Redevelopment and Revitalization

To gauge the impact of the BOA project on revitalization efforts, the contractor shall complete a progress report at or near the completion of the Pre-Nomination Study. This report will describe significant projects undertaken to advance the implementation of the BOA Plan, and document the associated public and private investments to advance or achieve BOA Plan goals, objectives and recommendations.

Projects and associated investments may consist of a range of site specific redevelopment activities, infrastructure improvements, new/enhanced public amenities or natural resource restoration or enhancements. All public and private funds used for such activities should be identified and described as outlined in the report form instructions.

Product: Progress report

Project Management and Responsibilities

The OER:

- will be responsible for conducting all project work in conformance with the Work Plan referenced in the executed contract with the DOS.
- will be responsible for all project activities including drafting request for proposals and managing subcontracts with consultants and sub consultants.
- will certify to the DOS that the procurement for project consultants and subs was achieved through a competitive process.
- will receive approval from the DOS for any and all consultant subcontracts before beginning project work.
- will be responsible for submission of all products and payment requests.
- will be responsible for coordinating participation and soliciting comments from local government personnel, project volunteers, and the public.
- will keep the DOS and DEC informed of all important meetings for the duration of the contract.
- will ensure that all products prepared as a part of this work plan shall include the NYS Comptroller's Contract #.
- will ensure the project objectives are being achieved.
- will ensure that comments received from the DOS, other agencies, and the project steering committee, or other advisory group, are satisfactorily responded to and reflected in subsequent work.
- will recognize that payments made to consultants or subs covering work carried out or products produced prior to receiving approval from the DOS and will not be reimbursed unless and until the DOS finds the work or products to be acceptable.
- will participate, if requested by DOS, in a training session or sessions focused on developing and implementing revitalization strategies.

The Department of State:

- will review and approve or disapprove of subcontracts between the OER and consultant(s) and any other sub consultant(s).
- will participate in initial project scoping and attend meetings that are important to the project.
- will review all draft and final products and provide comments as necessary to meet project objectives.
-
-

4. Schedule

Task Description	Task												Expected Products			
	Mo 1	Mo 2	Mo 3	Mo 4	Mo 5	Mo 6	Mo 7	Mo 8	Mo 9	Mo 10	Mo 11	Mo 12				
Component 1: Project Start-up	X	x														Consultant Procurement
Component 2: Web Based Portal			X			X									X	Web based Portal
Component 3: Draft Pre-Nomination Cluster Analysis							x								x	Draft Pre-Nomination Analysis.
Component 4: Completion and Approval of the Pre-Nomination Cluster Analysis															X	Complete Pre-Nomination Cluster Analysis
Component 5: Small Parks and Greenspace Analysis															x	Draft Pre-Nomination Analysis.
Component 6: Assessment and Analysis of Opportunities to Advance Redevelopment of BOA sites															x	Assessment and Analysis Report on Opportunities to Advance Redevelopment of BOA Sites.
Component 7: Project Reporting															x	Completed semi-annual reports.
Semi-annual Reports																

DOCUMENT STYLE REQUIREMENTS

Attachment A

Format for Print Copies:

Organization and format requirements for report products generated as a result of the Brownfield Opportunity Areas Program are as follows:

Cover: A report cover that includes:

- Title (name of the program step and name of the proposed Brownfield Opportunity Area) must also be displayed along the spine of the binder.
- Name of the municipality (city, town, or village and county) or municipalities that the proposed Brownfield Opportunity Area is located in.
- Name of the entity submitting the study (municipality, community based organization, or both).
- The following attribution: *"This (document, report, map, etc.) was prepared for (insert grantee name) and the New York State Department of State with state funds provided through the Brownfield Opportunity Areas Program."*
- Month and year the report was prepared.
- May include the following acknowledgement: *"This (document, report, map, etc.) was prepared with the assistance of (subcontractor's name[s])."*

Contents: A table of contents must be provided and be consistent with the description of content requirements in the work plan. The table of contents must also include a list of maps, tables, and appendices.

Sections: The report must include the sections described in the work plan. Each section must have a section cover page that states the section's title.

Pages: The narrative must be printed in an 11- or 12-point, Times New Roman, single space, on 8" x 11" paper with 1" margins using both sides and containing subject headings. Subject headings must be consistent with the content requirements in the work plan.

Pages must include footers that include the section name and page number. Page numbers must be numbered consecutively (i.e., 1, 2, 3, 4, 5, ...).

