

SCHEDULE A

TERMS AND CONDITIONS APPLICABLE TO LMDC CONSULTANT AGREEMENTS

ARTICLE I

RELATION OF CONSULTANT TO LMDC

1.1 SUPERVISION BY LMDC. The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of LMDC provided that neither LMDC's exercise nor failure to exercise such supervision and direction shall relieve Consultant of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement. The specific services to be performed by Consultant, the fees to be paid, and the required deliverables shall be set forth in Schedule B to this Agreement and in any written work orders authorized by LMDC under the scope of work set forth in Schedule B. Consultant may not undertake work on behalf of LMDC that is beyond the terms of Schedule B and, if required, authorized written work orders.

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

1.3 APPROVAL OF SUBCONSULTANTS. Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of LMDC, which LMDC may grant or withhold in its sole discretion. Consultant shall inform LMDC in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant. Such authorized use of a Subconsultant will not relieve Consultant of any of its obligations or liabilities under this Agreement. Consultant will supervise and be responsible for the performance of the Subconsultant. Consultant shall consult and cooperate with LMDC's Representative and Project Manager-MWBE Monitoring to identify opportunities for participation as Subconsultants by Minority and Women-owned Business Enterprises.

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

1.5 LMDC'S REPRESENTATIVE. LMDC will designate in writing to Consultant an individual who will serve as LMDC's Representative and regular point of contact for Consultant in

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regard to this Agreement and Consultant's services and obligations hereunder. LMDC may from time to time change this designation by written notification to Consultant.

1.6 APPROVALS OR ACCEPTANCE BY LMDC. Whenever action is to be taken, or approval or acceptance given, by LMDC, such action, approval or acceptance shall be deemed to have been taken or given only if so taken or given by LMDC's Representative or by another officer or employee of LMDC duly designated by such Representative to represent LMDC in connection therewith. LMDC's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by Consultant hereunder shall in no way relieve Consultant of responsibility and/or liability for such material.

1.7 CONFLICT-OF-INTEREST. Consultant represents and warrants that:

(a) Consultant does not have, and will not acquire, (i) any interest, direct or indirect, present or prospective, in the project to which Consultant's work relates or the real estate or other property which is the subject of the project, or in the immediate vicinity thereof, (ii) any other interests or relationships that conflict with or would reasonably appear to conflict with LMDC's interest in obtaining services under this Agreement, and has not employed and will not employ in connection with work to be performed hereunder any person or entity having any such interest or relationship.

(b) No officer, employee, agent or director of LMDC shall be permitted by Consultant to share in any benefit to Consultant that arises from Consultant's work hereunder.

(c) Consultant shall not permit any officer, employee, agent or director of LMDC 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, association, or other organization in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of LMDC be permitted by Consultant to have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(d) Consultant shall cause, expressly for the benefit of LMDC, every contract or agreement with any Subconsultant to include the representations contained in subsections (a), (b), and (c) of this Section 1.7. Consultant will take such action in enforcing such provisions as LMDC may direct.

(e) If Consultant becomes aware of any conflict or appearance of conflict prohibited by this section, Consultant shall promptly disclose the facts of such conflict to the LMDC Representative. In the absence of a written waiver from the Representative, Consultant will forfeit (and if already paid, will return to LMDC) any fees or expenses incurred while Consultant was in violation of this section.

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(f) For purposes of this section, interests and relationships of, and benefits to, a member of a person's family shall be deemed to be interests and relationships of, and benefits to, such person.

1.8 NO BROKER. Consultant represents that it has not employed any third party, 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. Consultant shall promptly give written notice to the LMDC's Representative and Chief Financial Officer of any circumstance that may (a) increase Consultant's fees or reimbursable expenses, or the number of hours necessary to perform the work, or (b) delay the agreed on date of completion of the work ("Completion Date"), or any milestone, or extend the Completion Date.

