

**SCHEDULE A-S**  
**CONDITIONS APPLICABLE TO SUBRECIPIENT AGREEMENTS**

**AGREEMENT**

between

**LOWER MANHATTAN DEVELOPMENT CORPORATION**

*(CFDA No. 14.228)*

and

**[NAME OF SUBRECIPIENT]**

for

**[NAME OF] PROGRAM**

THIS AGREEMENT, entered as of the \_\_\_\_ the day of \_\_\_\_\_ 2006 by and between LOWER MANHATTAN DEVELOPMENT CORPORATION (“Grantee” or “LMDC”), and [INSERT NAME OF SUBRECIPIENT] (“Subrecipient”).

WHEREAS, Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Public Law 107-38), Section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 2002 (Public Law 107-73), and Chapter 13 of the Defense Appropriations Act of 2002 (Public Law 107-117) in accordance with the regulations, waivers, and alternative requirements issued by the United States Department of Housing and Urban Development (“HUD”), including but not limited to those found at Title 24 of the Code of Federal Regulations (“CFR”) Part 570 concerning Community Development Block Grants (“CDBG”) and in the Federal Register at 67 FR 12042 and 67 FR 36017; and

WHEREAS, Grantee wishes to engage Subrecipient to assist Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

*[Insert general program background and description]*

A. Activities

Subrecipient will be responsible for administering the [NAME OF PROGRAM] Program in a manner satisfactory to Grantee and consistent with any standards required as a condition of providing these funds. Such Program will include the following activities eligible under HUD’s CDBG Program and the detailed scope of services in attached Schedule B, if any:

Program Delivery

Activity #1 *[Complete description of activity to be undertaken including what products or services are to be performed, where they are to be provided, for whom they are to be provided, how they are to be provided]*

Activity #2 “

Activity #3 “

Activity #4 “

General Administration

Subrecipient shall perform, at its expense unless otherwise provided herein, any and all general administrative services such as accounting and auditing services in support of the above activities and other requirements of this Agreement.

National Objectives

Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet one or more of the CDBG program's National Objectives, as defined in 24 CFR § 570.208: (1) benefit low- and moderate-income persons, (2) aid in the prevention or elimination of slums or blight, or (3) meet community development needs having a particular urgency.

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C. Levels of Performance

In addition to the normal administrative services required as part of this Agreement, Subrecipient agrees to provide specific levels of program services for each activity set forth in Section I.A above, such as the percentage of the activity to be completed by a specific date or other measurable milestones.

<u>Activity #</u>	<u>Performance Target</u>	<u>Estimated Completion Date</u>
1	[insert task or level]	[insert target date]
2	[insert task or level]	[insert target date]
3	[insert task or level]	[insert target date]
4	[insert task or level]	[insert target date]
	Program Completion	[insert target date]

[In lieu of putting the levels above, these performance indicators may be included on Exhibit A-1 Levels of Performance. The template Exhibit A-1 lists various types of indicators and is formatted for quarterly milestones. This form should be altered to reflect relevant and measurable performance indicators for the project.]

D. Staffing

[If subrecipient staff costs will be funded through this agreement, provide list of staff and time commitments to be allocated to each activity specified in subsection I.A. above. If not, indicate: “No staff costs of Subrecipient shall be funded under this Agreement.”.]

E. Performance Monitoring

The Grantee will monitor the performance of Subrecipient against goals and performance standards required herein. Substandard performance, as measured by Grantee based on the levels identified in Section I.C above, the activities identified in Section I.A above, the schedule identified in Section II below, and the HUD requirements, will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by Subrecipient within a reasonable period of time after being notified by Grantee, contract suspension or termination procedures will be initiated. Such suspension or termination may be initiated by Grantee and conducted in accordance with the provisions of 24 CFR § 570.503(b)(7), referencing 24 CFR §§ 85.43 and 85.44, on Subrecipient's material failure to comply with any term of the award as well as for the convenience of Grantee.

II. TIME OF PERFORMANCE

Services of Subrecipient shall start on [DATE] and end no later than [DATE]. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which Subrecipient remains in control of CDBG funds or other assets, including program income.

