

THIS AGREEMENT (the "Agreement") dated as of the 1<sup>st</sup> day of December, 2011, by and between the NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a Empire State Development (the "Corporation"), a corporate governmental agency, constituting a political subdivision and public corporation of the State, having an office at 633 Third Avenue, 34<sup>th</sup> floor, New York, NY 10017, and BBDO USA LLC (the "Contractor"), a Delaware limited liability company having an office at 1285 Avenue of the Americas, New York, NY 10019,

WITNESSETH THAT:

WHEREAS, the Corporation is a domestic corporation established pursuant to § 6254 of the Urban Development Corporation Act (the "UDCA"), McKinney's Unconsolidated Laws §§ 6251ff, as a corporate governmental agency of the state, constituting a political subdivision thereof and public benefit corporation; and

WHEREAS, the Corporation is established to, among other things, promote a vigorous and growing economy, to prevent economic stagnation and to encourage the creation of new job opportunities in order to protect against the hazards of unemployment, increase revenues to the State and to its municipalities and to achieve stable and diversified local economies; and

WHEREAS, pursuant to § 6255(3) of the UDCA, the Corporation is empowered to make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions; and

WHEREAS, the Corporation issued a Request for Proposal (the "RFP") posted on Corporation's web page and referred to in the New York State Contract Reporter contracting opportunity advertisement that appeared on August 25, 2011 as Contract No. BM11, seeking a qualified firm to provide the Corporation with full service advertising, marketing, branding, media and communications agency (a copy of the RFP is attached hereto as Schedule B); and

WHEREAS, the Contractor submitted a proposal dated September 16, 2011 in response to the RFP, a copy of the written portions whereof are attached hereto as Schedule C, which the Corporation has determined offers the best value for the State; and

WHEREAS, the Contractor is ready, willing and able to perform the services required by the Corporation.

**NOW THEREFORE**, in consideration of the payments hereinafter specified to be made by the Corporation to the Contractor, and in consideration of the agreements and mutual covenants of the parties herein contained, the parties hereto agree as follows:

I. DUTIES AND RESPONSIBILITIES

A. Scope of Services

1. The Corporation hereby retains the Contractor as its non-exclusive, full-service advertising, marketing, branding, media and communications agency and the Contractor hereby accepts its appointment as such from the Corporation. The Contractor hereby agrees to serve the Corporation faithfully and honestly, and to use its best efforts and abilities in the promotion and encouragement of the prosperous development of New York State, within and outside the State.

2. The Contractor will use its best efforts and abilities in serving the Corporation as the Corporation plans and conducts a program of marketing and promotion designed to market New York State as an ideal place for businesses to invest and create jobs. The promotions may range from local and regional to national and international in scope.

3. The Contractor will perform the services described in Section II (Scope of Services) in Part 1 of the RFP. Those services will be performed by Contractor in accordance with professional industry standards and specific instructions as agreed upon with or as provided in writing by the Corporation.

4. The Corporation may also request that the Contractor perform such other services, beyond those specifically set forth in the RFP, as a non-exclusive, full-service advertising agency at the rates specified in the Contractor's Budget, a copy of which is attached hereto as Schedule D.

B. Retention and Examination of Records

The Contractor shall save and maintain any and all records, books, accounts and documents produced pursuant to this Agreement ("Records") for a minimum of six years from the date of termination of this Agreement. The Corporation, the Attorney General and the Office of the State Controller ("OSC"), at its and their own expense, shall each have the right itself or through its agents to audit Contractor's Records, excluding payroll and/or individual compensation records, during such six year period, and shall have access to the Records during

normal business hours at an office of the Contractor within the State, for the term specified above for the purposes of inspection, auditing and copying. If the Corporation decides to audit payroll information, it will be done through a mutually-agreed independent accounting firm, and the scope of any such audit of salary and/or individual compensation records shall be mutually agreed upon by the Corporation and Contractor. The Corporation shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under s. 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Corporation 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 Corporation's right to discovery in any pending or future litigation.

C. Meetings

1. The Contractor shall make available, upon reasonable request by the Corporation, any of its officers, employees, consultants, subcontractors or agents for consultation with the Corporation concerning matters pertaining to this Agreement and any work performed hereunder.

2. The Corporation's Vice-President(s) of Marketing ("VPM") or any other person(s) authorized by the Corporation to monitor and/or evaluate the performance of this Agreement shall have access to the Contractor's premises at reasonable times upon prior written notice having been provided for the purpose of monitoring, assisting and evaluating the Project.

3. The Corporation's VPMs, currently Harvey Cohen and Maha Eltobgy, are hereby severally designated as the Corporation's Representative in accordance with Article 1.5 of the Conditions Applicable to the Corporation's Agreements for Materials/Services, a copy of which is attached as Schedule A.

II. TERM AND CONTRACT AMOUNT

Unless terminated early as provided for in Article 3 of Schedule A, the services described in this Agreement shall be performed by the Contractor beginning December 1, 2011 and ending November 30, 2013. This Contract may be extended for up to two (2) additional years, upon mutual agreement in writing by the parties, and upon approval of OSC as provided in Article XII

below. The total term of the Contract shall not exceed four (4) years, except as may be necessary to carry out the provisions of Article VI of this Agreement. Compensation for all services performed and materials provided under this Agreement shall not exceed Fifty Million Dollars (\$50,000,000.00).

### III. PAYMENT PROCESS

1. Billing and payment for services performed under the terms of this Agreement shall be made as provided in Article 6 of Schedule A. In clarification and amplification of the terms of Article 6, it is agreed that Contractor: (i) shall bill on an estimated time and materials basis no more frequently than monthly; (ii) that the term "materials" as used herein includes, without limitation, media buys and commitments; and (iii) shall provide full backup documentation acceptable to the Corporation for all items invoiced, including materials, to the Corporation. Documentation of services performed will without limitation include the names of all persons who worked on projects reflected in the invoice and what specific work was performed during the time invoiced for each person, and any other information deemed necessary by the Corporation as communicated to Contractor by the Corporation's Representative. Contractor and the Corporation will meet in person or by conference call on a quarterly basis (i.e., at not longer than three-monthly intervals) during the term of this Agreement to reconcile all estimates for the quarter with payments made by the Corporation, such reconciliation to be made on a per-project basis. At each reconciliation meeting, time sheets on a project basis (except for account management) for all persons whose work is invoiced will be provided by Contractor, together with documents substantiating all payments made by Contractor to third parties, including without limitation proof of deliverables received by Contractor. Third-party invoices and copies of cancelled payment checks (front and back) and/or wire transfer confirmations must accompany all invoices for payment by the Corporation. Failure by the Contractor to provide backup and documentation for all invoices will result in their being returned to Contractor as incomplete. The Corporation shall have no responsibility to pay incomplete invoices. Further, it is specifically agreed between the parties that John Osborn, President, and David Lubars, Chief Creative Officer, of BBDO will provide services under this Agreement at no cost to the Corporation.

2. Payments to third parties by Contractor can only be reimbursed to Contractor for work performed in connection with this contract at a rate not to exceed the rates established in Schedule D, and Contractor must pass through the third party's best available rate, including without limitation any discounted rates, to the Corporation for work performed by third parties, at no mark-up. Contractor will be acting as an agent for a disclosed principal, and all production services will be purchased for Corporation under the principle of Sequential Liability (which term is defined for the purpose of this Agreement to mean that Contractor will be held liable for payments to third-party production vendors and other suppliers to the extent Contractor has been paid by Corporation for such payments and agrees to defend, indemnify and hold harmless the Corporation against any and all claims by such vendors and other suppliers, and that the Corporation may be liable without indemnity by Contractor to such vendors and other suppliers when Contractor has not been paid by the Corporation as aforesaid for third-party vendors and suppliers whose work has been approved by the Corporation in advance in writing.

3. The estimated cost of each project will be invoiced to Corporation prior to any obligation being incurred by Contractor for such project. Fifty percent (50%) of the total invoice is due upon Corporation's written approval of the applicable estimate and thereafter Contractor shall issue invoices for the remaining production costs at least thirty (30) days before payment is due to ensure that Contractor receives payment prior to such times as Contractor is required to pay the providers of production services. All such invoices are subject to adjustment (up or down) prior to final billing. Final billing for actual costs incurred shall not exceed 105% of the estimated production cost, unless approved by the Corporation in advance of Contractor incurring such costs .

4. If Contractor does not receive payments in accordance with this section through no fault of Contractor and production obligations are about to be incurred by Contractor, Contractor may cancel such production with no liability to Corporation.

5. Contractor may sub-contract media planning and buying services to a media buyer with the prior approval of the Corporation. Contractor will furnish the Corporation a written invoice for media charges ("Obligation(s)") prior to any Obligation being incurred by

Contractor. Contractor will be acting as an agent for a disclosed principal, and all media will be purchased for Corporation under the principle of Sequential Liability. For amounts owing but not paid to Contractor, Corporation agrees that it will solely liable. Contractor has the right to confirm with media vendors and other suppliers that they expressly agree to payment on such terms. In addition, Contractor reserves the right, in case the media vendors or other suppliers are unwilling to confirm in writing that they agree to payment in accordance with the foregoing, or in the event Corporation's payments to Contractor are not timely received, Corporation's financial condition otherwise becomes a concern or credit insurers (if applicable) revise, withdraw or decline cover, to cease work on Corporation's account and attempt to cancel media previously ordered. All invoices will be issued based on 100% of the estimated cost of the Obligation(s). Contractor shall make timely submission of such invoices so that Contractor will be put in funds before its bills relating to services rendered to Corporation are payable. All such invoices will be promptly paid by Corporation in a manner reasonably appropriate to ensure the timely procurement and performance of the items set forth above and in any event within 30 days (or such shorter period as Contractor may indicate, based on the principle that all payments for media costs and other third party costs must be received in time for Contractor to pay vendor invoices in a timely manner). All such invoices are subject to adjustment (up or down) prior to final billing. Final billing for actual costs incurred shall not exceed 105% of the estimated media or other cost, unless approved by the Corporation in advance of Contractor incurring such costs.

6. Planned media may be paid prior to delivery at the Corporation's discretion. Media commissions, production expenses, labor expenses, out-of-pocket expenses and all other costs will not be reimbursed until the Contractor demonstrates to the satisfaction of the Corporation that the project is complete, and the Corporation has received satisfactory backup documentation from Contractor.

#### IV. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE ("MWBE") PARTICIPATION AND EQUAL EMPLOYMENT OPPORTUNITIES ("EEO")

1. Article 15-A of the New York State Executive Law §§ 310-318 ("the Statute") was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. The Corporation fully supports the efforts of

the State of New York to promote Equal Employment Opportunity (EEO) for all persons and promote equality of economic opportunity for minority group members and women who own business enterprises.

2. The Corporation has developed compliance requirements, forms and procedures to ensure that Contractors (to include those who submit bids/proposals in an effort to be selected for contract award as well as those successful bidders/proposers with whom the Corporation enters into Contracts) and proposed or actual Subcontractors comply with requirements concerning Equal Employment Opportunities for Minority Group Members and Women and meaningful participation opportunities for certified minority-owned or women-owned business enterprises (MWBEs) in the Corporation procurement process. Contractors participating in and/or selected for procurement opportunities with the Corporation shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for MWBEs, including but not limited to, the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development ("DMWBD") and set forth at 5 NYCRR Parts 140-144).

3. The parties shall refer to Schedule E, attached and incorporated by reference herein, for the specific EEO/MWBE requirements and associated forms required by this procurement. Schedule E shall supercede Schedule A Attachment 4.5 and Appendix I to the RFP both of which shall be deleted in its entirety. Forms shall be submitted without any changes to any Corporation goals specified in Schedule E of this contract. Copies of the required Corporation Forms are identified in Schedule E.

## V. NOTICES

For the purposes of Article 5.8 of Schedule A, notices shall be addressed as follows:

1. If to the Contractor, address to: 1285 Avenue of the Americas, New York, NY 10019. The Contractor may by written notice from time to time designate an alternative address and/or contact persons.

2. If to the Corporation, address to the NYS Urban Development Corporation, 633 Third Avenue, 34<sup>th</sup> floor, New York, NY 10017, Attention: Deputy General Counsel, tel. (212) 803-3750, Fax (212) 803-3775, email: mcassidy@empire.state.ny.us.