1.91 QUALITY. Consultant's services shall at all times be timely, professional, and consistent with (a) the terms of this Agreement and any Work Orders thereunder, and (b) the presentation of Consultant's capabilities in its response to any RFP or RFQ relating to this engagement.

1.92. THIS AGREEMENT. This agreement consists of this Schedule A, Schedule B, and any attachments hereto and thereto, the cover page executed by the parties, and any Work Orders executed hereunder.

1.93. SECTION HEADINGS. Article and Section headings in this Schedule A are solely for the convenience of the reader and will not affect the interpretation of this Agreement.

ARTICLE II

DOCUMENTS AND RECORDS

2.1 OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS. All material ("Material," which shall include, but not be limited to, plans, drawings, reports, drafts, notes, photographs, charts, programs, models, specimens, specifications, databases, spreadsheets, and other documents and material, including electronically stored material), prepared, developed, created, or worked on by Consultant under this Agreement, shall be and remain the exclusive property of LMDC, and will, to the fullest extent permitted by applicable law, be deemed works made for hire. Consultant hereby assigns to LMDC all of Consultant's right, title, and interest in and to the Material and to any intellectual property rights related thereto, including, without limitation, any rights in the nature of moral rights. LMDC shall have, without limitation, the right to publish, transfer, sell, license and use all or any part of such Material (including without limitation derivative works therefrom) without payment of any royalty, charge or other compensation to Consultant beyond the fees and reimbursements provided for in this Agreement.

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Upon request of LMDC from time to time and during any stage of the work, Consultant shall deliver all such materials to LMDC (together with any perpetual, royalty-free, non-exclusive licenses needed to access and use such Material based on the form or medium in which such Material exists), and at LMDC's request, take all actions and execute all documents LMDC reasonably requests to perfect its rights hereunder, including, without limitation rights under trademark, copyright, and patent law.

2.2 MAINTENANCE OF RECORDS. Except as otherwise provided by LMDC, Consultant shall until the later of six years after either the completion of its services hereunder or the termination of this Agreement by LMDC retain, maintain, and index the original books, documents, materials, and other records created or collected in the course of Consultant's performance of its obligations under this Agreement. In addition, Consultant shall, and require any and all Subconsultants to, until the later of six years after either the completion of its services hereunder or the termination of this Agreement by LMDC, maintain (a) complete and correct records of time spent by Consultant and any Subconsultants in the performance of its obligations under this Agreement, and (b) complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant and any Subconsultants in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant and any Subconsultants in performing its obligations hereunder. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses with invoices submitted in accordance with Article VI and other provisions of this Agreement.

2.3 SUBMISSION AND PRODUCTION OF RECORDS. At any time during the term of this Agreement and for six years thereafter, Consultant shall make all records available to LMDC, the United States Department of Housing and Urban Development ("HUD"), or their authorized representatives for review and audit at all such reasonable times as LMDC shall from time to time request. Within six years following the completion of Consultant's services hereunder or the termination of this Agreement, or on earlier request by LMDC, Consultant shall produce the index and all records maintained by Consultant pursuant to Section 2.2 above.

ARTICLE III

TERMINATION

3.1 FOR CAUSE.

(a) LMDC may terminate this agreement for cause if (i) at any time Consultant's services do not satisfy the requirements of section 1.91, (ii) Consultant fails to comply with a lawful instruction from LMDC's Representative, (iii) any representation or warranty made by Consultant in section 1.7 is breached, (iv) Consultant fails to comply with any law, order, regulation, or other legally binding authority to which it or LMDC is subject, (v) Consultant breaches section 4.3, (vi) without limiting the scope of foregoing clauses (i) through (v), Consultant materially breaches any other term of this Agreement, or (vii) any act or omission of a Subconsultant

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would have been grounds for termination hereunder had such Subconsultant been the Consultant hereunder.

