

STANDARD FORM CONTRACT – SHORT FORM MATERIALS/SERVICES

FOR LMDC USE ONLY		2. Project Name:	2. Project Number:
1. Contract No. _____		_____	_____
4. The Lower Manhattan Development Corporation (LMDC), a subsidiary of the Urban Development Corporation d/b/a Empire State Development Corporation, a corporate governmental agency and public benefit corporation organized under the laws of the State of New York pursuant to the New York State Urban Development Act, having its principal office and place of business at One Liberty Plaza, New York, New York 10006.			
5. HEREBY REQUESTS YOU			
Name of Contractor: Address Line 1: Address Line 2: City, State, Zip: ATTENTION: Title: Phone: Fax: E-mail:			
6. TO PROVIDE the materials/services as described below and in accordance with the terms set forth in this Agreement			
7. The above materials /services are to be provided on or before (date) _____.			
8. COMPENSATION for the above materials/services shall be as follows:			
<input type="checkbox"/> materials/services for this project are tax exempt <input type="checkbox"/> compensation/rate schedule attached Total Compensation for Materials/Services provided pursuant to this Agreement shall in the aggregate not exceed \$ _____.			
9. Any questions related to this Agreement may be referred to (LMDC name): _____ at LMDC via telephone: (212) 962-2300.			
10. To receive payments, a substantiated invoice must refer to the above Contract Number and be forwarded to the Lower Manhattan Development Corporation, 1 Liberty Plaza, 20 th Fl, NY, NY 10006.			
11. Schedule A and other schedules (if applicable) attached hereto are an integral part of this Agreement. Please note any other schedules and exhibits:			
12. If the proposed Agreement is acceptable please execute all copies and return to LMDC for final approval. A copy of the fully executed Agreement will be forwarded to you and will then constitute your authorization to proceed with the work described herein.			
13. LMDC INITIATOR OF CONTRACT:	14. AGREED TO AND ACCEPTED BY	15. APPROVED:	
_____	_____	Lower Manhattan Development Corporation	
Signature _____	Name of contractor _____	By _____	
_____	Signature _____	Name _____	
Name & Title _____	_____	Title _____	
Date _____	Name & Title _____	Date _____	

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.

B. 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.

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, including without limitation, as more fully set forth in the below chart and in Exhibit A-1 attached hereto.

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

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

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

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)(7), 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 11th 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.

SCHEDULE B
SCOPE OF WORK

1. Project Area and Purpose

2. Scope of Project

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

3. Project Schedule

Dated:

SCHEDULE C

LMDC CONTRACT PROVISIONS -- NON-DISCRIMINATION AND AFFIRMATIVE ACTION

I. Policy

It is the policy of the State of New York, ESD, and LMDC to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, ethnicity, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by LMDC's participation in projects or initiatives, and/or the use of LMDC funds.

- (1) The Contracting Party represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
 - (a) Contracting Party shall (i) not discriminate against employees or applicants for employment because of race, ethnicity, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and (iii) make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on 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) At the request of the LMDC, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.
- (2) Upon commencement of the contract services and quarterly (or monthly in the case of construction services) thereafter during the term of the Contract, the Contracting Party shall submit to the LMDC M/WBE Monitoring Project Manager, a Workforce Employment Utilization Report (Attachment C-1) of the workforce actually utilized on the Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the LMDC. In the case where the Contracting Party's and/or subcontractor's workforce does not change within the quarterly (or monthly in the case of construction services) period, the Contracting Party shall so notify the LMDC in writing.

The Contracting Party shall include, or cause to be included, the provisions of clauses (1) through (2) above in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

II. 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 Contract.
- (b) The goal for M/WBE participation in the performance of the work is expressed as a percentage of 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; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more M/WBEs -- the contract price multiplied by

the percentage of the entity's profits/losses which are to accrue to the M/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party -- the contract price.

- (d) The Contracting Party shall include, or cause to be included, the provisions of clauses (a) through (c) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

III. Reporting Requirements

The Contracting Party will permit access to its books, records and accounts, with respect to the Contract, by the LMDC for purposes of investigation to ascertain compliance with the provisions herein. The Contracting Party shall periodically file, or cause to be filed, reports, substantially in the format attached hereto as Attachments C-1 and C-2 (M/WBE Compliance Report to be filed quarterly (or monthly in the case of construction services), with the LMDC M/WBE Monitoring Project Manager, detailing compliance with the provisions of these non-discrimination and affirmative action clauses. An owner or officer of the Contracting Party shall certify the accuracy of the information contained in the reporting.