## VI. RIGHTS IN DATA, SOFTWARE AND OTHER INTELLECTUAL PROPERTY

A. Rights in Data: All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including without limitation cards, tapes, discs, and other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials prepared for and delivered to the Corporation in the course of performance of this Agreement hereunder (collectively, "Data"), shall upon payment by the Corporation be deemed to be "work made for hire" as defined in Section 101 of Title 17 of the United States Code, and shall be provided to and become the exclusive property of the Corporation. Subject to the rights and restrictions of third party licensors, if it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), upon payment by the Corporation, the Contractor hereby covenants and agrees to transfer all right, title and interest in any Data to the Corporation, and cooperate with the Corporation, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

B. Rights to Contractor-Developed Computer Software and Software Documentation: Upon the request of and at the expense of the Corporation, the Contractor may design, develop and install computer software as may be required for the Corporation. Subject to the rights and restrictions of third parties the Corporation, having been notified thereof by the Contractor in writing and in advance, upon payment to the Contractor shall have exclusive ownership of the software including all documentation, source and executable code. All computer software and related documentation, together with any versions of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed by the Contractor in the direct course of performance of this Agreement ("Contractor-Developed Computer Software and Software Documentation"), shall be deemed to be the property of the Corporation and all right, title and interest therein to the same shall vest in the Corporation: subject to the rights and restrictions of third parties the Corporation, having been



notified thereof by the Contractor in writing and in advance; upon payment to the Contractor. Notwithstanding the foregoing or any other agreement between the parties, all software applications, databases, computer programs (including source code and object code for any such programming), and executable code (collectively "Code") as well as other creative content and materials in existence prior to this Agreement (or created outside the scope of this Agreement) as well as all Code and other software tools and research developed, provided or used by Contractor hereunder (and the output thereof) and any extranets and dashboards that Contractor makes available to Corporation, excluding in each case any materials provided by Corporation ("Contractor Property"), shall remain the sole and exclusive property of Contractor. For clarity, it is understood that Contractor shall own all modifications, improvements or enhancements to the Contractor Property. Contractor hereby grants a worldwide, fully paid-up, perpetual, non-exclusive, non-transferable license to Corporation and its sister agency the NYS Department of Economic Development ("DED") to use internally and for the benefit of Corporation and DED such Contractor Property solely as integrated into the Work assigned to Corporation hereunder.

C. Other Intellectual Property Rights: The Contractor agrees that all other patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, this Agreement rendered to the Corporation by the Contractor or any of its employees or subcontractors during the term of this Agreement ("Items") shall, upon payment, be deemed to be a "work made for hire" (as herein above defined), and shall be provided to and become the exclusive property of the Corporation. If it is determined that any Items encompassed above do not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Contractor hereby covenants and agrees to transfer all right, title and interest in any such Items to the Corporation, and will cooperate with the Corporation, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest. The Contractor hereby assigns all of its rights in such intellectual property to the Corporation, shall, and will ensure that its employees and subcontractors shall, supply all assistance reasonably requested in securing for the Corporation's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, and will provide full information in regards to any such Item and execute all appropriate

documentation prepared by the Corporation in applying or otherwise registering, in the Corporation's name, all rights to any such Items.

## VII. RELATIONSHIP

A. The relationship of the Contractor to the Corporation arising out of this Agreement shall be that of an independent contractor; provided, in purchasing materials, services or media on Corporation's behalf with Corporation's authorization, Contractor will be acting as a limited agent for a disclosed principal and all agreements entered into by Contractor on Corporation's behalf are entered into on the basis of Sequential Liability. In accordance with its status as an independent contractor, the Contractor covenants and agrees that: it will conduct itself consistent with such status; it will neither hold itself out as, nor claim to be, an officer or employee of the Corporation or the State of New York by reason hereof; and it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Corporation or the State of New York including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

B. When directed by the Corporation, the Contractor shall act on the Corporation's behalf as the Corporation's agent in securing in good faith rights, materials and services required to execute Corporation's advertising, marketing and promotion campaigns and to provide other services required by this Agreement. The Contractor shall notify the Corporation of any non-cancellable commitments prior to engaging in such third party contracts.

C. All personnel of the Contractor shall be within the employ of the Contractor only, which alone shall be responsible for their work, direction, and compensation. Except for payment for services rendered under this Agreement, nothing in this Agreement shall impose any liability or duty on the Corporation or the State of New York on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, or for taxes of any nature including, but not limited to, unemployment insurance and workers' compensation.

D. The Corporation shall be responsible for the accuracy, completeness and propriety of information concerning the state, its products and services, and the products and services of other federal state and local municipalities, which the Corporation furnishes to the Contractor in connection with the performance of services for the Corporation. To insure the accuracy of materials prepared for the Corporation, the Contractor will seek the Corporation's approval of all such materials prior to release.

### VIII. REPRESENTATIONS, WARRANTIES AND OTHER COVENANTS

A. The Contractor represents and warrants that:

1. It is a duly organized, validly existing corporation authorized to do business in New York, in good standing under the laws of the State of New York; and
2. It has the corporate power and authority to execute and deliver this Agreement and to consummate the obligations and activities contemplated on its part, hereby the execution and delivery of this Agreement has been duly authorized by the Contractor no other corporate proceedings by the Contractor or the designated subcontractor are necessary to authorize the execution and delivery of this Agreement or the performance of the Contractor's obligations hereunder; and
3. It is a non-sectarian entity.

B. The Contractor further represents and warrants that:

1. Neither it, nor any of its directors, officers, employees, consultants or subcontractors have given anything of value to anyone to procure this Agreement between the parties or to influence any official act or the judgment of any person in the negotiation of any of the terms of this Agreement; and
2. All statements of fact in Schedule C (the Contractor's RFP Response) are true, complete, and accurate as of the date they were written, at present, and true, complete, and accurate as of the date of this Agreement; and
3. It has the full power and authority or will employ best efforts to ensure that it is able to grant to the Corporation those rights granted under Article VI of this Agreement with respect to the Data, Items, Contractor-owned and Contractor-Developed Computer Software and Software Documentation to be delivered to the Corporation under this Agreement; and that

neither the performance of these services by the Contractor nor the license to, nor use by the Corporation of said Data, Items, computer software and software documentation (including the copying thereof) in accordance with the terms of any license secured by the Contractor will in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure or other rights of any third party;

4. That it has taken reasonable steps to assure that all Data, Items and Contractor-owned and Contractor-Developed Computer Software contain no known viruses. For the purpose of this Agreement, the term virus (or viruses) shall be generally defined within the usage and trade of the Computer Industry.

C. The Corporation represents and warrants that:

1. It has the full authority and resources necessary to enter into this Agreement, to undertake the obligations applicable to the Corporation;

2. It shall not use, nor permit others to use, materials produced hereunder incorporating third party materials beyond the period for which releases, licenses, agreements or other consents relating thereto are valid; and

3. It shall comply with all applicable State laws.

D. No Arbitration. The parties hereto agree that any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

E. Non-Assignment. In accordance with s. 138 of the State Finance Law, this Agreement may not be assigned by Contractor or its right, title or interest therein assigned, transferred, conveyed or otherwise disposed of without the Corporation's prior written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the Corporation and with the concurrence of OSC where, as here, the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The

Corporation retains its right to approve any such assignment and to require that the assignee demonstrate its responsibility to do business with the Corporation. The Contractor may, however, assign its right to receive payments without the Corporation's prior written consent unless this Agreement concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

F. Governing Law. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

IX. FORCE MAJEURE

Neither party will be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of terrorism when recognized by federal or New York State government officials, acts of the federal government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause. Each party shall have the right to terminate for convenience in the event that the force majeure conditions persist for more (30) thirty days.

X. CONFLICTS OF INTEREST

In clarification and amplification of the terms of Article 6 of Schedule A, unless agreed to in writing by the Corporation, during the term of this Agreement, including any extensions thereto, the BBDO New York division of Contractor shall not enter into any contract or other agreement for the type of services provided for herein, or render any such services to any other division or affiliate of Contractor, with any state (with the exception of New York State), federal or local municipality in North America or the Canadian governments and/or its or their entities for economic development.

As of the date of this Agreement, Contractor represents and warrants that the BBDO New York division of Contractor has no contracts and other agreements for the type of services provided for herein, or renders any such services to any other division or affiliate of Contractor,, with any state (with the exception of New York State) commission or authority, or federal, local or the Canadian governments and/or its or their economic development entities.

XI. SCHEDULES

Schedules A, B, C, D and E attached hereto are in every respect incorporated into and made a part of this Agreement as if fully set forth herein.

XII. OSC APPROVAL

This Agreement is subject to review and approval by the Office of the State Comptroller (“OSC”) pursuant to Public Authorities Law section 2879-a and the regulations issued thereunder, pursuant to notice given by OSC to the Corporation.

Accordingly, this Agreement shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with this Agreement, unless and until OSC approval has been received. In addition, amendments to or modifications of this Agreement shall also be subject to OSC and Attorney General review and approval before they may be valid and enforceable.

XIII. APPROVAL BY THE CORPORATION’S BOARD OF DIRECTORS

This Agreement shall not be valid or enforceable unless and until the Corporation’s Board of Directors has approved the winning bidder pursuant to the RFP and authorized the execution of this Agreement. The Corporation represents and warrants that this contingency has been fulfilled.

XIV. MODIFICATION

The Agreement, and the Schedules attached hereto, contains the entire Agreement of the Contractor and the Corporation and no modification thereof shall be binding unless the same is in writing by a duly authorized representative of both parties, subject to the provisions of Article XII hereof.

XV. CONFLICT OR INCONSISTENCY

In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any Schedule hereto, such conflict or inconsistency shall, after reasonable efforts to harmonize the same are made, be resolved by reference to the relevant provisions of said documents in the following order: this Agreement (without Schedules), Schedule A, Schedule E, Schedule B, Schedule D and Schedule C.

XVI. REVISIONS TO SCHEDULE "A"

Notwithstanding anything to the contrary contained herein, the attached Schedule A - Conditions Applicable to the Corporation's Agreements for Materials/Services is hereby revised and amended to provide as follows:

1. The heading of Section 3.2. OPTIONAL TERMINATION BY THE CORPORATION is amended to read: "OPTIONAL TERMINATION."
2. The first sentence of Section 3.2 is deleted in its entirety and replaced with: "Either party may terminate this Agreement for any or no cause upon 90 days written notice to the other party."
3. The following provisions are added at the end of Section 5.2:

"The Corporation shall similarly defend and indemnify Contractor and hold Contractor harmless from any liability, loss, damage or expense occasioned by claims of third parties based on copyright matter or materials furnished to Contractor by the Corporation or any product liability claims relating to any of Corporation's products or services.

Corporation and Contractor hereby agree to notify the indemnifying party in writing of any indemnifiable claim within ten (10) days of receipt thereof. The indemnified party shall cooperate in all reasonable respects with the indemnifying party and its attorneys in the investigation, trial, defense and settlement of any such claim and any appeal arising therefrom. The indemnifying party hereby agrees and acknowledges that the indemnified party may, through its attorneys or otherwise, at its own cost and expense, participate in any such investigation, trial, defense and settlement that is being conducted by the indemnifying party, of any such claim and any appeal arising therefrom. No settlement of a claim shall be entered into without the consent of the indemnified party, which consent will not be unreasonably withheld."

4. In Section 7.2, the words in parentheses are amended to read "(General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or its equivalent)."

5. In Section 7.8(b), lines 2-5, the words "shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail." Are deleted and replaced with "Contractor shall provide the Corporation with thirty (30) days written notice prior to any policy cancellation; non-renewal or reduction in coverage below the minimum requirements of this Agreement."

6. In Section 7.8(d), the sentence "Deductibles and self-insured retentions must be approved by the Corporation." is deleted.

7. In Section 7.8(g), the words "Not less than thirty (30) days prior to the expiration or renewal date, the" at the beginning of the sentence are deleted and the words "upon the renewal or replacement of any policy required hereunder." are added at the end of the sentence.

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

NEW YORK STATE URBAN DEVELOPMENT CORP.

By: *(Signature)*

Name: KENNETH ADAMS

Title: PRESIDENT & C.E.O.

Date: 12/1/11

BBDO USA LLC

By: *(Signature)*

Name: DANA PERRY

Title: EVP CFO BBDO NY

Date: 12/1/2011

APPROVED  
*(Signature)*  
FOR THE STATE COMPTROLLER

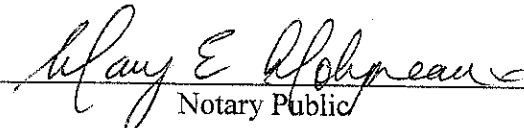
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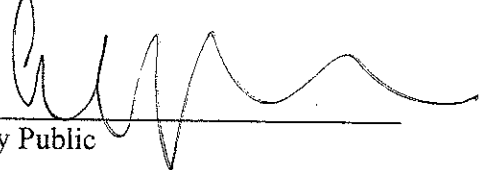
STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 1<sup>st</sup> day of December in the year 2011, before me a Notary Public in and for said state, personally appeared Dons Perry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her stated capacity, and that by his/her signature on the instrument, the individual, and the entity upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
01M04861484  
DUTC 06/02/2014

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 1st day of DECEMBER in the year 2011, before me a Notary Public in and for said state, personally appeared KENNETH ADAMS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her stated capacity, and that by his/her signature on the instrument, the individual, and the entity upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
SIMON WYNN  
Notary Public, State of New York  
No. 02WY4792002  
Qualified in New York County  
Commission Expires Aug. 31, 2013

**SCHEDULE A**

**CONDITIONS APPLICABLE TO THE CORPORATION'S<sup>(1)</sup> AGREEMENTS FOR MATERIALS/SERVICES**

**ARTICLE 1 RELATION OF CONTRACTOR TO THE CORPORATION**

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

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

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

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

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

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

<sup>1</sup> As used in this Schedule A, the "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD").

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

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

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

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

(d) The Contractor shall cause, for the benefit of the Corporation, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), (c) of this Section 1.7. The Contractor will take such action in enforcing such provisions as the Corporation may direct, or, at its option, assign such rights as it may have to the Corporation for enforcement by the Corporation.

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

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

## **ARTICLE 2 DOCUMENTS AND RECORDS**

**2.1 OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Contractor under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Corporation, and the Corporation shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specifications and other documents without payment of any additional royalty, charge or other compensation to Contractor. Upon request of the Corporation during any stage of the work, Contractor shall deliver all such materials to the Corporation. The Contractor agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of the Corporation, except that Contractor may retain copies of such reports and other documents for general reference use.