Limits: Draft and final reports submitted to the Department of State shall not exceed 150 pages, exclusive of the Executive Summary and appendices. Executive Summaries shall not exceed 15 pages. Appendices shall not exceed 150 pages.

Maps: Maps must be 8 ½" x 11", 8 ½" x 14" or 11" x 17" and be included in the body of the study. Maps that are 8 ½" x 14" or 11" x 17" must be folded down to an 8 ½" x 11" size. Maps that exceed the 11" x 17" size must be placed in a map pocket located at the end of the report. Rolled maps are not acceptable.

Binding: Documents must be bound in standard three-ring binders with a maximum ring size of 2 inches.

Languages: Where a proposed Brownfield Opportunity Area consists of a significant non-English speaking population, the grantee may translate documents and other materials into the language(s) representative of the community.

Format for Electronic Copies:

Compact computer disks, digital video disks, or USP Memory Sticks containing the document must conform to the following:

- The document must be delivered on a standard CD which is CD-R type, a standard DVD, or a USP Memory Stick.
- Each disk should contain a single Adobe® Acrobat® Portable Document Format (PDF) file, and a MS Word or WordPerfect file.
- The PDF document should use 300 dpi scanning resolution.
- The PDF document must have an appropriate identifying short file name.
- The document must be contained in one file; that is, all appendices, volumes, plans, drawings, etc., must be together.
- All documents must be searchable.

A search of existing materials for descriptive profiles should include, but not be limited to, the following sources:

Interviews

People knowledgeable about the site and previous uses

- Local municipal staff
- NYSDEC staff
- Current and former owners
- Current or former employees
- People living nearby
- Community leaders

Records Review

Federal

- Federal National Priorities site list
- Comprehensive Environmental Response Compensation/Liability Information System list
- Comprehensive Environmental Response Compensation/Liability Information System no further remedial action planned list
- Resource Conservation and Recovery Act - Treatment, Storage and Disposal Facilities list
- Resource Conservation and Act - Corrective Action facilities list
- Resource Conservation and Recovery Act - generators list
- Emergency Response Notification System list

State

- NYS DEC on-line Environmental Remediation databases (Remedial, Brownfield Cleanup Program, Environmental Restoration Program, Volunteer Cleanup Program, Spills)
- NYS Solid Waste Landfills
- NYS Registered Storage Tanks
- NYS Chemical Bulk Storage, Petroleum Bulk Storage, and Major Oil Storage Facilities

County and Local

- Property tax files
- Title records
- Site specific studies, reports
- Environmental Impact Statements
- Department of Health
- Fire Department

Private/Public

- Hazardous waste site information and environmental data

Aerial Photographs, Maps and Historical Newspapers

- United States Geological Survey (USGS) Topographic Map
- USGS Groundwater Maps
- USGS Bedrock Geology Maps
- USGS Surficial Geology Maps
- Soil Conservation Service Soil Maps
- NYS DOT aerial photographs
- Sanborn Fire Insurance Co. Maps
- Other private maps aerial photographs
- Historical newspaper databases
- Libraries and historical societies
- Local newspaper archives

Site Reconnaissance

- On-site
- From public right-of-ways and/or properties adjacent to the site

Pre-Nomination Study Descriptive Profile of Brownfield and Underutilized Properties

Tax Map Information (section, block and lot number(s)):

Preliminary Assessment of Importance and Ranking:

High Medium Low

Name:

Address:

Owner:

Municipality:

Publically Owned: (yes or no)

Foreclosure List: (yes or no)

Size: (acres)

Existing Buildings: (number and general condition)

Zoning:

Zone and/or District Status: (Check all that apply)

NYS Empire Zone:	<input type="checkbox"/>	Business Improvement District:	<input type="checkbox"/>
NYS Environmental Zone:	<input type="checkbox"/>	Special Assessment District:	<input type="checkbox"/>
Urban Renewal Area:	<input type="checkbox"/>	Historic District:	<input type="checkbox"/>
Federal Enterprise Business Zone:	<input type="checkbox"/>	Archeologically Significant Area:	<input type="checkbox"/>
Other _____	<input type="checkbox"/>		

Use Status: (Describe the site's current condition in terms of use and operational status, i.e. vacant, abandoned, partially developed, partially used.)

Property Description: (Describe the physical characteristics of the property, buildings, and natural feature based on field observations and/or aerial photographs.)

Use and Environmental History: (Describe, based on existing available information, the site's operational history, potential contamination issues, and ground water conditions.)