III. BUDGET

<u>Line Item:</u>	<u>Amount:</u>
Funded Program Items	
Consultant	\$ _____
Construction	\$ _____
Salaries	\$ _____
Other	\$ _____
Subtotal LMDC Program Funding	\$ _____
Other Program Funding (if any)	\$ _____
TOTAL	\$ _____

Any indirect costs charged must be consistent with the conditions of Section VIII.C(2) of this Agreement. A detailed budget is attached as Exhibit A-2, showing a breakdown of expenses for the Program, and indicating funds to be provided by any funding sources other than LMDC. Subrecipient must notify Grantee of any material changes to this detailed budget. Changes that may impact Program activities, performance, or schedule must be approved in writing by both the Grantee and Subrecipient as an update to Exhibit A-2.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by Grantee under this Agreement shall not exceed [\$AMOUNT]. Consistent with the payment procedures set forth in Section VIII.C.3 below, payments shall be made by Grantee to Subrecipient on a reimbursement basis for actual expenses incurred in accordance with this Agreement pursuant only to Subrecipient reimbursement requests that include documentary evidence of expenditures or obligations to pay, including copies of appropriate vendor invoices and receipts, which documentary evidence shall be

acceptable to LMDC. Final payment(s) by Grantee shall be made only on Subrecipient's completion of all work and submission of all reports required by this Agreement.

Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Section III herein and in accordance with performance as specified in Sections I and II. Expenses for general administration shall only be paid against the line item budgets specified in Section III above, if provided in Section I.D above, and in accordance with corresponding levels of performance in Section I.C above. Any funds that are not expended or not expended in accordance with the applicable guidelines or the restrictions set forth herein shall be returned promptly to Grantee in accordance with the requirements of 24 CFR § 570.504(b)(8). Payments may be contingent upon certification of Subrecipient's financial management system in accordance with the standards specified in 24 CFR § 84.21. Final payment(s) by Grantee shall be made only upon Subrecipient's completion of all work and submission of all reports required by this Agreement.

V. NOTICES

Communication and details concerning this Agreement shall be directed as follows:

<u>Grantee's Representative</u> [Representative's Name] [Title] Lower Manhattan Development Corp One Liberty Plaza, 20 <sup>th</sup> Floor New York, NY 10006 (212) 962-2300 (212) 962-2431 (fax)	<u>Subrecipient's Representative</u> [Representative's Name] [Title] [Subrecipient] [Address] New York, NY [zip] [Phone number] [Fax number] (fax)
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VI. SPECIAL CONDITIONS

A. Public Involvement

In accordance with LMDC's inclusive and open public process, Subrecipient will make best efforts to include the public in program planning, design and development. This may include presentations on the program design and development to the local community board(s) and other local civic and community groups as well as presentations in connection with any related environmental or regulatory review process conducted by LMDC. Subrecipient will incorporate public comments in the final program design and implementation as appropriate. Subrecipient will report on efforts to obtain and incorporate public involvement in its monthly Progress Reports.

B. Other Conditions

*[Identify any special conditions specific to the particular activity or Subrecipient, including any matching, supplemental, or alternative funding requirements and requirements for LMDC review and approval of aspects of the project such as design.]*

If LMDC is not funding 100% of the Program costs, Subrecipient shall nevertheless submit to LMDC documentation confirming the actual completion of the Program and a final budget for the Program.

C. Public Information

If any public announcements are to be made regarding the initiation, progress, or completion of the Program, Subrecipient will provide advance notice and copy of such announcement and provide appropriate recognition of LMDC and HUD in accordance with VII.F below.

VII. GENERAL CONDITIONS

A. General Compliance

Subrecipient agrees to comply with the requirements of the HUD regulations concerning CDBG, 24 CFR Part 570, as modified by the waivers and alternative requirements applicable to LMDC and its subrecipients that are published at 67 FR 12042 and 67 FR 36017. Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as Subrecipient is an independent contractor.

C. Hold Harmless

Subrecipient shall hold harmless, defend and indemnify Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance and Bonding

Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from Grantee.

Subrecipient shall comply with the bonding and insurance requirements of 24 CFR §§ Part 84.31 and 84.48, including but not limited to the following insurance to the extent stated:

1. 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. LMDC shall be named as an additional insured.

2. Automobile Liability and Property Damage Insurance, if applicable, in an amount not less than \$1,000,000 combined single limit for both bodily injury and property damage.