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

### **ARTICLE 3 TERMINATION**

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

**3.2 OPTIONAL TERMINATION BY THE CORPORATION.** The Corporation at any time, in its sole discretion, may terminate this Agreement or postpone or delay all or any part of the Agreement upon written notice to the Contractor. In the event of such termination, postponement or delay, the Corporation shall pay the Contractor for professional time and out-of-pocket expenses incurred by Contractor to the date notice of such action is received by Contractor. The Contractor agrees to cause any agreement or contract entered into by Contractor with any Subcontractor to provide for an optional termination by Contractor similar to the provisions of this Section 3.2.

### **ARTICLE 4 REQUIRED PROVISIONS**

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

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

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

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

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

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

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

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

#### **4.5 NON-DISCRIMINATION & AFFIRMATIVE ACTION**

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

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

(a) During the term of this Agreement, the Contractor shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law. A copy of the Contractor's initial Form ST-220-CA is attached hereto as Attachment 4.6. Immediately upon delivery, such updated form shall form a part of this Agreement.

(b) The Contractor's updated certification shall be made if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

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

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

The Contractor hereby certifies that all information provided to the Corporation with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j, attached to this Agreement as Attachment 4.7 – (1), and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment 4.7 – (2), is complete, true and accurate. The Contractor acknowledges that the preceding sentence is a material representation upon which the Corporation is relying in entering into this

Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement shall be subject to termination pursuant to Section 3.1 hereof.

## **ARTICLE 5 OTHER STANDARD PROVISIONS**

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

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

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

**5.4 GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

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

**5.6 CONFIDENTIALITY.** Contractor hereby agrees that all data, recommendations, reports and other materials developed in the course of performance under this Agreement are strictly confidential between Contractor and the Corporation and Contractor may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from the

Corporation. Notwithstanding the preceding sentence, Contractor shall cooperate fully with such third parties as the Corporation may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Contractor in connection with performance under this Agreement.

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

**5.8 NOTICES.** All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

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

**State of New York [Agency Name]**

**Name:**

**Title:**

**Address:**

**Telephone Number:**

**Facsimile Number:**

**E-Mail Address:**

**[Contractor Name]**

**Name:**

**Title:**

**Address: Telephone Number:**

**Facsimile Number:**

**E-Mail Address:**

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

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

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

**ARTICLE 6 BILLING POLICY**

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

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

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

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

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

**6.4 PRINTING.**

- (a) Internal print or xeroxing is not reimbursable. It is part of the Contractor's overhead cost, unless ordered by or for specific use of the Corporation,
- (b) Outside printing will be reimbursed only to the extent of prints requested by the Corporation, and at cost evidenced by a receipt.
- (c) No postage will be reimbursed for printing requested by the Corporation.

**6.5 TELEPHONE.**

- (a) Only calls to the Corporation and calls relating to telephone surveys are chargeable. All other calls are part of Contractor's overhead costs.
- (b) Calls between the Contractor's office and its employees are not reimbursable.

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

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

**6.8 NON-REIMBURSABLES.**

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

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

- (a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, insurance or other reimbursable items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).
- (b) Title to all equipment purchased pursuant to this Agreement is vested in the Corporation. The Corporation has the option of claiming any or all of such equipment.



#### **6.10 GENERAL.**

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible original receipts should be presented for reimbursement.
- (c) At any time or times until three years after completion of Contractor's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Corporation on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

### **ARTICLE 7 INSURANCE**

7.1 The Contractor shall carry, and shall require each of its Subcontractors to carry, insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required depending on the nature of the services to be performed under this Agreement or a subconsulting agreement. Any such additional types or amounts of coverage shall be specified on Attachment 7.1 attached hereto.

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

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

7.4 Professional Liability Insurance if and as may be specified on Attachment 7.1. 7.5 Workers' Compensation: Employers liability and disability benefits as required by New York State. Proof of compliance shall be in the form specified on Attachment 7.5.

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

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

#### **7.8 Other requirements.**

- (a) Acceptance and/or approval by the Corporation of any insurance does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities.
- (b) All required insurance shall be obtained at the Contractor's sole cost and expense; shall be primary and non-contributing to any insurance or self-insurance maintained by the Corporation; shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail.
- (c) All required insurance shall be maintained with insurance carriers licensed to do business in New York State, acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

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

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

(f) The Contractor shall cause all insurance to be in full force and effect as of the commencement of this Agreement and to remain in full force and effect throughout its term until conclusion of the services to be performed hereunder or earlier termination of this Agreement. Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

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

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

#### Attachment 4.5 Non-Discrimination and Affirmative Action Provisions

At all times during the term of this Agreement, Contracting Party shall comply with the Corporation's Non-Discrimination, Affirmative Action and Minority and Women Participation policies, plans and programs as hereinafter set forth:

#### **I. Definitions**

Defined terms used in this Schedule C and not defined below, shall have the meanings set forth in the Agreement. For the purposes of this Agreement, the following terms shall have the meanings set forth below:

#### **"Affirmative Action Officer" (AAO)**

Shall mean the Vice President for Affirmative Action or other person designated by the Corporation.

#### **"Contracting Party"**

Shall mean any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services to the Corporation or any of its subsidiaries pursuant to a contract or purchase order in excess of \$1,500.

#### **"Minority Business Enterprise" (MBE)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: at least fifty-one percent (51%) owned by one or more Minority Group Members; an enterprise in which such minority ownership is real, substantial and continuing; an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; an enterprise authorized to do business in the State of New York and is independently owned and operated; and an enterprise certified by New York State as a minority business.

#### **"Minority Group Member"**

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

#### **"Corporation Contract"**

Shall mean a written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of \$5,000, whereby the Corporation or any of its subsidiaries 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 Corporation.

#### **"Corporation Subcontract"**

Shall mean an agreement providing for a total expenditure in excess of \$1,500, between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor's obligation under a Corporation Contract is undertaken or assumed.

#### **"Women-owned Business Enterprise" (WBE)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; an enterprise in which the ownership interest of such women is real, substantial and continuing; an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; an enterprise authorized to do business in the State of New York and is independently owned and operated; and an enterprise certified by New York State as woman-owned.

## II. Policy

It is the policy of the State of New York, the Urban Development Corporation and all of its subsidiaries, to take affirmative action to ensure that minority/women businesses and minority/female workforce participate in the economic benefits generated by the Corporation's participation in projects, and/or the use of State funds. The Contracting Party's EEO Policy Statement shall contain, but not necessarily be limited to, and the Contracting Party, as a precondition to entering into a valid and binding Corporation Contract, shall, during the performance of the Corporation Contract, agree to the following:

- (a) Contracting Party shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, shall undertake or continue existing programs of affirmative action to insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on Corporation Contracts. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) Any Contracting Party performing work in connection with a Corporation Contract must comply with all State, Federal and local laws, orders, rules and regulations which prohibit discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and all such parties shall affirmatively cooperate in the implementation of Contracting Party's obligations hereunder.
- (c) The Contracting Party shall state in all solicitations or advertisements for employment that, in the performance of the Corporation Contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.
- (d) At the request of the AAO, the Contracting Party 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, sexual orientation, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.
- (e) After an award of a Corporation Contract, the Contracting Party shall submit to the AAO a workforce utilization report, satisfactory to the AAO in form and substance with respect to the workforce actually utilized on the Corporation Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO.
- (f) The Contracting Party shall comply with the provisions of Sections 291-299 of the Executive Law and with the applicable provisions of the Civil Rights Law of the State of New York and (i) shall furnish all information and reports deemed necessary by the AAO under this Agreement and (ii) shall furnish all information and reports required by such sections of the Executive Law and the Civil Rights Law.
- (g) Contracting Party will permit access to its books, records and accounts, with respect to the Corporation Contract, by the AAO for purposes of investigation to ascertain compliance with the provisions herein.
- (h) The Contracting Party shall remit payment in a timely fashion, pursuant to the State and Corporation's Prompt Payment Policy, for work performed by M/WBE firms in connection with the Project.
- (i) The Contracting Party will include, or cause to be included, the provisions of clauses (a) through (h) in every purchase order or contract that it enters into in order to fulfill its obligations under the Corporation Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Corporation Contract or Subcontract.

### III. Goals for Minority and Women-Owned Business Enterprise Participation

(a) The Contracting Party is required to use its best efforts to achieve an overall M/WBE participation goal of 20 % of the total dollar value of the Corporation Contract.

(b) The goal for M/WBE participation in the conduct of the work is expressed as a percentage equal to the Contract price.

(c) The total dollar value of the work performed by M/WBEs will be determined as:

(i) the dollar value of the work subcontracted to M/WBEs; or

(ii) where the Contracting Party is a joint venture including one or more M/WBEs as joint ventures - the contract price multiplied by the percentage of the joint venture's profits/losses which are to accrue to the M/WBE joint venture(s) under the joint venture agreement; or

(iii) where the M/WBE is the Contracting Party - the contract price.

(d) Contracting Party will include, or cause to be included, paragraphs (a) through (c) in every subcontract or purchase order unless exempt by the Affirmative Action Officer, so that such provisions will be binding upon each Contracting Party.

### IV. Best Efforts

For the purposes of this Agreement, it is understood that (i) best efforts are not limited to the efforts specified herein, and (ii) the role of M/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

(a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;

(b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;

(c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;

(d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with M/WBE participation on the Corporation Contract;

(e) Utilizing the resources of the New York State Urban Development Corporation Affirmative Action Department to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts; and

(f) Encouraging the formation of joint ventures, partnerships, or other similar arrangements, where appropriate, to ensure that the Contracting Party will meet its obligations hereunder.

### V. Reporting Requirements

Upon request, the Contracting Party shall periodically file, or cause to be filed, reports with the AAO detailing compliance with the provisions of this Agreement. Compliance reports, substantially in the format attached hereto as Exhibit 1, shall be filed at such times, shall contain such information and shall be in such form as the AAO may require.

**VI. Non-Compliance and Sanctions** In the event that any Contracting Party violates any of the provisions of this Agreement, the Corporation may require that the following sanctions and remedies for non-compliance be imposed:

(a) Summon the Contracting Party for a hearing with the Affirmative Action Officer.

(b) After any such hearing, and a determination by the Affirmative Action Officer that the Contracting Party has failed to comply with any of these provisions, and the passage of time in which to remedy such failure has transpired, this Agreement may be cancelled, terminated or suspended, in whole or in part. Alternatively, the Affirmative Action Officer, in his/her sole discretion, may assess liquidated damages against the Contracting Party for failure to demonstrate its best efforts in complying with the Affirmative Action Program. Liquidated damages may be assessed in an amount equal to the dollar value of contracts that would have been realized by MWBE's if the goals had been achieved.

(c) If such an award is assessed against any Contracting Party, (i) the amount of such assessment may be withheld from any monies due to the Contracting Party by the Corporation or; (ii) may be paid to the Corporation by the Contracting Party that has been found to fail to comply with the Affirmative Action Program. Any liquidated damages collected hereunder shall be paid into one or more MWBE technical assistance funds administered by the Corporation.

(d) Such sanctions that may be imposed and remedies invoked hereunder, shall be considered independent of, or in addition to, sanctions and remedies otherwise provided by law.

**Attachment 7.1  
Additional Insurance**

**Professional Liability Insurance:** Professional Liability/ Errors & Omissions coverage, including advertising liability and cyber-liability in the minimum amount of \$ 10,000,00.00, and naming NYS Urban Development Corporation, d/b/a Empire State Development as additional insured.

Schedule E

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

**I. General Provisions**

- A. The Corporation is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing and (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Corporation to fully comply and cooperate with the Corporation in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Labor Law or other applicable federal, state or local laws.
- C. Failure to comply with the following requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.

**II. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development (the "Division"). If any of these terms or provisions conflict with applicable laws or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
  - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The Contractor shall submit an EEO policy statement to the Corporation within seventy two (72) hours after the date of the Letter of Intent to award Contract.



3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Corporation may provide the Contractor or Subcontractor a model statement (see Form 100 – Minority and Women-Owned Business Enterprises Equal Employment opportunity Policy Statement).
4. The Contractor’s EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. Contractor will include the provisions of sections (a) through (c) of this subsection in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Form 101 - Staffing Plan

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

D. Form 102 - Workforce Employment Utilization Report (“Workforce Report”)

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Corporation of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report

- must be submitted to report this information.
2. Separate forms shall be completed by the Contractor and any subcontractor performing work on the Contract.
  3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

### **III. Contract Goals**

- A. For purposes of this procurement, the Corporation hereby establishes a goal of 15% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation. The above-mentioned contract goals shall be a percentage of total expenditures made pursuant to this contract, including but not limited to, purchase orders, invoices and other payments made in the performance of this contract.
- B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in subsection "A", Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

[http://www.empire.state.ny.us/Small\\_and\\_Growing\\_Businesses/mwbe.asp](http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp)

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

### **IV. MWBE Utilization Plan**

- A. Form 103 – MWBE Utilization Plan
  1. Contractor is required to submit an MWBE Utilization Plan to the Corporation on "Form 103" with this bid/proposal or in the event such a plan was not submitted with a bid/proposal, prior to the execution of this Contract.