- (b) Such termination shall be in addition to any other remedies or claims with respect to the underlying facts.
- (c) LMDC may, but is not required to, exercise such right of termination immediately upon learning of the grounds therefor, and termination shall be effective immediately upon LMDC's communication of such to Consultant orally or in writing (including by email), provided that LMDC will promptly confirm in writing any oral notification.
- (d) LMDC will pay Consultant for, in accordance with and subject to the requirements of this Agreement, any satisfactory services rendered and reimbursable expenses incurred prior to the existence of the grounds for such termination, and the terms of this Agreement shall continue to govern such services and expenses. LMDC shall have the right to set off against any such amounts any damages suffered by LMDC as result of any breach of this Agreement. LMDC will have no obligation to make, and Consultant shall return to LMDC, any payments to Consultant for services rendered or reimbursable expenses incurred from and after the existence of the grounds for such termination.
- (e) Consultant agrees to cause any agreement entered into by Consultant with any Subconsultant to provide for termination for cause by Consultant similar to the provisions of this Section 3.1.

3.2 FOR CONVENIENCE. At any time, LMDC, in its sole discretion, may terminate this Agreement or postpone or delay all or any part of the Agreement on thirty (30) days written notice to Consultant. In the event of such termination, postponement, or delay, LMDC shall pay Consultant for, in accordance with and subject to the requirements of this Agreement, any satisfactory services rendered and reimbursable expenses incurred prior to the effective date of such termination, postponement, or delay, and the terms of this Agreement shall continue to govern such services and expenses. Consultant agrees to cause any agreement entered into by Consultant with any Subconsultant to provide for termination for convenience by Consultant similar to the provisions of this Section 3.2.

ARTICLE IV

PROVISIONS REQUIRED BY LAW, ASSIGNMENTS

4.1 CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS. Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement

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with the same effect as if set forth in full. Such laws shall include, but are not limited to, the laws referenced in this Section 4.1.

Consultant shall comply with all applicable HUD guidelines relating to Community Development Block Grant (“CDBG”) funding, as modified or waived with respect to LMDC and published by HUD at 67 F.R. 12707 and 67 F.R. 36017. Consultant shall comply with applicable provisions of the Housing and Community Development Act of 1974, as amended, section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Public Law 107-73), the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Public Law 107-38), and other applicable laws, including but not limited to:

- (a) Anti-discrimination and Labor Laws, including but not limited to:
 - (1) The Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) as supplemented by HUD regulations (24 CFR part 135) with respect to efforts to provide to the greatest extent feasible employment and other economic opportunities to low- and very low-income individuals. Consultant will be required to report on its efforts and the results of such efforts on a quarterly basis;
 - (2) Nondiscrimination in program administration and activities (29 U.S.C. § 794, 42 U.S.C. § 5309(a) and § 6101 *et seq.*);
 - (3) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
 - (4) The Fair Housing Act (42 U.S.C. §§ 3601-20);
 - (5) The Copeland “Anti-Kickback” Act (18 U.S.C. § 874) as supplemented in the U.S. Department of Labor (“DOL”) regulations (29 CFR part 3) with respect to all contracts for construction or repair;
 - (6) The Davis-Bacon Act (42 U.S.C. § 5310, 40 U.S.C. §§ 276a to 276a-7), as supplemented by DOL regulations (29 CFR part 5), with respect to construction contracts in excess of \$2000; and
 - (7) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by DOL regulations (29 CFR part 5) with respect to construction contracts in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.

- (b) Safe and Accessible Facilities and Services. Consultant must provide safe and accessible facilities and services in accordance with applicable law, including but not limited to:
 - (1) Americans with Disabilities Act (42 U.S.C. §§ 4151-4157);
 - (2) The Lead-Based Paint Poisoning and Prevention Act (42 U.S.C. §§ 4821-4846);
 - (3) All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and

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- (4) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871) (53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995).