IV. Non-Compliance and Sanctions

In the event that any Contracting Party violates any of the provisions herein, the LMDC may require that the following sanctions and remedies for non-compliance be imposed:

- (a) Summon the Contracting Party for a hearing with the LMDC.
- (b) After any such hearing, and a determination by the LMDC 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 Contract may be canceled, terminated or suspended, in whole or in part. Alternatively, the LMDC M/WBE Monitoring Project Manager, 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 M/WBEs 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 LMDC or; (ii) may be paid to the LMDC 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 M/WBE technical assistance funds administered by the ESD.
- (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.

ESD AND LMDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in Sections II herein, and developed by ESD or LMDC.

Affirmative Action Officer ("AAO")

Shall mean LMDC's M/WBE Monitoring Project Manager, or his/her designee, managing the affirmative action program for LMDC in coordination with LMDC's Legal Affairs Department.

Best Efforts - Minority and Women-owned Business Enterprise Participation

Best efforts are not limited to the efforts specified herein, and 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. Such record keeping must include 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 potential M/WBE participation on the Contract;
- (e) Utilizing the resources of the LMDC and ESDC's Affirmative Action Unit (AAU) 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, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contracting Party will meet its obligations herein.
- (g) The Contracting Party shall remit payment in a timely fashion.

Contract

Shall mean (i) a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a **Contracting Party**, providing for a total expenditure in excess of \$5,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in whole or in part with LMDC funds and (ii) any loan or grant agreement funded in whole or in part with LMDC funds.

Contracting Party

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by the ESD and/or LMDC and (ii) **any borrower or subrecipient** receiving funds from the ESD or LMDC pursuant to a loan or grant document.

Minority Business Enterprise (“MBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) 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; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) 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 (A) racial groups: (i) American Indian or Alaska native, (ii) Asian, (iii) Black or African American, (iv) Native Hawaiian or Other Pacific Islander, OR (B) a member of the Hispanic or Latino ethnic group.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a **Contracting Party** and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESD funds or LMDC with HUD funds.

Women-owned Business Enterprise (“WBE”)

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

Minority and Women Business Enterprise Listings

The ESDC Affirmative Action Unit (AAU) is available to assist you in identifying M/WBEs certified by the state of New York that can provide goods and services in connection with existing and proposed contracts. If you require M/WBE listings, please call the AAU at (212) 803-3224 or use the ESD’s M/WBE database at <http://205.232.252.35/>. For additional assistance, contact the LMDC’s Project Manager-M/WBE Monitoring at (212) 962-2300.

WORKFORCE EMPLOYMENT UTILIZATION REPORT
NON-CONSTRUCTION
(See reverse side for instructions)
LOWER MANHATTAN DEVELOPMENT CORPORATION

TYPE OF REPORT (check one):
TYPE OR SERVICE (check one):

/ / TOTAL WORKFORCE
/ / PROFESSIONAL CONSTRUCTION CONSULTANT

CHECK IF NOT-FOR-PROFIT / /

CONTRACTOR/FIRM NAME:

ADDRESS:

PERCENT OF JOB COMPLETED:

TELEPHONE NUMBER:

REPORTING PERIOD:

FEDERAL ID NO.:

PROJECT NAME:

N.Y.S. UNEMPLOYMENT INSURANCE NO.:

PROJECT LOCATION:

CHECK ONE: / / PRIME CONTRACTOR / / SUBCONTRACTOR

COUNTY: ZIP:

CONTRACT NO.:

CONTRACT AMOUNT: \$

PRODUCT/SERVICE PROVIDED:

FEDERAL OCCUPATIONAL CATEGORY	NUMBER OF EMPLOYEES															
	TOTAL NUMBER OF EMPLOYEES		ETHNICITY HISPANIC OR LATINO		ETHNICITY NOT HISPANIC OR LATINO		AMERICAN INDIAN OR ALASKA NATIVE		ASIAN		BLACK OR AFRICAN AMERICAN		NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		WHITE	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
Officials/Administrators																
Professionals																
Technicians																
Sales Workers																
Office & Clerical																
Craft Workers																
Operatives																
Laborers																
Service Workers																
TOTALS																

CERTIFICATION: I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Workforce Employment Utilization Report and (ii) to the best of my knowledge, information and belief the information contained herein is complete and accurate.