2. The Utilization Plan shall list the MWBEs Contractor intends to use to perform on the Contract and provide a description of the Contract scope of work which Contractor intends to structure to increase the participation by NYS Certified MWBEs on Contract pursuant to the prescribed Contract Goals set herein, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of the Contract which Contractor intends to be performed by NYS Certified MWBEs.
  3. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and/or during the Contract term must be reported on a revised MWBE Utilization Plan and submitted to the Corporation for approval.
- B. The Corporation will review the MWBE Utilization Plan and issue to Contractor a written notice of acceptance or deficiency within twenty (20) days of its receipt. A notice of deficiency shall include (1) the name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals and the reasons why it is not acceptable; (2) elements of the Contract scope of work which the Corporation has determined can be reasonably structured by Contractor to increase the likelihood of participation in the Contract by NYS Certified MWBEs; and (3) other information which the Corporation determines to be relevant to the MWBE Utilization Plan.
- C. In the event a notice of deficiency is issued Contractor shall respond to the notice within seven (7) business days of receipt by submitting a written remedy in response to the notice of deficiency to the Corporation. If the written remedy that is submitted is not timely or is found by the Corporation to be inadequate, the Corporation shall notify the Contractor and direct Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on forms provided by the Corporation. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The Corporation may disqualify Contractor as being non-responsive under the following circumstances:
1. If Contractor fails to submit a MWBE Utilization Plan;
  2. If Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
  3. If Contractor fails to submit a request for waiver in the event of a deficiency within the utilization plan; or
  4. If the Corporation determines that Contractor has failed to document good faith efforts to meet the contract goals prescribed in Article III.

## V. Waivers

- A. For Waiver Requests Contractor should use Form 104 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is

complete, the Corporation shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

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

#### **VI. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form MWBE 105) to the Corporation by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **VII. Administration Hearing on Disqualification**

- A. If the Corporation disqualifies a bid based on deficiency in Contractor's utilization plan, Contractor shall be entitled to an administrative hearing, on the record, before the Corporation to review the determination of disqualification of the bid and determination of non-responsibility of the Contractor.
- B. Such final administrative determination shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within thirty (30) days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Executive Law Article 15-A, §313.

#### **VIII. Complaints**

- A. If the Corporation determines that the Contractor is not in compliance with the requirements found in Part 142 of the MWBE Regulations and the Corporation is unsuccessful in its efforts to resolve the matter and bring the Contractor into compliance with the requirements, the Corporation may file a complaint with the Director according to the provisions of Executive Law Article 15-A, §§ 313 & 316 or may assess liquidated damages pursuant to § 316-a.
- B. Subsequent to the award of this Contract, if Contractor submits a Request for Waiver of MWBE participation goals and the Corporation denies the request or fails to respond within twenty (20) days of receiving it, or if Contractor has received a written determination from the Corporation that Contractor has failed or refused to comply with the provisions of this Contract, Contractor may file a complaint with the Director in accordance with the provisions of Executive Law Article 15-A, §§ 313 & 316.

C. The complaint must be filed within twenty (20) days of the Corporation's receipt of the Request for Waiver. If the Corporation fails to respond in that time, or within twenty (20) days of a notification that the request has been denied by the Corporation or within twenty (20) days of receipt of notification from the Corporation that the Contractor has failed or refused to comply with the goals:

1. A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
2. The party filing a complaint, whether the Contractor or the Corporation, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
3. Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty (30) days of receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of the Corporation and the Contractor, the complaint shall be referred to the Division's designated hearing officer. Upon conclusion of the administrative proceeding, the hearing officer will submit to the Director his or her final determination regarding the alleged violation of the Contract or refusal of the Corporation to grant a waiver request by the Contractor and his or her recommendations regarding the imposition of fines, sanctions or penalties.
4. The Director, within ten (10) days of receipt of the hearing officer's decision, will issue a final determination with regard to fines, sanctions or penalties and shall cause a copy of such determination to be served upon the Contractor by personal service or by certified mail, return receipt requested.
5. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by Contractor or Contractor's representative or the Contractor's willful and intentional disregard of the MWBE participation requirement included in this Contract may include a determination that Contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such Contract for up to one year following the final determination.
6. If a Contractor has previously been debarred, the penalties imposed for any subsequent violations, if such violation occurs within five years of the first violation, may result in debarment for up to five (5) years after the final determination. Such information shall be posted on the Division's web site.
7. The determination of the Corporation or the Contractor to proceed with a complaint shall not preclude the Corporation, in its discretion, from pursuing any other remedies which it may have pursuant to law and Contract, including withholding from payments to the Contractor the estimated amount of the fines and penalties which may be imposed pursuant to this subsection.

#### **IX. Liquidated Damages - MWBE Participation**

- A. In lieu of the complaint procedures set forth in Article VIII of this Appendix, if the Corporation determines that Contractor is not in compliance with the requirements of this subsection and Contractor refuses to comply with such requirements, or if Contractor is

found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Corporation liquidated damages.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
  
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Corporation, Contractor shall pay such liquidated damages to the Corporation within sixty (60) days after they are assessed by the Corporation unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Corporation.

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

**M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

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

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

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

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

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

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

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

**Minority Business Enterprise Liaison**

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)  
responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment  
Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ % Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>
<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force	
<b>Offeror's Name:</b>	<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor
<b>Offeror's Address:</b>	<b>Subcontractor's name</b> _____

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

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

<b>PREPARED BY (Signature):</b>	<b>DATE:</b>
<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>
Submit completed with bid or proposal M/WBE 101 (Rev 11/08)	

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OM/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

# WORK FORCE EMPLOYMENT UTILIZATION

<b>Contract No.:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Entity:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Contractor's Name:</b>	<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Contractor's Address:</b>	

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

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

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b> <b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b> Submit completed form to: NYS (add Agency name) <small>M/W/VBE 102 (Revised 11/08)</small>	

**General Instructions:** The work force utilization (M/WBE 102) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

9. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
10. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
11. Check off the box that corresponds to the reporting period for this report.
12. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
13. Enter the total work force by EEO job category.
14. Break down the total work force by gender and enter under the heading 'Work force by Gender'
15. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
16. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
17. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

**Offeror's Name:**

**Address:**

**City, State, Zip Code:**

**Telephone No.:**

**Region/Location of Work:**

**Federal Identification No.:**

**Solicitation No.:**

**Project No.:**

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

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).**

**PREPARED BY (Signature):** \_\_\_\_\_ **TELEPHONE NO.:** \_\_\_\_\_ **EMAIL ADDRESS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_ **FOR M/WBE USE ONLY** **DATE:** \_\_\_\_\_

**REVIEWED BY:** \_\_\_\_\_

**UTILIZATION PLAN APPROVED:**  YES  NO **Date:** \_\_\_\_\_  
**Contract No.:** \_\_\_\_\_ **Project No. (if applicable):** \_\_\_\_\_

**Contract Award Date:** \_\_\_\_\_  
**Estimated Date of Completion:** \_\_\_\_\_  
**Amount Obligated Under the Contract:** \_\_\_\_\_  
**Description of Work:** \_\_\_\_\_

**NOTICE OF DEFICIENCY ISSUED:**  YES  NO **Date:** \_\_\_\_\_  
**NOTICE OF ACCEPTANCE ISSUED:**  YES  NO **Date:** \_\_\_\_\_

M/WBE 103 (Revised 11/08)

# REQUEST FOR WAIVER FORM

<b>INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.</b>	
<b>Offeror/Contractor Name:</b>	<b>Federal Identification No.:</b>
<b>Address:</b>	<b>Solicitation/Contract No.:</b>
<b>City, State, Zip Code:</b>	<b>M/WBE Goals: MBE      %      WBE      %</b>
<p>By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</p> <p>Contractor is requesting a:</p> <p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.)      Date of such filing with Empire State Development: _____</p>	
<b>PREPARED BY (Signature):</b>	
<p>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</p> <p><b>Name and Title of Preparer (Printed or Typed):</b></p>	
<b>Date:</b>	
<b>***** FOR M/WBE USE ONLY *****</b>	
<b>Telephone Number:</b>	<b>Email Address:</b>
<b>REVIEWED BY:</b>	<b>DATE:</b>
<p><b>Submit with the bid or proposal or if submitting after award submit to:</b></p> <p style="text-align: center;">New York State Office of Mental Retardation and Developmental Disabilities Division of Fiscal and Administrative Solutions M/WBE Program Management Unit 44 Holland Avenue, 3<sup>rd</sup> Floor Albany, New York 12229</p>	
<p>Waiver Granted: <input type="checkbox"/> YES      MBE: <input type="checkbox"/>      WBE: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver      <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> ESD Certification Waiver      <input type="checkbox"/> *Conditional</p> <p><input type="checkbox"/> Notice of Deficiency Issued</p> <p>*Comments: _____</p>	

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note: Unless a Total Waiver has been granted, the Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by AGENCY, to determine M/WBE compliance.

Is this a final report? Check One  
 Yes  No

**M/WBE Quarterly Report**  
 of \_\_\_\_\_

**NYS AGENCY Contract No.** \_\_\_\_\_ **Project No.** \_\_\_\_\_

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

Contractors Name and Address		Federal ID#	Goals/\$ Amt.		Contract Type	
			MBE % = _____	WBE % = _____	Paid to Contractor This Quarter _____	
		Project Completion Date	Work Location		Total Paid to Contractor To Date _____	
M/WBE Subcontractor/Vendor	Product Code*	Work Status This Report	Total Subcontractor Contract Amount	Payments this Quarter		Total Payment Made to Date
			MBE	WBE	MBE	WBE
Name: FED ID#		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete				
Name: FED ID#		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete				
Name: FED ID#		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete				
Name: FED ID#		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete				
<b>Total</b>						

\*See Reverse Side for Product Codes

Date \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_



**PRODUCT KEY CODE**

A	=	Agriculture/ Landscaping (e.g., all forms of landscaping services)
B	=	Mining (e.g., geological investigations)
C	=	Construction
C15	=	Building Construction – General Contractors
C16	=	Heavy Construction (e.g., highway, pipe laying)
C17	=	Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)
D	=	Manufacturing
E	=	Transportation, Communication and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	=	Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)
G52	=	Construction Materials (e.g., lumber, paint, law supplies)
H	=	Financial, Insurance and Real Estate Services
I	=	Services
I73	=	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)
I81	=	Legal Services
I82	=	Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	=	Social Services (Counselors, vocational training, child care)
I87	=	Engineering, architectural, accounting, research, management and related services

# Empire State Development

December 12, 2011

Dana Perry  
Executive VP and CFO  
BBDO USA LLC  
1285 Avenue of the Americas  
New York, NY 10019

Re: Letter Agreement Amending Contract between NYSUDC  
and BBDO USA LLC dated as of December 1, 2011  
UDC and OSC Contract No. C201101

Dear Mr. Perry:

This letter agreement, when acknowledged and agreed to by you for and on behalf of BBDO USA LLC ("BBDO"), as shown by your signature and acknowledgment below, shall constitute an enforceable letter agreement amending that certain agreement (the "Agreement") dated as of December 1, 2011 between the New York State Urban Development Corporation (the "Corporation") and BBDO, as provided in Article XIV of the Agreement.

The Agreement is amended as follows:

1. Article I.B. Page 3, Line 3. Delete the words "it will be done through a mutually-agreed independent accounting firm, and."

2. Article III.5. Page 6, line 3. Insert the words "for media purchased for Corporation under the principle of Sequential Liability" after the words "paid to Contractor." Insert the word "be" before the word "solely."

3. Article VIII. Page 13. Add a new section "G" providing:

G. Use of Funds. 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. The substance of the foregoing sentence shall be included in any and all subcontracts between BBDO and third parties, including without limitation media sub-contractors, relating to work/services arising out of this Agreement.

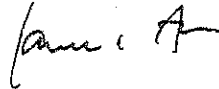
December 12, 2011

Dana Perry

Page 2

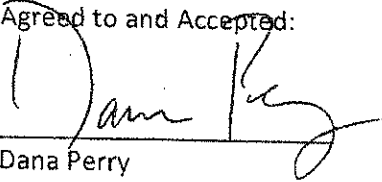
Thank you for your agreement to these terms.

Yours truly,




President and CEO  
NYS Urban Development Corporation

Agreed to and Accepted:



Dana Perry  
Executive VP and CFO  
BBDO USA LLC

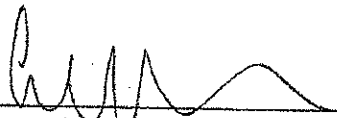
APPROVED 12/12 2011  
  
FOR THE STATE COMPTROLLER

C.S.

ACKNOWLEDGMENT

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

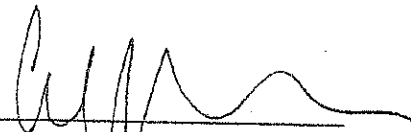
On the 12<sup>th</sup> day of December, 2011  
before me personally appeared  
Dana Perry to me known, who  
acknowledged that he executed  
the within instrument and that  
by his signature the individual,  
and the entity on whose behalf  
he acted, executed the same.

  
\_\_\_\_\_  
Notary Public, State of New York  
[Stamp]

SIMON WYNN  
Notary Public, State of New York  
No. 02WY4792002  
Qualified in New York County  
Commission Expires Aug. 31, 2013

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

On the 12<sup>th</sup> day of December, 2011  
before me personally appeared  
Kenneth Adams to me known, who  
acknowledged that he executed  
the within instrument and that  
by his signature the individual,  
and the entity on whose behalf  
he acted, executed the same.