3. Workers' Compensation coverage for employer liability and disability benefits as required by the State of New York.

4. Excess Liability Insurance in an amount not less than \$10,000,000.

5. Certificates of Insurance for all of the aforementioned coverages shall be provided to LMDC prior to the commencement of work under this Agreement. LMDC shall be named as an additional insured on each such certificate.

#### F. Grantor and Grantee Recognition

Subrecipient shall insure recognition of the role of HUD and of LMDC in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled, where practicable, as to the role of HUD and of the LMDC. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. See Exhibit A-3 for general guidance in recognizing HUD as Grantor and LMDC as Grantee.

#### G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

#### H. Suspension or Termination

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. Partial terminations of the Scope of Service in Section I.A above may only be undertaken with the prior approval of Grantee. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other

materials prepared by Subrecipient under this Agreement shall, at the option of Grantee, become the property of Grantee, and Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Grantee may suspend or terminate this Agreement, in whole or in part, if Subrecipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and Grantee may declare Subrecipient ineligible for any further participation in Grantee's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe Subrecipient is in noncompliance with any applicable rules or regulations, Grantee may withhold up to fifteen (15) percent of said contract funds until such time as Subrecipient is found to be in compliance by Grantee, or is otherwise adjudicated to be in compliance.

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

Subrecipient agrees to comply with 24 CFR §§ 84.21-84.28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### 2. Cost Principles

Subrecipient shall administer the Program in conformance with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," A-122 "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### B. Documentation and Record-Keeping

#### 1. Records to be Maintained

Subrecipient shall maintain all records required by the HUD regulations specified in 24 CFR § 570.506 that are pertinent to the activities to be funded under this Agreement. A partial list of required records is included in Exhibit A-4. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records supporting reports demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records supporting reports required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

f. Financial records as required by 24 CFR §§ 85.20 and 570.502; and

g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570 (24 CFR §§ 570.600-570.614).

## 2. Retention

Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the completion or termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment or for a reasonable period of time as requested by Grantee. Notwithstanding the above, if there is a litigation, claim, audit, negotiation or other action that involves any of the records cited and that has started before the expiration of the four-year period, such records must be retained until completion of the action and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

Subrecipient shall index the records that must be maintained and retained in this subparagraph B. At the end of the four-year period following the completion or termination of all activities funded under this Agreement, or on earlier request by LMDC, Subrecipient shall produce to LMDC the index and all records maintained in accordance with this subparagraph B.

## 3. Personal Data

Subrecipient shall maintain personal data demonstrating eligibility for individual services provided. Such data shall include, but not be limited to, name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

## 4. Disclosure

Subrecipient understands that personal information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of Grantee's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited by the Privacy Act, 5 U.S.C. § 552a, unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent or guardian.

## 5. Property Records

Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR § 570.503(b)(8), where applicable.

## 6. Close-Outs



Subrecipient's obligation to Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to Grantee), and determining the custodianship of records.

#### 7. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to Grantee, HUD, their respective auditors, and their designees or the Federal Government, at any time during normal business hours, as often as Grantee or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Subrecipient shall provide office support services necessary to ensure timely production of records, including but not limited to (i) availability of office space, telephones, computers, telephone, and data lines, (ii) personnel to provide such services and (iii) access to records in electronic format. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit, commonly referred to as a Single Audit, conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

#### C. Reporting and Payment Procedures

##### 1. Program Income

Subrecipient shall report quarterly all program income as defined at 24 CFR § 570.500(a) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by Subrecipient shall comply with the requirements set forth at 24 CFR § 570.504. By way of further limitations, Subrecipient may only use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to Grantee at the end of the contract period. Any interest earned on cash advances from the United States Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to Grantee.

##### 2. Indirect Costs

If indirect costs are charged, Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to Grantee for approval, in a form specified by Grantee.

##### 3. Payment Procedures

In accordance with the payment terms in Section IV above, Grantee will pay to Subrecipient funds available under this Agreement based upon information submitted by Subrecipient and consistent with any approved budget

and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by Grantee on behalf of Subrecipient.