SIGNATURE _____ DATE _____

Revised: November 2004

WORKFORCE EMPLOYMENT UTILIZATION REPORT
NON-CONSTRUCTION
Instructions for Completion

PURPOSE:

The *Workforce Employment Utilization Report For Non-Construction Firms* is prepared by all contractors, and subcontractors if any, supplying commodities or providing professional construction consulting or consulting services (skilled or non-skilled) to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the *contract specific work force* can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific workforce *cannot* be separated out, the contractor's *total workforce* is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

GENERAL INFORMATION:

1. *Name of contracting state agency* and state agency code (five digit code).
2. *Reporting period* covered by report (mm/dd/yy); check to indicate *Quarterly or Semi-Annual* Report.
3. *Contractor firm name* (prime contractor on summary report submitted to agency) and *address* (including city name, state and zip code); check if the contractor is a NOT-FOR-PROFIT.
4. *Type of Report:* check to indicate whether report covers (i) the *Contract Specific Workforce* or (ii) the *Company's Total Workforce* (in the event the contract specific workforce cannot be separated out).
5. Contractor *Federal Employer Identification number* or payee identification number (prime contractor i.d. on summary report); check to indicate prime or subcontractor report.
6. *Contract Amount* is dollar amount based on terms of the contract.
7. *Contract number* is the agency assigned number given to the contract.
8. *Location of work* including county and zip code where work is performed.
9. Indicate *Product or Service provided* by contractor (brief description).
10. *Contract start date* is month/day/year work on contract actually began.
11. Contractor's *estimate of the percentage of work completed* at the end of this reporting period.

FEDERAL OCCUPATIONAL CATEGORIES:

The contractor's workforce is broken down and reported by the nine *Federal Occupational Categories (FOC's)* consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Managers, Professionals, Technicians, Sales, Office & Clerical (Administrative Support), Craft Workers, Operatives, Laborers, and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

TOTAL NUMBER OF EMPLOYEES:

Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total workforce, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) thru (12) report the number of males and females employed, based on the following defined groups:

Race

- **American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- **Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **Black or African American.** A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."
- **Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **White.** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Ethnicity

- **Hispanic or Latino.** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."
- **Not Hispanic or Latino.** A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

TOTALS:

Column totals should be calculated (sum each column) for all FOC's combined.

SUBMISSION:

The workforce utilization report is to be completed by both prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The prime contractor shall complete a report for its own workforce, collect reports completed by each subcontractor, and prepare a summary report for the entire combined contract workforce. The reports shall include the total number of employees in each occupational category for all payrolls completed in the quarterly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR pursuant to Article 15-A of the Executive Law*.

OCCUPATIONAL CODES

Officials/Administrators	100
Professionals	110
Technicians	120
Sales Workers	130
Office & Clerical	140
Craft Workers	150
Operatives	160
Laborers	170
Service Workers	180

FORWARD TO THE RESPONSIBLE LMDC PROJECT MANAGER

Lower Manhattan Development Corp.
One Liberty Plaza, 20th Floor
New York, NY 10006
P (212) 962-2300
F (212) 962-2431

Exhibit A-1 Levels of Performance

Type of project	Unit	Measure	Total - entire project	Total - funded by LMDC	Target level and date achievable by quarter								Cum. Year 2		
					Q1	Q2	Q3	Q4	Cum. Year 1	Q5	Q6	Q7		Q8	
General	#	Temporary jobs - construction													
	#	Temporary jobs - other													
	#	Permanent jobs													
	#	Persons													
	#	Low-income persons													
	#	Moderate-income persons													
	#	Households													
	#	Low-income households													
	#	Moderate-income persons													
	#	Businesses													
	#	Non-business organizations													
	#	Public facilities													
	#	Pedestrians													
	#	Vehicles													
	#	Visitors													
Streetscape/ outdoor area	#	Area workers													
	SF	Paved area													
	SF	Roadway													
	SF	Other													
	SF	Sidewalks													
	LF	Curb													
	#	Light poles													
	#	Trash receptacles													
	#	Signage													
	#	Bollards													
	#	Security devices													
	LF	Fencing													
	#	Bicycle racks													
	LF	Utilities													
	Landscaped areas/ parks/ playgrounds	SF	Landscaped area												
#		Irrigation systems													
SF		Park area													
SF		New park area													
SF		Reconstructed park area													
SF		Landscaping													
#		Trees													
#		Planters													
#		Plants													
#		Bulbs													
SF	New playground area														