  
\_\_\_\_\_  
Notary Public, State of New York  
[Stamp]

SIMON WYNN  
Notary Public, State of New York  
No. 02WY4792002  
Qualified in New York County  
Commission Expires Aug. 31, 2013

December 12, 2011  
 Dana Perry  
 Page 2

Thank you for your agreement to these terms.

Yours truly,

President and CEO  
 NYS Urban Development Corporation

Agreed to and Accepted:

Dana Perry  
 Executive VP and CFO  
 BBDO USA LLC

APPROVED AS TO FORM  
 NYS ATTORNEY GENERAL  
  
 DEC 13 2011  
  
  
 LORRAINE I. REMO  
 PRINCIPAL ATTORNEY

ACKNOWLEDGMENT

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

On the 12<sup>th</sup> day of December, 2011  
 before me personally appeared  
 Dana Perry to me known, who  
 acknowledged that he executed  
 the within instrument and that  
 by his signature the individual,  
 and the entity on whose behalf  
 he acted, executed the same.

Notary Public, State of New York  
 [Stamp]

SIMON WYNN  
 Notary Public, State of New York  
 No. 02WY4792002  
 Qualified in New York County  
 Commission Expires Aug. 31, 2013

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

On the 12<sup>th</sup> day of December, 2011  
 before me personally appeared  
 Kenneth Adams to me known, who  
 acknowledged that he executed  
 the within instrument and that  
 by his signature the individual,  
 and the entity on whose behalf  
 he acted, executed the same.

Notary Public, State of New York  
 [Stamp]

SIMON WYNN  
 Notary Public, State of New York  
 No. 02WY4792002  
 Qualified in New York County  
 Commission Expires Aug. 31, 2013

FIRST AMENDMENT, dated as of December 21, 2012 (this "Amendment"), to that certain Agreement, dated as of December 1, 2011 (the "Original Agreement"), by and between the NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT, a corporate governmental agency, constituting a political subdivision and public benefit corporation of the State, having an office at 633 Third Avenue, 34<sup>th</sup> Floor, New York, New York 10017 ("ESD"), and BBDO USA LLC, a Delaware limited liability company having an office at 1285 Avenue of the Americas, New York, New York 10019 ("BBDO").

WHEREAS, ESD and BBDO entered into the Original Agreement pursuant to which BBDO continues to serve ESD as a non-exclusive, full service advertising, marketing, branding, media, and communications agency in connection with a program of marketing and promotion designed to market New York State as an ideal place for businesses to invest and create jobs; and

WHEREAS, ESD and BBDO desire to amend the Original Agreement as set forth in this Amendment; and

WHEREAS, terms used in this Amendment but not defined herein shall have the respective meanings set forth in the Original Agreement.

NOW, THEREFORE, in consideration of the payments hereinafter specified to be made by ESD to BBDO, and in consideration of the agreements and mutual covenants of the parties herein contained, the parties hereto agree as follows:

1. With reference to Original Agreement Section I ("Duties and Responsibilities") A ("Scope of Services") 4, attached hereto is "Schedule D – Supplemental Budget 2013" which supplements but does not replace Schedule D to the Original Contract.
2. The fourth (and last) sentence of Article II ("Term and Contract Amount") of the Original Agreement is deleted in its entirety and the following is inserted in place thereof: "Compensation for all services performed and materials provided under this Agreement shall not exceed One Hundred Million Dollars (\$100,000,000.00)."
3. Except as modified by this Amendment, the terms and provisions of the Original Agreement: (i) shall remain unmodified in all other respects; (ii) are hereby ratified; and (iii) shall remain in full force and effect. The Original Agreement and this Amendment collectively hereafter shall be referred to as the "Agreement".
4. This Amendment is subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law Section 2879-a and the regulations issued thereunder, pursuant to notice given by OSC to ESD. Accordingly, this Amendment shall not be

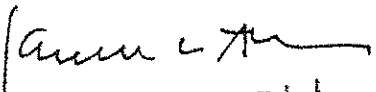
valid and enforceable, nor shall ESD have any liability of any kind arising from or in connection with this Amendment, unless and until OSC approval has been received.

5. This Amendment shall not be valid or enforceable unless and until ESD's Board of Directors has authorized execution of this Amendment. ESD represents and warrants that this contingency has been fulfilled.

6. This Amendment may be executed by the parties in separate counterparts, each of which when so executed shall be deemed an original and both of which taken together shall constitute one and the same agreement.

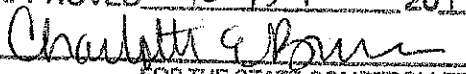
IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first written above.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT

By:   
Name: Kenneth Adams  
Title: President + CEO  
Date: 12/31/12

BBDO USA LLV

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

APPROVED 12/31 2012  
  
FOR THE STATE COMPTROLLER

C.S.  
\$50,000,000

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF New York        )

On the 21<sup>st</sup> day of December, 2012, before me, the undersigned, personally appeared Kenneth Adams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Suzanna Blaskovic  
\_\_\_\_\_  
Signature and Office of individual taking acknowledgment

SUZANNA BLASKOVIC  
NOTARY PUBLIC, State of New York  
No. 01BL5079348  
Qualified in Queens County  
Commission Expires June 2, 2015

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF \_\_\_\_\_        )

On the \_\_\_ day of December, 2012, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual taking acknowledgment

valid and enforceable, nor shall ESD have any liability of any kind arising from or in connection with this Amendment, unless and until OSC approval has been received.

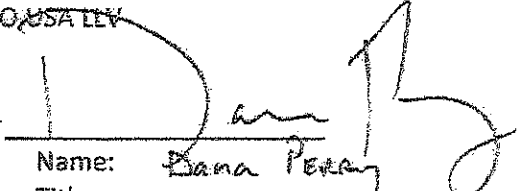
5. This Amendment shall not be valid or enforceable unless and until ESD's Board of Directors has authorized execution of this Amendment. ESD represents and warrants that this contingency has been fulfilled.

6. This Amendment may be executed by the parties in separate counterparts, each of which when so executed shall be deemed an original and both of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first written above.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT

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

BBDO USA LLC  
By:   
Name: Dana Perry  
Title: SVP CFO BBDO NY  
Date: 12/21/12



EXECUTION COPY

SECOND AMENDMENT, dated as of July 9, 2013 (this "Second Amendment") to that certain Agreement, dated as of December 1, 2011 (the "Original Agreement"), by and between the NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT, a corporate governmental agency, constituting a political subdivision and public benefit corporation of the State, having an office at 633 Third Avenue, 34<sup>th</sup> Floor, New York, New York 10017 ("ESD") and BBDO USA LLC, a Delaware limited liability company having an office at 1285 Avenue of the Americas, New York, New York 10019 ("BBDO").

WHEREAS, ESD and BBDO entered into the Original Agreement pursuant to which BBDO continues to serve ESD as non-exclusive, full service advertising, marketing, branding, media and communications agency in connection with a program designed to market and promote New York State as an ideal place for businesses to invest and create jobs; and

WHEREAS, ESD and BBDO subsequently entered into a First Amendment to the Original Agreement dated December 21, 2012 by adding "Schedule D – Supplemental Budget 2013," to supplement but not replace the Original Agreement and to increase the compensation for all services performed and materials provided, to an amount not to exceed One Hundred Million Dollars (\$100,000,000) (collectively, the Original Agreement as amended by the First Amendment are referred to as the "Agreement"); and

WHEREAS, as a result of Hurricane Sandy, thirteen counties in the State of New York (the "State") have been declared disaster areas (the "Target Area"), pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.); and

WHEREAS, the State has received an allocation of Community Development Block Grant Disaster Recovery ("CDBG-DR") funds ("CDBG-DR Funds") from the U.S. Department of Housing and Urban Development ("HUD") for disaster relief efforts in the Target Area ; and

WHEREAS, the State's Housing Trust Fund Corporation ("HTFC") has been authorized to administer and distribute the CDBG-DR funds in the State; and

WHEREAS, ESD and HTFC will enter into an agreement (the "Interagency Agreement") pursuant to which HTFC has agreed to fund, from its allocation of CDBG-DR funds (i) an amount not to exceed Twenty-Nine Million Dollars (\$29,000,000) for a marketing and advertising campaign, which ESD has agreed to administer, to promote tourism in the Target Area (the "Scope IIA Additional Services"), and (ii) an amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) to launch and promote the State of New York Storm Recovery Program throughout various counties (the "Scope IIA-1 Additional Services"), as more specifically described in Scope IIA (defined below) and Scope IIA-1 (defined below) hereto; and

WHEREAS, ESD and BBDO agree that the Scope IIA Additional Services and the Scope IIA-1 Additional Services are consistent with, and fall within, the scope of services provided for in the Original Agreement; and

WHEREAS, in furtherance of the Interagency Agreement and to expedite relief to the Targeted Areas and to launch and promote the State of New York Storm Recovery Program, ESD and HTFC wish to engage BBDO to design and implement the Scope IIA Additional Services and the Scope IIA-1 Additional Services; and

WHEREAS, ESD and BBDO desire to further amend the Agreement, as set forth in this Second Amendment; and

WHEREAS, terms used in this Second Amendment but not defined herein shall have the respective meanings set forth in the Original Agreement.

NOW, THEREFORE, in consideration of the payments hereinafter specified, as well as the agreements and the mutual covenants of the parties herein contained, the parties hereto agree to amend the Agreement as follows:

1. With reference to Section I ("Duties and Responsibilities") A ("Scope of Services") 4, attached here to are: (a) "II A. Scope of Services to Promote Tourism to areas impacted by Hurricane Sandy" which supplements but does not replace Section II Scope of Services of the Original Agreement ("**Scope IIA**") as set forth in Exhibit A; (b) "IIA-1. Scope of to launch and promote the State of New York Storm Recovery Program" which supplements but does not replace Section II Scope of Services of the Original Agreement ("**Scope IIA-1**") as set forth in Exhibit A-1; (c) "Schedule E – Supplemental Budget and Projected Accomplishments 2013" which supplements but does not replace Schedule D and Schedule D- Supplemental Budget 2013. The budget for the Scope IIA Work is as set forth in Exhibit B and the budget for the Scope IIA-1 Work is set forth in Exhibit B-1 (collectively, "Schedule E").
2. Billing and payment for the additional services shall continue to be made pursuant to Section III ("Payment Process") and Article 6 of Schedule A of the Original Agreement. Pursuant to the Interagency Agreement, HTFC shall reimburse ESDC, from CDBG-DR Funds: (i) in an amount not to exceed Twenty-Nine Million Dollars (\$29,000,000) for the tourism marketing, and (ii) in an amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) for the program marketing.
3. Section I B. ("Retention and Examination of Records") of the Original Agreement is amended by adding the following paragraph:

"HTFC and the Comptroller General of the United States, or their duly authorized representatives, shall have reasonable access to any books, documents, papers, records and accounts produced or resulting from the Scope IIA Additional Services and the

Scope IIA-1 Additional Services of the Second Amendment to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. BBDO shall retain all such books, documents, papers, records and accounts for a period of six (6) years. The retention period begins on the date of the submission of HTFC's annual performance and evaluation report to HUD in which the activities assisted under this Second Amendment are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the six-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the six-year period, whichever occurs later."

4. Section 5.2 of Schedule A is amended by adding the following paragraph:

"To the fullest extent permitted by law, BBDO shall defend, indemnify and hold harmless HTFC and its agents and employees from and against any and all claims, actions, damages, losses, expenses and costs of every nature and kind, including reasonable attorneys' fees, incurred by or asserted or imposed against HTFC, as a result of or in connection with the work to be performed by BBDO hereunder."

5. Notwithstanding anything in the Original Agreement to the contrary, the period of performance for the Scope IIA Additional Services and the Scope IIA-1 Additional Services shall commence as of the effective date of this Second Amendment, and shall end April 30, 2015. All payment requests for costs incurred prior to May 1, 2015, must be received by ESD no later than May 31, 2015.

6. The fourth (and last) sentence of Article II ("Term and Contract Amount") of the Original Agreement is deleted in its entirety and the following is inserted in place thereof: "Compensation for all services performed and materials provided under this Agreement shall not exceed One Hundred Thirty Six Million Five Hundred Thousand Dollars (\$136,500,000)."

7. Except as modified by this Second Amendment, the terms and provisions of the Agreement: (i) shall remain unmodified in all other respects; (ii) are hereby ratified; and (iii) shall remain in full force and effect.

8. This Second Amendment is subject to review and approval of the Office of the State Comptroller ("OSC") pursuant to the Public Authorities Law Section 2879-1 and the regulations issued thereunder, pursuant to notice given by OSC to ESD. Accordingly, this Second Amendment shall not be valid and enforceable, nor shall ESD have any liability of any kind arising from or in connection with this Second Amendment, unless and until OSC approval has been received.

9. This Second Amendment shall not be valid or enforceable unless and until ESD's Board of Directors has authorized execution of this Amendment. ESD represents and warrants that this contingency has been fulfilled.

IN WITNESS WHEREOF, the Parties heretofore have caused this Agreement to be executed by their respective officers duly authorized as of the date and year first written above.