(c) Privacy Act. Consultant must comply with the Privacy Act (5 U.S.C. § 552a) and ensure that all personal information obtained from the public is handled in compliance with the Privacy Act. Consultant must ensure the minimum required access to any such personal information collected or received from the public and will hire a bonded clerk to ensure compliance with the Privacy Act as to any such information in its possession.

(d) Drug Free Workplace. Consultant shall or shall continue to provide and maintain a drug-free workplace by implementing a workplace drug policy that includes:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (2) Establishing an ongoing drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the grantee's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (1) herein;
- (4) Notifying the employee in the statement required by subparagraph (1) herein that, as a condition of employment under the grant, the employee will: (i) abide by the terms of the statement; and (ii) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (5) Notifying LMDC, in writing, within five (5) calendar days after receiving notice under subparagraph 4(ii) from an employee or otherwise receiving actual notice of such conviction; and
- (6) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(ii), with respect to any employee who is so convicted: (i) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (ii) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

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- (e) Anti-Lobbying. To the best of its knowledge and belief:
- (1) 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;
 - (2) 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
 - (3) It will require that the certification language of this paragraph (e) be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

4.3 WORKERS' COMPENSATION INSURANCE. Consultant agrees that 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.

4.4 NO ASSIGNMENT WITHOUT CONSENT. Consultant agrees that:

(a) Consultant shall not, without the prior written consent of LMDC, which may be granted or withheld in the sole discretion of LMDC, assign, transfer, or otherwise cause or suffer to be alienated or disposed of (a) this Agreement, (b) any of Consultant's obligations under this Agreement, or (c) any of Consultant's rights under this Agreement, including, without limiting the generality of this section 4.4, its right to payment under this Agreement; and

(b) Any purported or attempted assignment, transfer, or other act in violation of subsection (a) shall be void as against LMDC; provided that to the extent governing law requires LMDC to recognize such assignment notwithstanding this section 4.4, LMDC may, at its option, to the maximum extent permitted by law, terminate this Agreement for cause pursuant to section 3.1 or convenience pursuant to section 3.2, and in any event, to the maximum extent permitted by law, recover damages for breach.

4.5 NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Consultant shall comply and cause each of its Subconsultants to comply with the provisions of Schedule C attached to and made a part of this Agreement, relating to non-discrimination and affirmative action. Consultant shall provide initial reports relating to its existing workforce and subcontracting commitments as Attachments C-1 and C-2 to Schedule C hereto and updated quarterly reports to both LMDC's Affirmative Action Officer and Project Manager-MWBE Monitoring for every quarter in which Consultant performs services under this Agreement.

ARTICLE V

OTHER STANDARD PROVISIONS

5.1 NO WAIVER. No failure by LMDC to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by Consultant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by LMDC. 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. Consultant shall indemnify and hold harmless LMDC, the New York State Urban Development Corporation, d/b/a/ Empire State Development, and the State of New York and their directors, officers, employees, and agents from and against any and all claims, suits, losses, liabilities, judgments, awards, settlements, costs, expenses and demands (including, but not limited to, reasonable attorney's fees and other costs of defense or investigation) arising out of or relating to Consultant's performance of, or failure to perform, this Agreement, or any Subconsultant's performance of, or failure to perform its agreement with Consultant, and upon demand shall reimburse any indemnified person for any such matters, including reasonable expenses incurred in the investigation or defense of any of the foregoing.

5.3 ASSIGNMENT BY LMDC. LMDC may transfer and assign any and all of its rights and obligations under this Agreement, including, without limitation, transferring and assigning its rights to Consultant's performance of any portion of the services provided for herein, together with LMDC's obligations and rights pertaining to such portion of services, to any partnership, firm, corporation, governmental agency or department or other entity which LMDC determines has undertaken or will undertake any part of the Agreement. LMDC shall give Consultant written notice of any such transfer and assignment. Such transfer and assignment shall relieve LMDC of any further liability or obligation hereunder.