Exhibit A-1 Levels of Performance

Type of project	Unit	Measure	Total - entire project	Total - funded by LMDC	Target level and date achievable by quarter									
					Q1	Q2	Q3	Q4	Cum. Year 1	Q5	Q6	Q7	Q8	Cum. Year 2
	SF	Reconstructed playground area												
	SF	New recreation area												
	SF	Reconstructed recreation area												
	#	Playground equipment												
	#	Ball fields												
	#	Ice/ roller rinks												
	#	Fountains/ water feature												
	#	Drinking fountains												
	#	Toilets												
	#	Kiosks												
	#	Carousels												
	#	Chairs and tables												
	#	Benches												
	LF	Seating Wall												
	Accessibility	#	Escalators											
#		Elevators												
#		Lifts												
#		Stairs												
SF		Bridges												
#		Artwork produced or presented												
#		Events												
#		Attendees (events/exhibits)												
#		Participants (education or other extended program)												
#		Units												
#		Studios												
#		1 bedrooms												
#		2 bedrooms												
#		3+ bedrooms												
Buildings		SF	Commercial space											
	SF	Residential space												
	SF	Retail space												
	SF	Cultural space												
	SF	Recreation space												
	SF	Non-profit space												

Exhibit A-2.
Detailed Project Budget

[A project budget is included in Section II of the Subrecipient Agreement. If a detailed project budget is required – attach as Exhibit A-2. The specific format may vary according to the project but must indicate LMDC funds, other program funding, and total project costs.]

Exhibit A-3
Grantor and Grantee Recognition

Please find below guidelines for recognition of HUD and LMDC in any work done as a result of this subrecipient agreement. Note, any public information and all of the items below must be approved by LMDC in advance of publication or posting.

Written documents

All written documents must include the following language, unless otherwise specified in writing by LMDC:

1. "This [program/project] is made possible by a grant from the Lower Manhattan Development Corporation, which is funded through Community Development Block Grants from the U.S. Department of Housing and Urban Development."
2. Written documents should also include the LMDC logo and the names of the Governor, Mayor, Chairman of LMDC, and President of LMDC.

Internet information and e-mail information

1. Internet information must include all of the items required for written documentation and a link to LMDC's website.

Offices open to the public providing services funded by LMDC

1. All offices must include a sign including all of the items required for written documentation.

Construction Signs

1. All construction signs must include a sign including all of the items required for written documentation.
2. All construction signs must also include the name of the project, an expected end date for the project, the name of the subrecipient, and a phone number for the public to call to obtain information about the project. This must be a phone number maintained by the subrecipient or one of its subcontractors.

Completed Projects

1. All completed projects must include permanent recognition of LMDC. The subrecipient is required to submit to LMDC for written approval the proposed permanent recognition.

Exhibit A-4
LMDC STANDARD RECORD LIST

FINANCIAL RECORDKEEPING.

General

- ___ Record of CDBG funds received
- ___ Record of CDBG funds disbursed
- ___ Documentation of CDBG expenditures including subconsultant and subcontractor expenditures
- ___ Review of expenditures
- ___ Payment requests
- ___ Source documentation (bills, receipts, copies of cancelled checks, etc.)
- ___ General ledger (assets, liabilities, income, and expenses)
- ___ Income by category or grant
- ___ Expenses by category or grant
- ___ Cash disbursements
- ___ Payroll reports including details relating to overtime
- ___ Time records for employees and subconsultant employees
- ___ Correspondence between Subrecipient and LMDC regarding budget changes or authorizing any contract amendments.
- ___ Audit files (work papers, reports, auditee responses, and other audit correspondence)
- ___ Documentation of internal controls including but not limited to policies and procedures
- ___ The results and response to any fiscal monitoring findings