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT

By: [Signature]  
Name:  
Title:

BBDO LISA LLY


By: [Signature]  
Name: DANA KELLY  
Title: SVP CEO BBDO NY

APPROVED 7/26 2013  
[Signature]  
FOR THE STATE COMPTROLLER

\$36,500,000

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF New York )

On the 26<sup>th</sup> day of June in the year 2013 before me, the undersigned personally appeared Francis We Han, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

LISA LIM  
Notary Public, State of New York  
No. 02115020558  
Qualified in New York County  
Commission Expires 11/22/ 2013

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF Suffolk )

On the 18 day of June in the year 2013 before me, the undersigned personally appeared Dana Perry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

JENNIFER CARMELA CAMARDA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01CA6224825  
Qualified in Suffolk County  
My Commission Expires July 07, 2014

## EXHIBIT A

### SCOPE IIA Additional Services

#### Tourism Campaign

Under ESD's direction, BBDO will develop and implement an industry-wide advertising and marketing campaign ("Tourism Campaign"), in order to provide immediate support to the State's tourism industry and promote travel to communities located in the Target Area (Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties). The focus of the Campaign is the upcoming summer tourist season in the Target Area, i.e., Memorial Day to Labor Day of 2013 but may include future tourist seasons.

The key components of the Tourism Campaign will be as follows:

- TV Advertising -- including creative development, production, agency fees and media associated with the development and launch of multiple :30 sec TV spots and possibly :60 TV spots
- Digital & Mobile -- including creative development, production, agency fees and media associated with the development and launch of a website/microsite, search engine optimization, email marketing, mobile advertising (including rich media unit development) and banner advertising
- Social Media - including strategy development, creative development, contests, blogs and agency fees associated with the development and launch of social media programs designed to support tourism in the impacted areas
- Print -- including creative development, production, agency fees and media associated with the development and launch of multiple print advertisements in an assortment of sizes as dictated by the media plan
- Radio- including creative development, production, agency fees and media associated with the development and launch of multiple radio spots-- including but not limited to live reads.

Attached hereto is a copy of HUD's approval of HTFC's Waiver Request letter as published in the Federal Register Volume 78, No. 76, 2013-09228 (April 19, 2013) which shall provide guidance to BBDO as it develops the tourism campaign plan.

\*\*\*\*\*

As a preliminary matter, BBDO will provide ESD with a written plan and schedule of activities to implement the components of this scope of work within 15 days of execution of this Second Amendment.



practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Rental Assistance Demonstration Evaluation, Phase I.

*OMB Control Number:* Pending.

*Description of the Need for the Information and Proposed Use:* HUD is conducting an evaluation of the Rental Assistance Demonstration (RAD), focused on the conversion of public housing developments to project-based rental assistance and project-based vouchers. The evaluation will study a

sample of RAD sites and a carefully chosen group of comparison sites. Identification of comparison sites will rely heavily on analysis of existing data—including internal HUD data on public housing and public housing tenants, and neighborhood data from the American Community Survey. If there are significant differences between RAD sites and comparison sites that are not reflected in the data, the resulting evaluation will be biased. Therefore it is necessary to conduct limited information collection from local experts to learn about any “unobservable” characteristics that should influence the selection of comparison sites. This information will refine the comparison group and enable HUD to produce more rigorous estimates of program impacts.

*Agency Form Numbers:* None.

*Members of the Affected Public:* This information collection request will affect individuals involved with public

and assisted housing programs in the 24 sites selected to be part of the RAD Evaluation. Up to five individuals per site will be interviewed by telephone. They will be asked to provide information about a specific public housing development undergoing conversion through RAD—specifically, they will be asked about the decision to utilize RAD at that particular development. They will also be asked to comment on other public housing properties identified by the research team as potential comparison sites. These interviews will be semi-structured, guided by an interview protocol comprising mostly open-ended questions. Interviews will take no longer than 30 minutes.

*Estimate of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The following chart details the respondent burden:

	Number of responses	Hours per response	Total hours
Telephone interviews .....	120	.5	60
<b>Total .....</b>	<b>120</b>	<b>.5</b>	<b>60</b>

*Status of the proposed information collection:* Pending OMB approval.

*Authority:* Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 12, 2013.

Jean Lin Pao,  
General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013-09237 Filed 4-16-13; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5710-N-01]

**Clarifying Guidance, Waivers, and Alternative Requirements for Hurricane Sandy Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** Previously, the Department allocated \$5,400,000,000 of Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2) for the purpose of assisting recovery

in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy (see 78 FR 14329, published in the *Federal Register* on March 5, 2013). This Notice provides clarifying guidance, waivers, and alternative requirements.

**DATES:** With the exception of waivers included in this Notice, this Notice is effective on April 19, 2013. The effective date for waivers in this Notice is April 24, 2013.

**FOR FURTHER INFORMATION CONTACT:** Stan Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the “800” number, these telephone numbers are not toll-free.) Email inquiries may be sent to [disaster\\_recovery@hud.gov](mailto:disaster_recovery@hud.gov).

**SUPPLEMENTARY INFORMATION:**

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- I. Background
- II. Applicable Rules, Statutes, Waivers, and

- Alternative Requirements
- III. Catalog of Federal Domestic Assistance
- IV. Finding of No Significant Impact

**I. Background**

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2, approved January 29, 2013) (Appropriations Act) makes available \$16,000,000,000 in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

On March 1, 2013, the President issued a sequestration order in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act. This provision of law and the order implementing sequestration reduces funding for disaster recovery grants from \$15,980,000,000 to \$15,181,000,000. The \$10 million provided to CPD for administrative costs and the \$10 million provided to the

Office of the Inspector General are also each reduced to \$9.5 million.

In a Federal Register Notice published March 5, 2013 (78 FR 14329), the Department allocated \$5,400,000,000 after analyzing the impacts of Hurricane Sandy and identifying unmet needs. This Notice provides clarifying guidance, waivers, and alternative requirements to grantees in receipt of an allocation under the Appropriations Act.

## II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This section provides additional waivers and alternative requirements to Hurricane Sandy grantees, and clarifies or modifies guidance provided at 78 FR 14329. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, regulatory waivers must be published in the Federal Register no later than five days before the effective date of such waiver.

**1. Action Plan for Disaster Recovery criterion for approval—Elevation Requirements.** Paragraph 1(a)(3) at 78 FR 14333 is hereby amended by deleting that paragraph and replacing it in its entirety with the following:

A description of how the grantee will promote: (a) Sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with

other local and regional planning efforts to ensure consistency.

In addition, grantees must adopt and meet the following minimum requirements for approval: In order to better ensure a sustainable long-term recovery, grantees must elevate (or may, for certain non-residential structures as described below, floodproof) new construction and substantially improved structures one foot higher than the latest Federal Emergency Management Agency (FEMA) issued base flood elevation. This standard and criterion for approval of an Action Plan was made after considering the history of FEMA flood mitigation efforts. This higher elevation also takes into account projected sea level rise, which is not considered in current FEMA maps and National Flood Insurance Program premiums, which will potentially rise as FEMA Flood Insurance Rate Maps that take Hurricane Sandy into account are issued.

Each grantee must include in its Action Plan a description of how it will ensure compliance with the requirement that it will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain. At a minimum, actions to minimize harm must include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source and best available data under Executive Order 11988 is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Executive Order 11988 on floodplain management requires that federal agencies use the best available flood data to determine the location of projects and activities. In addition, best available flood risk data must be used to determine requirements for reconstruction, and the elevation of structures for grants funding (in whole or part) new construction and substantial-improvements as defined at 24 CFR 55.2(b)(8). If a new construction or substantial improvement project or activity is located in a floodplain, the lowest floor must be designed using the base flood elevation, determined in accordance with the best available data, plus one foot as the baseline standard for elevation. If higher elevations are required by locally adopted code or

standards, those higher standards would apply.

Instead of elevating non-residential structures that are not critical actions as defined at 24 CFR 55.2(b)(2), grantees may design and construct the project such that below the flood level, the structure is floodproofed using the best available flood data plus one foot. Floodproofing requires structures to be water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, the effects of buoyancy or higher standards required by the FEMA National Flood Insurance Program as well as state and locally adopted codes. All mixed-use structures must be floodproofed consistent with the latest FEMA guidance.

Each grantee that submitted an Action Plan prior to the publication of this Notice must amend its Plan to address this modified requirement. This revision will be treated as a non-substantial amendment and does not require a public comment period. Revised plans must be submitted to the Department within thirty (30) days of the effective date of this Notice.

**2. State of New York—counties eligible for CDBG-DR assistance.** HUD is amending 78 FR 14330 to define "most impacted and distressed counties" to include counties that meet the revised threshold that will be used for non-Sandy allocations under Public Law 113-2. The new threshold identifies "most impacted counties" as counties with at least \$10 million in damages. Of counties eligible for CDBG-DR assistance from the devastation of Hurricane Sandy, Westchester County, New York, meets this new threshold in addition to the "most impacted counties" already identified in FR 14330. As such, Table 2 at 78 FR 14330 is amended to identify the following counties as the most impacted and distressed: Nassau, Suffolk, Rockland, and Westchester. In addition, to provide consistency among CDBG disaster recovery appropriations, HUD has determined that any county within the State of New York that received a Presidential declaration under FEMA-4020-DR (Hurricane Irene) or FEMA-4031-DR (Tropical Storm Lee) is eligible to receive assistance under the Appropriations Act. However, the State must expend at least 80 percent of its CDBG-DR allocation in its most impacted and distressed counties.

**3. Waiver to permit some activities in support of the tourism industry (State of New York only).** The State of New York has requested a waiver to allow the State to use CDBG-DR funds to support

its \$53.9 billion tourism industry and promote travel to communities in the disaster-impacted areas. Tourism in Sandy-impacted counties generates approximately \$32.5 billion, \$1.7 billion of which is created by disaster-affected businesses. In the surge area alone (nine of the 14 impacted counties), Hurricane Sandy affected 32,282 businesses; the Long Island tourism industry lost approximately 6,000 jobs due to Sandy's impact. Without this waiver, the State estimates a \$500 million loss in revenue.

Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues and has granted similar waivers for several CDBG-DR disaster recovery efforts. As the State of New York is proposing advertising and marketing activities for this specific program, rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived only to the extent necessary to make eligible use of no more than \$30 million for assistance for the tourism industry. CDBG-DR funds may be used to promote a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Sandy. This waiver will expire at the end of the State's two-year expenditure period.

4. *Tenant-based rental assistance (New York City only).* The City of New York has found that low-income households were disproportionately impacted by Hurricane Sandy. Of the renters that registered for FEMA assistance, almost 65 percent had annual incomes less than \$30,000. As of March 2013, nearly 1,200 households (almost 3,000 people) remain in hotels or interim facilities as a result of Hurricane Sandy, while an unknown number are living in unsafe conditions or "doubled-up."

To assess the permanent housing needs of displaced persons and families, and to match those households with available housing units, the city's Department of Housing Preservation and Development (HPD) created a "housing portal." To date, more than 1,600 households have registered for assistance; 84 percent of these have incomes at or below 50 percent of the

area median income. Meanwhile, HUD and FEMA are activating the Disaster Housing Assistance Program (DHAP), which could potentially address some households' need for rental assistance. However, DHAP is limited to one year, and the program requirements include evidence of sufficient financial assets to support a post-DHAP housing plan, which will exclude most extremely low-income households. Many of these households require a longer subsidy period so that they can develop a permanent housing plan. Thus, the Department is waiving 42 U.S.C. 5305(a), to the extent necessary to make eligible rental assistance payments on behalf of low-income households (at or below 50 percent of the area median income) displaced by Hurricane Sandy. Displaced households that have rejected public housing assistance, or declined a Section 8 voucher, will not be eligible. This waiver will expire at the end of the State's two year expenditure period.

5. *Program income alternative requirement.* The following changes and additions are made to Paragraph 17 at 78 FR 14341. Paragraphs a.(1)(h) through (j) are replaced, paragraph a.(1)(k) is added, and paragraph (2) is replaced with the following:

(h) Interest earned on funds held in a revolving fund account;

(i) Interest earned on program income pending disposition of the income;

(j) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low and moderate income, if the special assessments are used to recover all or part of the CDBG-DR portion of a public improvement; and

(k) Gross income paid to a unit of general local government or subgrantee of the unit of general local government from the ownership interest in a for-profit entity acquired in return for the provision of CDBG-DR assistance.

(2) "Program income" does not include the following:

(a) The total amount of funds, which does not exceed \$35,000 received in a single year from activities, other than revolving loan funds that is retained by a unit of general local government and its subgrantees (all funds received from revolving loan funds are considered program income, regardless of amount);

(b) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(c) Payments of principal and interest made by a subgrantee carrying out a CDBG-DR activity for a unit of general local government, toward a loan from

the local government to the subgrantee, to the extent that program income received by the subgrantee is used for such payments;

(d) The following classes of interest, which must be remitted to HUD for transmittal to the Department of the Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

(i) Interest income from loans or other forms of assistance provided with CDBG-DR funds that are used for activities determined by HUD to be not eligible under § 570.482 or section 105(a) of the Act, to fail to meet a national objective in accordance with the requirements of § 570.483, or to fail substantially to meet any other requirement of this subpart or the Act;

(ii) Interest income from deposits of amounts reimbursed to a state's CDBG-DR program account prior to the state's disbursement of the reimbursed funds for eligible purposes; and

(iii) Interest income received by units of general local government on deposits of grant funds before disbursement of the funds for activities, except that the unit of general local government may keep interest payments of up to \$100 per year for administrative expenses otherwise permitted to be paid with CDBG-DR funds.