Location on Map
(if available)

Digital Photo of Property
(if available)

APPENDIX E

CHARITIES AND CHARITABLE TRUSTS

Most not-for-profit organizations (including corporations and charitable trusts) are required to file annual financial reports with the Attorney General. This requirement is found in Article 7-A of the Executive Law and Article 8 of the Estates, Powers and Trusts Law (EPTL). Specifically, Section 8-1.4 of the EPTL states:

(a) For the purposes of this section, “trustee” means (1) any individual, group of individuals, corporation or other legal entity holding and administering property for charitable purposes, whether pursuant to any will, other instrument or agreement, court appointment, or otherwise pursuant to law, over which the attorney general has enforcement or supervisory powers, (2) any non-profit corporation organized under the laws of this state for charitable purposes, and (3) any non-profit foreign corporation organized for charitable purposes, doing business or holding property in this state. Neither a foreign corporation nor a trustee acting under the will of, or any agreement executed by, a non-resident of this state shall become subject to the provisions of this section merely by reason of maintaining a bank, custody, investment or similar account in this state.

(s) A trustee shall not be qualified to make application for funds or grants or to receive such funds from any department or agency of the state without certifying compliance with paragraphs (d), (f), and (g) of this section and all applicable registration and reporting requirements of Article 7-A of the Executive Law.

In addition, please note that the new Charities Registration number is a 6-digit number with a hyphen after the second and fourth digits.

Pages E-1 and E-2 contain the inclusive listing of exemptions to the registration and reporting requirements of each article of law cited above.

If the Contractor qualifies for exemption from either article of law, place the complete number, i.e., 2(b), of the exemption in the respective section of Box 6 on the Contract Face Page.

Any questions regarding the statutory requirements or applicability to your organization should be directed to:

Office of the Attorney General
Charities Registration Bureau
120 Broadway
New York, New York 10271
212-416-8400 / 212-416-8401

APPENDIX E-1

EXECUTIVE LAW ARTICLE 7-A CHARITIES REGISTRATION EXEMPTION LISTING

1. This article shall not apply to corporations organized under the religious corporations law, and other religious agencies and organizations, and charities, agencies, and organizations operated, supervised, or controlled by or in connection with a religious organization.

2. The following persons shall not be required to register with the attorney general:

(a) An educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families.

(b) Fraternal, patriotic, social, alumni, law enforcement support organizations and historical societies chartered by the New York state board of regents when solicitation of contributions is confined to their membership.

(c) Persons requesting any contributions for the relief of any individual, specified by name at the time of solicitation, if all of the contributions collected, without any deductions whatsoever, are paid to or for the benefit of the named beneficiary.

(d) Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of twenty-five thousand dollars during a fiscal year of such organization, provided none of its fund raising functions are carried on by professional fund raisers or commercial co-venturers. However, if the gross contributions received by such charitable organization during any fiscal year of such organization shall be in excess of twenty-five thousand dollars, it shall within thirty days after the date it shall have received total contributions in excess of twenty-five thousand dollars register with the secretary as required by section one hundred seventy-two of this article.

(e) Any charitable organization receiving an allocation from a federated fund, incorporated community appeal or a united way, provided such fund, appeal or united way is complying with the provisions of this article relating to registration and filing of annual reports with the secretary, and provided such organization does not actually receive, in addition to such allocation, contributions in excess of twenty-five thousand dollars during the fiscal year, and provided further that all the fund-raising functions of such organizations are carried on by persons who are unpaid for such services. However, if the gross contributions other than such allocation received by such charitable organization during any fiscal year of such organization shall be in excess of twenty-five thousand dollars, it shall within thirty days after the date it shall have received such contributions in excess of twenty-five thousand dollars register with the secretary as required by section one hundred seventy-two of this article.

(f) A local post, camp, chapter or similarly designated element, or a county unit of such elements, of a bona fide veterans' organization which issues charters to such local elements throughout this state, a bona fide organization of volunteer firemen, an organization providing volunteer ambulance service (as defined in section three thousand one of the public health law) or a bona fide auxiliary or affiliate of such organizations, provided all its fund-raising activities are carried on by members of such an organization or an affiliate thereof and such members receive no compensation, directly or indirectly, thereof.

(g) An educational institution which files annual financial reports with the regents of the university of the state of New York as required by the education law or with an agency having similar jurisdiction in another state or library which files annual financial reports as required by the state education department.