#### 4. Reporting Requirements

Subrecipient shall submit the following reports:

Monthly: (a) Progress Report to Grantee substantially in the form attached hereto as Exhibit A-5, or as may be updated or supplemented by Grantee on 30 days notice to Subrecipient. The monthly Exhibit A-5 shall reflect the overall project or program status, including recent progress or delays. These reports shall describe progress towards the specific performance benchmarks listed in Section 1.C, Exhibit A-1, and Exhibit A-9 (refer to Section XI.E.), if applicable. The report shall also summarize Subrecipient's monitoring of its contractors, referred to herein as "subcontractors." Subrecipient may use Exhibit A-6 as a guideline for monitoring such subcontractors.

(b) For construction-related projects, monthly submission of completed Schedule C-Attachment C1 (Workforce Employment Utilization Report) and Schedule C-Attachment C2 (MBE/WBE Compliance Report Construction), or similar form acceptable to LMDC as set forth in Section X.B (2) below.

Quarterly: (a) Completed Exhibit A-7 (Workforce Utilization Report for Section 3 Clause) and Exhibit A-8 (September 11<sup>th</sup> Workforce Report), or similar form acceptable to the Grantee as set forth in Section Section X.C (3) and X.C(4) below.

(b) For non-construction projects, quarterly submission of completed Schedule C-Attachment C1 (Workforce Employment Utilization Report) and Schedule C-Attachment C2 (MBE/WBE Compliance Reports LMDC Non-Construction Contract), or similar form acceptable to the Grantee.

#### D. Procurement

##### 1. Compliance

Subrecipient shall comply with current Grantee policies concerning the procurement of subcontractors and purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policies as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to Grantee upon termination or completion of this Agreement.

##### 2. Standards

Subrecipient shall procure all materials, property, or services through a fair and open process in accordance with the requirements of 24 CFR § 85.36, and shall subsequently follow 24 CFR Part 85 as modified by 24 CFR § 570.502, covering utilization and disposal of property.

3. Travel

Subrecipient shall obtain written approval from Grantee for any travel outside the New York City metropolitan area with funds provided under this Agreement.

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), as amended, and implementing regulations at 49 CFR Part 24 and 24 CFR § 570.606(b); (b) the requirements of 24 CFR § 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements of 24 CFR § 570.606(d) governing optional relocation policies. Subrecipient shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

Subrecipient agrees to comply with all applicable civil rights laws, rules, and ordinances of the City of New York and the State of New York and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12106 and 12086.

2. Nondiscrimination

Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. Subrecipient will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and 24 CFR §§ 670.601 and 670.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that Grantee and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

#### 4. Section 504

Subrecipient agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), which prohibits discrimination against the handicapped in any Federally assisted program. The Grantee shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

#### B. Affirmative Action

##### 1. Compliance with E.O. 11246

Subrecipient agrees that it shall be committed to carry out, pursuant to Grantee's specifications, an Affirmative Action Program to provide equal opportunity in employment in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

##### 2. M/WBE

Subrecipient will use its best efforts to afford small and minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and woman-owned business enterprise" ("M/WBE") means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, 'minority group members' are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. To qualify as an M/WBE, business enterprises must be a Certified Minority/ Women Business as determined and listed by the State of New York. Subrecipient may rely on its own certification program if it is submitted to LMDC and such designation is approved in writing by LMDC in advance.

Subrecipient shall provide written or electronic notification to Grantee no later than five days prior to posting notification of procurement for goods, services, and or construction related activities contemplated by this Agreement. This notification shall include type of procurement and information on how to obtain bid documents. Subrecipient shall provide Grantee written or electronic notification to Grantee no later than five days after award of contract for goods, services, or construction related activities contemplated by this Agreement. This

notification shall include name of contractor, contact name and phone number for contractor, type of services, and contract size. Grantee may publish notification of procurement and award of contract on website of Grantee and in regular mailings to small businesses, minority and women owned organizations, government agencies, and interested individuals. LMDC may facilitate meetings between contractors and the above groups for contracts awarded over \$1 million using HUD CDBG funds granted to the subrecipient by LMDC. Contractors shall be required to attend these meetings.

Subrecipient shall comply with and cause each of its subcontractors to comply with the provisions of Schedule C, attached to and made a part of this Agreement, relating to non-discrimination. Subrecipient shall make best efforts to comply with the provisions of Schedule C relating to affirmative action.