(e) Proceeds from the sale of real property purchased or improved with CDBG-DR funds, if the proceeds are received more than 5 years after expiration of the grant agreement between the state and the unit of general local government.

\* \* \* \* \*

6. *Assistance to businesses, including privately-owned utilities.* Paragraph 1(d)(3) at 78 FR 14335 is hereby amended to be consistent with the alternative requirement as stated in paragraph 41 at 78 FR 14347. While Paragraph 41 discussed both small businesses and private utilities, the paragraph at 1(d)(3) only discussed small businesses. Thus, grantees in receipt of an allocation under the Appropriations Act are subject to the following: when CDBG-DR funds are provided to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR part 121. CDBG-DR funds may not be used to assist a privately-owned utility for any purpose.

7. *Modification of certification.* Paragraph 42(n) at 78 FR 14348 is replaced with the following: The grantee will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is

designed or modified to minimize harm to or within the floodplain. The grantee further certifies that at a minimum, actions to minimize harm will include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Grantees that have provided this certification in compliance with the previous Notice must resubmit the revised language to the Department within thirty (30) days of the effective date of this Notice.

### III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice are as follows: 14.269.

### IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Dated: April 15, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

[FR Doc. 2013-09228 Filed 4-16-13; 6:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5681-N-15]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW, Room 7040 Washington, DC 20405, (202) 501-0084; (This is not toll-free numbers).

EXHIBIT A-1

SCOPE IIA-1 Additional Services

Program Campaign

Under ESD's direction, BBDO will also develop and implement an industry-wide advertising and marketing campaign ("Program Campaign"), in the same mediums as the Tourism Campaign described above in order to launch and promote the State of New York Storm Recovery Program in the areas affected by Hurricanes Sandy, Irene and Lee.

This shall include Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Greene, Herkimer, Montgomery, Nassau, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, Warren, Washington, Westchester, Broome, Chemung, Chenango, Fulton, Oneida, and Tioga Counties.

\*\*\*\*\*

As a preliminary matter, BBDO will provide ESD with a written plan and schedule of activities to implement the components of this scope of work within 15 days of execution of this Second Amendment.

EXHIBIT B

SCHEDULE E – SUPPLEMENTAL BUDGET and PROJECTED ACCOMPLISHMENTS 2013 FOR  
SCOPE IIA Additional Services

Attached

**SCHEDULE E – SUPPLEMENTAL BUDGET and PROJECTED ACCOMPLISHMENTS 2013  
FOR SCOPE IIA Additional Services**

**RATES APPLY TO:**

Gross Media Budget (\$)			\$ 22,411,460.23
Net Media Budget (\$)			\$ 19,049,741.19
Media Commission (%)			3.00%
Media Commission % based on	gross	net media <i>(check one)</i>	
<b>Production Expense</b>			
All production expenses incurred in-house (except with respect to Personnel as identified below) or out-of-house, shall be billed at actual cost with no mark-up due the Contractor.			\$ 800,000.00
	<b>Number of Hours</b>	<b>Billing Rate per Hour \$</b>	<b>Total \$ (Hours x Billing Rate)</b>
<b>Personnel (In-House OR Subcontractor)</b>			
<b>Specific Personnel 1/</b>			
Account Management	450	\$ 124.73	\$ 56,128.50
Creative Management	550	\$ 289.69	\$ 159,329.50
Production Management	1,280	\$ 201.89	\$ 258,419.20
Media Buyer (covered by commission)			
Web Site Design/Production			
Digital Media Production			
Research	20	\$ 201.89	\$ 4,037.80
Public Relations			
<i>(add additional staff as necessary)</i>			
<b>Other Personnel 2/</b>			
1. All Other Professionals			
2. Clerical			
3.			
4.			
5.			
<b>Administrative Expenses</b>			<b>Annual Total \$</b>
(Billed at actual cost, no mark-up permitted)			
Telecommunications			
Supplies			
Legal & Other Professional			
General administrative			
<b>Grand Total Personnel/Admin Expenses</b>			\$ 477,915.00
<b>Travel</b>			
accordance with State rates, as identified in Appendix			

# Projected Post-Sandy Tourism Fee Breakdown

Timeframe: 4/1/13 - 9/30/13

PhD Media Breakdown				
MEDIA	IN-STATE	OUT-OF-STATE	TOTAL MEDIA	
<b>Total TV Spend</b>				
In-State: All News, Syndication/Prime Access, Fringe, Sports, Yankees/Mets Sponsorships, Out-of-State: Early Morning News, Evening News, Sports, Late Night, Cable	\$ 10,243,472.00	\$ 5,544,500.00	\$ 15,787,972.00	
Canadian TV				
Toronto and Montreal: Early Morning News	\$ -	\$ 232,692.00	\$ 232,692.00	
<b>Minor League Baseball Partnership</b>				
On-site interactive activities and in-stadium video board commercial spots/sponsorship features in 11 NYS minor league stadiums	\$ 150,000.00	\$ -	\$ 150,000.00	
<b>Digital</b>				
Geotargeted site list focusing on specific categories: Travel & Booking, Trip Planning, Local News and Information, Fitness Enthusiast and	\$ 405,681.90	\$ 173,863.70	\$ 579,545.60	
<b>Print</b>				
Local & drive market newspapers and event pulps + Time Out NY Insert	\$ 1,245,806.40	\$ 939,819.00	\$ 2,185,625.40	
6 page custom insert (2x), P4CB (4-5x)				
<b>OOH</b>				
Bulletins, Bus Shelters/Columns, Subway/Commuter Rail, NYC Taxis	\$ 471,750.00	\$ 314,500.00	\$ 786,250.00	
<b>Total Spend</b>	<b>\$ 12,519,710.30</b>	<b>\$ 7,209,374.70</b>	<b>\$ 19,729,085.00</b>	

BBDO Fee Breakdown			
ROLE	HOURS	FEE	
Account management			



<p>General Description: Manage client relationships and lead development of advertising initiatives.</p> <p>Account Management</p> <p>TOTAL</p>	<p>450</p> <p>450</p>	<p>\$56,128.50</p>
<p><b>Creative services</b></p> <p>General Description: Develop creative concepts/executions for advertising via design, copywriting, etc.</p> <p>Creative Concepting (Design + Copywriting)</p> <p>TOTAL</p>	<p>550</p> <p>550</p>	<p>\$159,329.50</p>
<p><b>Production services</b></p> <p>General Description: Produce the final advertising materials via mediums such as TV, print, digital, web, etc.</p> <p>Pre production (estimates, location scouting for shoot, etc)</p> <p>Video/Photo shoot</p> <p>Editing shoot content</p> <p>Shipping of final files</p> <p>TOTAL</p>	<p>200</p> <p>650</p> <p>350</p> <p>80</p> <p>1280</p>	<p>\$258,419.20</p>
<p><b>Research &amp; strategy</b></p> <p>General Description: Manage the upfront research and strategy before a creative team is briefed to develop advertising elements.</p> <p>Strategic Development</p> <p>TOTAL</p>	<p>20</p> <p>20</p>	<p>\$4,037.80</p>

PhD Total		\$19,722,085.00
BBDO Total	2300	\$477,915.00
Production ESTIMATE		\$800,000.00
<b>Grand Total</b>		<b>\$24,000,000.00</b>

EXHIBIT B-1

SCHEDULE E – SUPPLEMENTAL BUDGET and PROJECTED ACCOMPLISHMENTS 2013 FOR  
SCOPE IIA-1 Additional Services

Attached

**SCHEDULE E – SUPPLEMENTAL BUDGET and PROJECTED ACCOMPLISHMENTS 2013  
FOR SCOPE IIA-1 Additional Services**

**RATES APPLY TO:**

Gross Media Budget (\$)			\$ 7,722,851.06
Net Media Budget (\$)			\$ 6,564,423.40
Media Commission (%)			3.00%
Media Commission % based on	gross	net media <i>(check one)</i>	
<b>Production Expense</b>			
All production expenses incurred in-house (except with respect to Personnel as identified below) or out-of-house, shall be billed at actual cost with no mark-up due the Contractor.			\$ 450,000.00
	<u>Number of</u>	<u>Billing Rate</u>	<u>Annual</u>
<b>Personnel (In-House OR Subcontractor)</b>			
<b>Specific Personnel 1/</b>			
Account Management	584	\$ 124.73	\$ 72,842.32
Creative Management	280	\$ 289.69	\$ 81,113.20
Production Management	485	\$ 201.89	\$ 97,916.65
Media Buyer (covered by commission)			
Web Site Design/Production			
Digital Media Production			
Research	10	\$ 201.89	\$ 2,018.90
Public Relations			
<i>(add additional staff as necessary)</i>			
<b>Other Personnel 2/</b>			
1. All Other Professionals			
2. Clerical			
3.			
4.			
5.			
<b>Administrative Expenses</b>			<b>Annual Total \$</b>
(Billed at actual cost, no mark-up permitted)			
Telecommunications			
Supplies			
Legal & Other Professional			
General administrative			
<b>Grand Total Personnel/Admin Expenses</b>			\$ 253,891.07
<b>Travel</b>			
accordance with State rates, as identified in Appendix			<i>no answer required</i>

# Projected Post-Sandy Loan Assistance Fee Breakdown

Timeframe: 5/1/13 - 4/30/15

PhD Media Breakdown		
MEDIA		TOTAL MEDIA
<b>Spot TV</b>		
300 broadcast / 100 cable: Albany-Schenectady-Troy, Binghamton, Burlington-Plattsburg, New York, Elmira, Utica		\$ 5,824,308.93
<b>Print</b>		
Albany Times Union, Binghamton Press & Bulletin, Elmira Star Gazette, The Evening Sun, Press-Republican, Oneonta Daily Star, Poughkeepsie Journal, The Leader Herald, Hudson Catskill Newspapers, Herkimer Telegram, The Recorder, Newsday, Utica Observer Dispatch, Middletown Times Herald-Record, Cooperstown Crier, Troy Record, Saratogian, Schenectady Daily Gazette, Times Journal News, Sullivan County Democrat, Appalachian Community Press, The Daily Freeman, Glen Falls Post Star, Journal News		\$ 971,800.00
<b>Total Spend</b>		<b>\$ 6,796,108.93</b>

BBDO Fee Breakdown		
ROLE	HOURS	FEE
<b>Account management</b>		
General Description: Manage client relationships and lead development of advertising initiatives.		
Account Management	584	\$72,942.32
<b>TOTAL</b>	<b>584</b>	<b>\$72,942.32</b>
<b>Creative services</b>		
General Description: Develop creative concepts/executions for advertising via design, copywriting, etc.		
Creative Concepting (Design + Copywriting)	280	
<b>TOTAL</b>	<b>280</b>	<b>\$81,113.20</b>

**Production services**

General Description: Produce the final advertising materials via mediums such as TV, print, digital, web, etc.

Pre production (estimates, location scouting for shoot, etc)

- Video/photo shoot
- Editing shoot content
- Shipping of final files
- TOTAL

140  
100  
200  
45  
485

\$97,916.65

**Research & strategy**

General Description: Manage the upfront research and strategy before a creative team is briefed to develop advertising elements.

- Strategic Development
- TOTAL

10  
10

\$2,018.90

PhD Total		\$6,796,108.93
BBDO Total	1359	\$253,891.07
Production ESTIMATE		\$450,000.00
<b>Grand Total</b>		<b>\$7,500,000.00</b>

EXECUTION COPY

**THIRD AMENDMENT**, dated as of March 28, 2014 (the "Third Amendment") to that certain Agreement, dated as of December 1, 2011 (the "Original Agreement"), by and between the NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT, a corporate governmental agency, constituting a political subdivision and public benefit corporation of the State, having an office at 633 Third Avenue, 34<sup>th</sup> Floor, New York, New York 10017 ("ESD") and BBDO USA LLC, a Delaware limited liability company having an office at 1285 Avenue of the Americas, New York, New York 10019 ("BBDO").

WHEREAS, ESD and BBDO entered into the Original Agreement pursuant to which BBDO was contracted to, and continues to, serve ESD as its non-exclusive, full service advertising, marketing, branding, media and communications agency in connection with a program designed to market and promote New York State as an ideal place for businesses to invest and create jobs (generally referred to as the "Open for Business" program and herein referred to as "OFB"); and

WHEREAS, ESD and BBDO subsequently entered into a First Amendment to the Original Agreement dated December 21, 2012 by: (i) adding "Schedule D – Supplemental Budget 2013," to supplement but not replace the Original Agreement; and (ii) to increase the compensation for all services performed and materials provided under the Original Agreement, to an amount not to exceed One Hundred Million Dollars (\$100,000,000); and

WHEREAS, ESD and BBDO subsequently entered into a Second Amendment to the Original Agreement, dated as of July 9, 2013 by, inter alia, adding to the Scope of Services for OFB set forth in the Original Agreement, as amended: (i) a marketing and advertising campaign administered by ESD to promote tourism in the Hurricane Sandy Target Area (as defined in the Second Amendment); and (ii) a campaign to launch and promote the State of New York Storm Recovery Program throughout various counties that have been declared disaster areas pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.); and (iii) amending Article II (Terms and Contract Amount" of the Original Agreement as amended to increase the Compensation for all services to be performed by BBDO to One Hundred and Thirty Six Million Five Hundred Thousand Dollars (\$136,500,000.00) (collectively, the Original Agreement as amended by the First Amendment and the Second Amendment is referred to hereinafter as the "Amended Agreement"); and

WHEREAS, the State Legislature has enacted Section 17 of Chapter 57 of the Laws of 2013, providing inter alia that the NYS Power Authority ("NYPA") is authorized and directed to make a contribution to the State Treasury to the credit of the General Fund, or as otherwise directed in writing by the Director of the Budget, in an amount of up to \$90,000,000 for the state fiscal year commencing April 1, 2013, the proceeds of which will be utilized to support energy-related initiatives of the State or for economic development purposes; and

WHEREAS, the Director of the Budget has, by writing dated January 6, 2014, requested that NYPA transfer the sum of \$50 million to the credit of ESD in furtherance of ESD's Statewide economic development initiatives, which said sum has been so transferred to ESD by NYPA, and

WHEREAS, the OFB program is an integral part of ESD's Statewide economic development initiatives, and BBDO's services under the Amended Agreement in aid of the OFB program further such economic development initiatives by continuing to market and promote New York State as an ideal place for businesses to invest and create jobs; and

WHEREAS, terms used in this Third Amendment but not defined herein shall have the respective meanings set forth in the Original Agreement.