(h) A charitable organization which receives all or substantially all of its funds from a single governmental agency and reports annually to that agency provided such reports contain financial information substantially similar in content to that required by subdivision one of section one hundred seventy-two-b of this article; provided, however, that such organization may receive no more than twenty-five thousand dollars from sources other than the government agency to which it reports.

(i) Any police department, sheriff's department or other governmental law enforcement agency.

(j) The state parent teachers association and any parent teachers association affiliated with an educational institution that is subject to the jurisdiction of the state education department.

3. In addition to the statutory exemptions, the following are also exempt:

(a) Any Municipality.

(b) Fire Districts, School Districts, and Water Districts.

APPENDIX E-2

ESTATES, POWERS AND TRUSTS LAWS ARTICLE 8, SECTION 8-1.4(b)

CHARITABLE TRUSTS REPORTING EXEMPTION LISTING

The registration and reporting provisions of this section do not apply to:

1. Contractor is not a Trustee as defined in Section 8-1.4(a) set forth in Appendix E.
2. Government entity
3. Entity required by law to complete an annual report to either the United States Congress or the New York State Legislature;
4. Religious organizations;
5. Educational institution incorporated under the Education Law or by special act;
6. Hospital;
7. Fraternal, patriotic, social, student, alumni, veterans, volunteer firefighters, volunteer ambulance workers' organization or historical society chartered by the New York State Board of Regents;
8. Trust or estate for which there is a corporate trustee acting as sole trustee or co-trustee under the will of a decedent who died domiciled outside New York or a trust instrument executed by a nonresident of New York State;
9. Trust or estate in which the charitable interest is delayed or contingent;
10. Officer, director or trustee of an organization exempt from registration who holds property for the religious, educational or charitable purposes of the organization;
11. Cemetery corporation subject to the provisions of Article 15 of the Not-for-Profit Corporation Law;
12. The state parent teachers association ("PTA") and any parent teachers association affiliated with an educational institutional that is subject to the jurisdiction of the State Education Department; and
13. Any corporation organized under Article 43 of the Insurance Law.

**APPENDIX F
NOTICES**

1. 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 Department of State

Name: Vincent R. Sculco
 Title: Senior Budget Analyst
 Address: 99 Washington Avenue, Suite 1010
 Albany, NY 12231
 Telephone Number: (518) 473-2466
 Facsimile Number: (518) 473-2464
 E-Mail Address: vince.sculco@dos.state.ny.us

253 Broadway, 14th Floor

Name: ~~Daniel Walsh~~ Lee Ilan
 Title: ~~Director~~ Senior Planner
 Address: 253 Broadway, 14th Fl.
 New York, NY 10007
 Telephone Number: 212-788-~~3000~~ 2929
 Facsimile Number: 212-788-2941
 E-Mail Address: ~~dwalsh@cityhall.nyc.gov~~ lilan@cityhall.nyc.gov

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.

APPENDIX G
ELECTRONIC PAYMENTS

Contractor shall provide complete and accurate billing invoices to the Agency in order to receive payment. Billing invoices submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

APPENDIX X

MODIFICATION AGREEMENT FORM

Agency Code: 19000
Contract Period: _____

Contract No.: C096013
Funding for Period: _____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the New York State Department of State, having its principal office at 99 Washington Avenue, Albany, New York, 12231 (hereinafter referred to as the STATE), and 253 Broadway, 14th Floor (hereinafter referred to as the CONTRACTOR), for modification of Contract Number C096013, as amended above and in attached Appendice(s) _____.

Terms and conditions of this amendment are subject to continued availability of funds for this contract.

All other provisions of said AGREEMENT shall remain in full force and effect.

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

CONTRACTOR SIGNATURE

By: _____
(print name)

By: _____
(print name)

Title: _____

Title: _____

Date: _____

Date: _____

State Agency Certification: "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

ACKNOWLEDGMENT

State of New York)
County of _____)ss:

On this _____ day of _____, in the year 20____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she is the _____ of _____, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

NOTARY PUBLIC

Approved:

Thomas P. DiNapoli
State Comptroller

By: _____

Date: _____

APPENDIX L
WHISTLEBLOWER POSTER



REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau
212-825-5959**

or by mail or in person at:

DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE, 17th FLOOR
NEW YORK, NEW YORK 10038
Attention: COMPLAINT BUREAU

or file a complaint on-line at:

www.nyc.gov/doi

All communications are confidential.

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