### 3. Access to Records

Subrecipient shall furnish and cause each of its subcontractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by Grantee, HUD or its agent, or other authorized Federal officials for purposes of a compliance review, audit or investigation to ascertain compliance with the rules, regulations and provisions stated herein.

### 4. Notifications

Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Subrecipient, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

### 5. EEO/AA Statement

Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

### 6. Subcontract Provisions

Subrecipient will include the provisions of Sections X.A (Civil Rights) and X.B (Affirmative Action) in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its subcontractors.

## C. Employment Restrictions

### 1. Prohibited Activity

Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; lobbying; political patronage; and nepotism activities.

## 2. Labor Standards

Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Grantee for review upon request.

Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by HUD pertaining to such contracts and with applicable requirements of the regulations of the United States Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Subrecipient of its obligation, if any, to require payment of the higher wage. In all such contracts subject to such regulations, Subrecipient shall cause or require to be inserted in full provisions meeting the requirements of this paragraph.

## 3. "Section 3" Clause

### a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon Grantee, Subrecipient and any of Subrecipient's subcontractors. Failure to fulfill these requirements shall subject Grantee, Subrecipient and any of Subrecipient's subcontractors, their successors and assigns, to those sanctions specified by this Agreement. Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701).

Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.

Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

Subrecipient certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

b. Notifications. Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts. Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

d. Reporting. Subrecipient shall submit quarterly reports to Grantee, substantially in the form attached hereto as Exhibit A-7, regarding its efforts to satisfy the obligations contained in subclauses 3(a)-(c) above.

4. September 11, 2001 Recovery

a. Compliance. Subrecipient will make efforts to employ on this Program individuals affected by September 11, 2001, specifically, but not limited to, individuals who (a) lost wages from their work below Houston Street due to September 11, 2001, or (b) lived below Houston Street on September 11, 2001 or currently reside there.

b. Reporting. Subrecipient shall submit quarterly reports to Grantee substantially in the form attached hereto as Exhibit A-8, regarding its efforts to satisfy the obligations as set forth in this subsection 4.

D. Conduct

1. Assignability

Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of Grantee thereto; provided, however, that claims for money due or to become due to Subrecipient from Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to Grantee.

2. Subcontracts

a. Approvals. Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of Grantee prior to the execution of such subcontract agreement. Prior to such approval being given, Grantee must be provided with a completed LMDC Standard Business Background Questionnaire or its equivalent, for each proposed subcontractor. Subrecipient may provide its standard background questionnaire as an equivalent, if it is submitted to LMDC and is approved in writing by LMDC in advance.

b. Monitoring. Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in the Monthly Progress Reports (see Exhibit A-5) as part of the Reporting Requirements set forth in Section VIII.C above and supported with documented evidence of any actions taken to correct areas of noncompliance. Exhibit A-6 is provided as a guideline for Subrecipient to use in monitoring its subcontractors.

c. Content. Subrecipient shall cause provisions of this Agreement from and including Section VII through Section XI of this agreement, except as otherwise expressly contemplated herein, to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process. Subrecipient shall comply with the Procurement provisions of Section VIII.D above and undertake to ensure



that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be given to Grantee along with documentation concerning the selection process.

3. Hatch Act

Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Conflict of Interest

Subrecipient agrees to abide by the provisions of 24 CFR § 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Subrecipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of Subrecipient, or of any designated public agencies or subrecipients that are receiving funds from HUD under the CDBG program.

5. Lobbying

Subrecipient hereby certifies that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the certification language of this subparagraph 5 be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants,

loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly:

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

6. Copyright

If this Agreement results in any copyrightable material or inventions, Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

7. Religious Organization

Subrecipient agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR §570.200(j).

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C. § 7401, *et seq.*;

2. Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

3. Environmental Protection Agency ("EPA") regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001), Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR § 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement be conducted.

#### D. Historic Preservation

Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

#### E. Environmental Performance Commitments

Subrecipient agrees to implement the Lower Manhattan environmental performance commitments set forth in Exhibit A-9, attached hereto. Subrecipient will identify the specific measures implemented and may include additional commitments and specific measures as part of the project-specific governmental entities coordination plan, construction environment plan, design documents, and contracts. Environmental Performance Commitments are reported in Exhibit A-5 (Monthly Progress Report).

## XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.