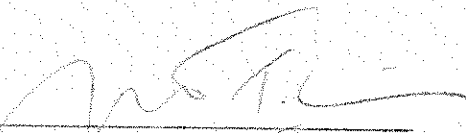
NOW, THEREFORE, in consideration of the payments hereinafter specified, as well as the agreements and the mutual covenants of the parties herein contained, the parties agree to amend the Agreement as follows:

1. The fourth (and last) sentence of Article II ("Term and Contract Amount") of the Amended Agreement is deleted in its entirety and the following is inserted in place thereof: "Compensation for all services performed and materials provided under this Agreement shall not exceed One Hundred Eighty Six Million Five Hundred Thousand Dollars (\$186,500,000)."
2. Except as modified by this Third Amendment, the terms and provisions of the Amended Agreement: (i) shall remain unmodified in all other respects; (ii) are hereby ratified; and (iii) shall remain in full force and effect.
3. This Third Amendment is subject to review and approval of the Office of the State Comptroller ("OSC") pursuant to the Public Authorities Law Section 2879-1 and the regulations issued thereunder, pursuant to notice given by OSC to ESD. Accordingly, this Third Amendment shall not be valid and enforceable, nor shall ESD have any liability of any kind arising from or in connection with this Third Amendment, unless and until OSC approval has been received.
4. This Third Amendment shall not be valid or enforceable unless and until ESD's Board of Directors has authorized execution of this Amendment.


REMAINDER OF PAGE BLANK

IN WITNESS WHEREOF, the Parties heretofore have caused this Agreement to be executed by their respective officers duly authorized as of the date and year first written above.

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT

By:   
Name: Vincent J. Tobin  
Title: CFO

BBDO USA LLC

By:   
Name: Rajat K. Mehta  
Title: SVP - Senior Counsel

APPROVED 5/7 2014  
Charlotta Ebroeyan  
FOR THE STATE COMPTROLLER



STATE OF NEW YORK )

COUNTY OF Westchester ) ss.:

On the 8<sup>th</sup> day of April in the year 2014 before me, the undersigned personally appeared Margaret Tobin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Jane Grogan  
Notary Public

JANE GROGAN  
Notary Public, State of New York  
No. 01GR6028122  
Qualified in New York County  
Commission Expires July 12, 2017

STATE OF NEW YORK )

COUNTY OF Putnam ) ss.:

On the 7 day of April in the year 2014 before me, the undersigned personally appeared Rosalie C. Skinner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Rosalie C. Skinner  
Notary Public

ROSALIE C. SKINNER  
Notary Public, State of New York  
No. 01SK6117070  
Qualified in New York County  
Commission Expires October 18, 2016

November 26, 2013

Dana Perry  
Executive Vice President, Chief Financial Officer  
BBDO New York  
1285 Avenue of the Americas  
New York, New York 10019

Re: First One-Year Extension of the Agreement

Dear Mr. Perry:

Reference is made to that certain Agreement, dated as of December 1, 2011 (the "**Original Agreement**"), by and between the New York State Urban Development Corporation d/b/a Empire State Development, a corporate governmental agency, constituting a political subdivision and public benefit corporation of the State, having an office at 633 Third Avenue, New York, New York 10017 ("**ESD**") and BBDO USA LLC, a Delaware limited liability company having an office at 1285 Avenue of the Americas, New York, New York 10019 ("**BBDO**"), as amended by a First Amendment to the Original Agreement dated December 21, 2012 (the "**First Amendment**"), and as further amended by the Second Amendment to the Original Agreement dated July 9, 2013 (the "**Second Amendment**") (collectively, the Original Agreement as amended by the First Amendment and as further amended by the Second Amendment, the "**Agreement**").


Pursuant to Article II of the Agreement, ESD and BBDO agree to extend the Agreement, which ends on November 30, 2013 for one year, to end on November 30, 2014 (the "**First One-Year Extension of the Agreement**").

Except as modified by this First One-Year Extension of the Agreement, the terms and provisions of the Agreement: (i) shall remain unmodified in all other respects and (ii) shall remain in full force and effect.

ESD and BBDO acknowledge that Article II of the Agreement provides that the First One-Year Extension is subject to the approval of the Office of the State Controller.

AGREED TO BY:

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION d\b\A  
EMPIRE STATE DEVELOPMENT

By:   
Name: Frances A. Walton  
Title: Chief Financial and  
Administrative Officer

BBDO USA LLC

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

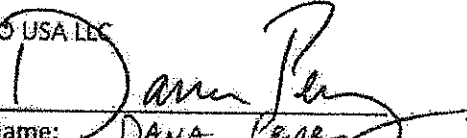
ESD and BBDO acknowledge that Article II of the Agreement provides that the First One-Year Extension is subject to the approval of the Office of the State Controller.

AGREED TO BY:

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT

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


BBDO USA LLC

By:   
Name: DANA PERRY  
Title: EVP CFO BBDO NY

ESD and BBDO acknowledge that Article II of the Agreement provides that the First One-Year Extension is subject to the approval of the Office of the State Controller.

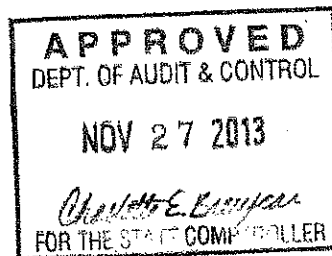
AGREED TO BY:

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION d\b\A  
EMPIRE STATE DEVELOPMENT

By:   
Name: Frances A. Walton  
Title: Chief Financial and  
Administrative Officer

BBDO USA LLC

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



EXECUTION COPY

FOURTH AMENDMENT, dated as of September 19<sup>th</sup>, 2014 (the "Fourth Amendment") to that certain Agreement, dated as of December 1, 2011 (the "Original Agreement"), by and between the NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT, a corporate governmental agency, constituting a political subdivision and public benefit corporation of the State, having an office at 633 Third Avenue, 34<sup>th</sup> Floor, New York, New York 10017 ("ESD") and BBDO USA LLC, a Delaware limited liability company having an office at 1285 Avenue of the Americas, New York, New York 10019 ("BBDO").

WHEREAS, ESD and BBDO entered into the Original Agreement pursuant to which BBDO was contracted to, and continues to, serve ESD as its non-exclusive, full service advertising, marketing, branding, media and communications agency in connection with a program designed to market and promote New York State as an ideal place for businesses to invest and create jobs (generally referred to as the "Open for Business" program and herein referred to as "OFB"); and

WHEREAS, ESD and BBDO subsequently entered into a First Amendment to the Original Agreement dated December 21, 2012 by: (i) adding "Schedule D – Supplemental Budget 2013," to supplement but not replace the Original Agreement; and (ii) to increase the compensation for all services performed and materials provided under the Original Agreement, to an amount not to exceed One Hundred Million Dollars (\$100,000,000); and

WHEREAS, ESD and BBDO subsequently entered into a Second Amendment to the Original Agreement, dated as of July 9, 2013 by, inter alia, adding to the Scope of Services for OFB set forth in the Original Agreement, as amended: (i) a marketing and advertising campaign administered by ESD to promote tourism in the Hurricane Sandy Target Area (as defined in the Second Amendment); and (ii) a campaign to launch and promote the State of New York Storm Recovery Program throughout various counties that have been declared disaster areas pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.); and (iii) amending Article II (Terms and Contract Amount" of the Original Agreement as amended to increase the Compensation for all services to be performed by BBDO to One Hundred and Thirty Six Million Five Hundred Thousand Dollars (\$136,500,000.00); and

WHEREAS, the State Legislature enacted Section 17 of Part HH of Chapter 57 of the Laws of 2013, providing inter alia that the NYS Power Authority ("NYPA") is authorized and directed to make a contribution to the State Treasury to the credit of the General Fund, or as otherwise directed in writing by the Director of the Budget, in an amount of up to \$90,000,000 for the state fiscal year commencing April 1, 2013, the proceeds of which will be utilized to support energy-related initiatives of the State or for economic development purposes; and

WHEREAS, the Director of the Budget, by writing dated January 6, 2014, requested that NYPA transfer the sum of \$50 million to the credit of ESD in furtherance of ESD's Statewide economic development initiatives, which said sum has been so transferred to ESD by NYPA, and

WHEREAS, the OFB program is an integral part of ESD's Statewide economic development initiatives, and BBDO's services under the Amended Agreement in aid of the OFB program further such economic development initiatives by continuing to market and promote New York State as an ideal place for businesses to invest and create jobs; and

WHEREAS, ESD and BBDO accordingly entered into a Third Amendment to the Original Agreement, dated as of March 28, 2014 by amending Article II ("Terms and Contract Amount" of the Original Agreement to increase the Compensation for all services to be performed by BBDO to One Hundred and Eighty Six Million Five Hundred Thousand Dollars (\$186,500,000.00) (collectively, the Original Agreement as amended by the First Amendment, the Second Amendment and the Third Amendment is referred to hereinafter as the "Amended Agreement"); and

WHEREAS, based upon the aforementioned Section 17 of Part HH of Chapter 57 of the Laws of 2013, the Director of the Budget, by writing dated January 6, 2014, requested that NYPA transfer the further sum of \$25 million to the credit of ESD in furtherance of ESD's Statewide economic development initiatives, which said sum has been so transferred to ESD by NYPA, and

WHEREAS, terms used in this Fourth Amendment but not defined herein shall have the respective meanings set forth in the Original Agreement.


NOW, THEREFORE, in consideration of the payments hereinafter specified, as well as the agreements and the mutual covenants of the parties herein contained, the parties agree to further amend the Amended Agreement as follows:

1. The fourth (and last) sentence of Article II ("Term and Contract Amount") of the Amended Agreement is deleted in its entirety and the following is inserted in place thereof: "Compensation for all services performed and materials provided under this Agreement shall not exceed Two Hundred Eleven Million Five Hundred Thousand Dollars (\$211,500,000)."
2. Except as modified by this Fourth Amendment, the terms and provisions of the Amended Agreement: (i) shall remain unmodified in all other respects; (ii) are hereby ratified; and (iii) shall remain in full force and effect.
3. This Fourth Amendment is subject to review and approval of the Office of the State Comptroller ("OSC") pursuant to the Public Authorities Law Section 2879-1 and the regulations issued thereunder, pursuant to notice given by OSC to ESD. Accordingly, this Fourth Amendment shall not be valid and enforceable, nor shall ESD have any liability of any kind arising from or in connection with this Third Amendment, unless and until OSC approval has been received.

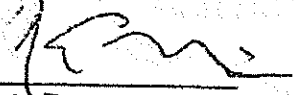
4. This Fourth Amendment shall not be valid or enforceable unless and until ESD's Board of Directors has authorized execution of this Amendment.

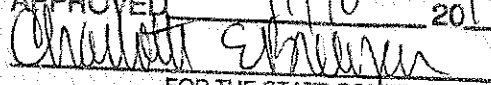
IN WITNESS WHEREOF, the Parties heretofore have caused this Agreement to be executed by their respective officers duly authorized as of the date and year first written above.

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT

By:   
Name: Mehul J. Patel  
Title: Chief of Staff

BBDO USA LLC

By:   
Name: Raj E. Murgar  
Title: SUP-SOURCE COUNSEL

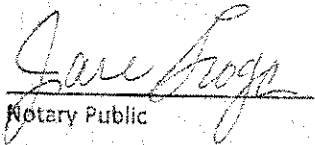
APPROVED 11/10 2014  
  
FOR THE STATE COMPTROLLER

PC \$ 25,000,000.00  
/s/



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

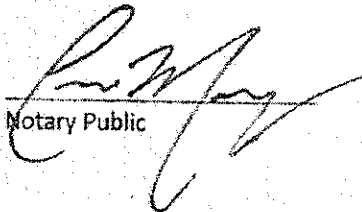
On the 19<sup>th</sup> day of September in the year 2014 before me, the undersigned personally appeared Mehul Patel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

JANE GROGAN  
Notary Public, State of New York  
No. 01GR6028122  
Qualified in New York County  
Commission Expires July 19, 20 17

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 18 day of September in the year 2014 before me, the undersigned personally appeared Ronald E McQueen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

CRAIG MICHAEL MERSKY  
Notary Public, State of New York  
No. 02ME6179911  
Qualified in Kings County  
Commission Expires December 31, 2015