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5.4 SCOPE OF LMDC OBLIGATION. The obligation and any liability of LMDC hereunder is limited to funds disbursed by HUD to or on behalf of LMDC to pay eligible fees and reimbursable expenses hereunder. LMDC will not under any circumstance be liable for indirect, incidental, special, or consequential damages, whether or not LMDC was aware of the possibility of such damages. LMDC's maximum liability hereunder shall be to pay for services at the agreed to rates and to reimburse Consultant for eligible expenses in accordance with this Agreement.

5.5 GOVERNING LAW, FORUM, ETC. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to any provisions of New York law that would result in the application of the law of any other state. Any actions arising out of or relating to this Agreement may be brought only in (a) the courts of record of the State of New York located in New York County, New York, or (b) the United States District Court for the Southern District of New York. Consultant hereby consents to the personal jurisdiction of those courts, waives any objections to venue in those courts, and consents to the dismissal of any action arising out of or relating to this Agreement that is brought in any other forum.

5.6 ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and supersedes all prior and contemporaneous statements, representations, agreements, and understandings, whether written or oral. No statement, promise, condition, understanding, agreement, 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 other than by an instrument in writing executed by the parties hereto.

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

5.7A ELECTRONIC SECURITY. Consultant represents and warrants that any material provided by consultant in electronic format will not contain any program, code, command, or other matter that could (a) damage, or cause to malfunction, LMDC'S hardware, software, or electronically stored information, or (b) enable unauthorized access to LMDC's hardware, software, or electronically stored information.

5.8 RELEASE AND DISCHARGE. As a condition for receiving final payment hereunder, Consultant shall execute and deliver to LMDC a general release, in a form to be

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specified by LMDC, releasing LMDC, New York State Urban Development Corporation (dba Empire State Development) and the State of New York and their directors, officers, employees and agents from any and all claims, demands and liabilities whatsoever of every kind of nature both at law and in equity arising out of or related to this Agreement. A copy of such release is annexed hereto and made a part hereof.

5.9 **SURVIVAL.** For avoidance of doubt, after the termination (for cause, for convenience, or through the passage of time) of this Agreement, the rights and obligations of the parties relating to services performed during the term hereof will be governed by the terms of this Agreement regardless of whether such terms have been expressly specified to survive. The terms of this Agreement that impose obligations that survive termination include Article II and Sections 5.2, 5.7, and 5.7A.

5.10 **MISCELLANEOUS.** The parties 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 the Agreement.

5.11 **NOTICES.** (a) Except as provided in section 3.1, all notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail.

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

If to Lower Manhattan Development Corporation:

Lower Manhattan Development Corporation

Name: [insert name of LMDC's designated representative]

Title:

Address: One Liberty Plaza, 20th Floor, New York, NY 10006

Telephone Number: (212) 962-2300

Facsimile Number: (212) 962-2431

E-Mail Address: [insert email address]

with copy to: legaldepartment@renewnyc.com

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If to [Consultant Name]:

[Consultant Name]

Name: [insert name of Consultant's designated representative]

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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

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

ARTICLE VI

BILLING POLICY

6.1 Consultant will invoice LMDC monthly for services, and, if permitted under the Agreement, for reimbursement of eligible expenses. Invoices should be submitted within 21 calendar days of each month end. Failure to submit an invoice conforming to the requirements of this Agreement within 60 calendar days after the end of a month will constitute a waiver of Consultant's right to payment for services and reimbursement of expenses, and such items will be paid, in whole or part, at the sole discretion of LMDC. Consultant is required to submit detailed documentation in support of any request for reimbursement. All invoices and their accompanying documentation must be forwarded along with a completed copy of the attached sample INVOICE SUMMARY and a letter of transmittal to:

Accounts Payable Department
Lower Manhattan Development Corporation
1 Liberty Plaza, 20th Floor
New York, New York 10006

Invoices should include LMDC's contract and project numbers, if any. Consultant should also include federal identification number with the first invoice.

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6.2 OUT OF POCKET REIMBURSABLE EXPENSES. Out-of-pocket reimbursable expenses must be approved in advance, in writing. Expenses should be delineated on any invoices by general category. Consultant must submit supporting documentation for each individual expense.

6.3 MEALS. Meals must be approved in writing, in advance. Consultant shall be reimbursed in accordance with per diem rates to be provided at the time of authorization. Invoices must be submitted with the names of attendees to be included. Business meals are not allowed except to the extent they are specifically authorized by LMDC.

6.4 PRINTING.

(a) Internal printing and copying are not reimbursable. It is part of Consultant's overhead cost, unless ordered by or for specific use of LMDC or its subsidiaries.

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

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

6.5 TELEPHONE.

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

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

6.6 TRANSPORTATION. Travel and transportation expenses must be approved in writing, in advance. If authorized, air travel will be reimbursed at coach class rates.

6.7 LODGING. Lodging expenses must be approved in writing, in advance. If authorized, lodging will be reimbursed at United States General Services Administration Domestic Per Diem Rates.

6.8 NON-REIMBURSABLE ITEMS. Consultant will not be reimbursed for the following expenses:

(a) Flight insurance.

(b) Valet Services (except five or more consecutive days of travel).

(c) Personal expenses of any type.

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- (d) Expenses paid for LMDC employees.
- (e) Travel to any LMDC office 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, Consultant 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 LMDC. LMDC 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 six years after completion of Consultant's services or earlier termination of this Agreement by LMDC, LMDC or HUD 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 LMDC on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments.

ARTICLE VII

INSURANCE

7.1 Consultant shall carry and shall require each of his Subconsultants to carry the following insurance to the extent stated.

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 Lower Manhattan Development Corporation shall be named as an additional insured.

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 (specify requirements as applicable).

RFPQ Attachment 4

7.5 **Workers' Compensation** covering employers' liability and disability benefits as required by State of New York.

7.6 **Excess Liability Insurance** (specify requirements as applicable).

7.7 **Certificates of Insurance** for all of the aforementioned coverages shall be provided to LMDC prior to the commencement of work under this Agreement.

RFPQ Attachment 4

INVOICE SUMMARY
(Submit with Letter of Transmittal)

Accounts Payable Department
Lower Manhattan Development Corporation
1 Liberty Plaza, 20th Floor, New York, NY 10006

Date: _____
Invoice No:
Amount \$

Consultant _____

Address _____

Project _____

LMDC Contract No. _____ Project No.

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

Latest Contract Amount \$

Billed to Date \$

Paid to Date \$

Balance Due \$

*Attach letters of Authorization

**Attach back-up

S A M P L E

RFPQ Attachment 4

Lower Manhattan Development Corporation

RELEASE

In consideration of Lower Manhattan Development Corporation's final payment in the amount of [INSERT AMOUNT], [NAME OF CONSULTANT] hereby releases, acquits, exonerates and forever discharges Lower Manhattan Development Corporation (LMDC), New York State Urban Development Corporation (dba Empire State Development) and the State of New York, and their directors, officers, employees, and agents from any and all claims, including but not limited to, counterclaims, cross-claims, defenses, affirmative defenses, causes of action of any type (whether common law, statutory, regulatory, legal, equitable or administrative, and whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured), demands, disputes, damages, costs, losses, detriments, interest, expenses, penalties, attorneys' fees, actions, debts, controversies, suits, and choses in action, whether known or unknown, arising out of or relating to any services, labor, materials, technology, intellectual property, or other tangible or intangible matters provided to or for the benefit of LMDC or LMCCC at any time prior to or through the date of this Release, including but not limited to any matters arising out of contracts or agreements with LMDC or LMCCC in existence at any time prior to or through the date of this release.

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

Name of Firm

(Corporate Seal)

By: _____

S A M P L E