Procurement:

- ___ Local Procurement Procedures
- ___ Procurement Small Purchase Method (\$100,000 or less/consultation)
 - ___ price quote documentation (at least three)
 - ___ scope of work
 - ___ selection methodology and justification
 - ___ verification of contract insurance
- ___ Competitive Sealed Bid (construction)
 - ___ Invitation for Bid (IFB)
 - ___ public notice
 - ___ mailing list of recipients
 - ___ bids received
 - ___ documentation of selection process, cost estimate evaluation/rating
 - ___ price and cost analysis/ cost reasonableness
 - ___ justification if cost is 20% over estimate
 - ___ verification of contractor eligibility
 - ___ verification of contractor insurance

- ___ Competitive Proposal (over \$100,000)
 - ___ Request for Proposal (consulting) or
 - ___ Request for Qualifications (engineering/architectural services)
 - ___ public notice
 - ___ mailing list of recipients
 - ___ proposals received
 - ___ documentation of selection process (RFP only)
 - ___ cost estimate evaluation/rating
 - ___ "Best and Final" offers
 - ___ documentation of selection process (RFQ)
 - ___ "most qualified" determination
 - ___ negotiation of fair and reasonable price
 - ___ price and cost analysis/ cost reasonableness
 - ___ justification if cost is 20% over estimate
 - ___ verification of contractor insurance
- ___ Non-Competitive Proposals/Sole Source
 - ___ memorandum summarizing justification
 - ___ documentation of sole source determination
 - ___ price and cost analysis/ cost reasonableness
 - ___ justification if cost is 20% over estimate

PROGRAM RECORDKEEPING.

Policy

- ___ Personnel Handbook
- ___ Drug Free Workplace Policy
- ___ Fair Employment Policy/Posting
- ___ Procurement Policy
- ___ Equal Opportunity Employment Policy (employment and contracting)
 - ___ Title IV
 - ___ Section 504
 - ___ ADA
 - ___ Section 3
 - ___ Affirmative Action

Contracts

- ___ Signed contract(s)/Amendment(s)
- ___ Files for each contractor including:
 - ___ Contractor's and subcontractors' certifications
 - ___ Payrolls and Statements of Compliance for each week
 - ___ Employee interview records
 - ___ Trainee/apprentice program certification/registration
 - ___ Letters authorizing payroll deductions
 - ___ Letters authorizing fringe benefit funds

National Objective/Public Benefit – General Program:

- ___ Demographic data re: target area and beneficiaries
- ___ Job recruitment, training, and hiring documents
- ___ Demographic data re: employees, applicants, and interviewees
- ___ Minority and women-owned business solicitation lists
- ___ Section 3 documentation, records and reports
- ___ Section 504 compliance self-evaluation and documentation
 - ___ TIG minorities and women hires
 - ___ Affirmative action goals

Environmental records:

- ___ Environmental assessment and determination

EXHIBIT A-5: MONTHLY PROGRESS REPORT

PROJECT #:	SUBRECIPIENT NAME:
PROJECT NAME:	PERIOD (MONTH):
PROJECT AMOUNT:	OBLIGATION DATE:

PROJECT DESCRIPTION:

COMMUNITY AND DEVELOPMENT NEEDS:

PUBLIC INVOLVEMENT:

FUNDING SOURCES:

FUNDS

LMDC Standard Subrecipient Agreement Boilerplate (March 2009)
Exhibit A-5

EXHIBIT A-5: MONTHLY PROGRESS REPORT

Total Projected Budget:	\$.00
Total HUD Disaster Recovery Funds:	\$.00
Obligated HUD Disaster Funds to Date:	\$.00
Unobligated HUD Disaster Funds to Date:	\$0.00
Cumulative HUD Disaster Funds to Date:	\$.00

ACTIVITIES: SCHEDULE

Activities	Measure Description	Expected Start	Expected Completion	Completed to Date

OVERALL: ACCOMPLISHMENTS AND BENEFICIARIES

Measure Description	Number of Beneficiaries	Month
Number of Businesses Benefiting		
Number of Non-business Organizations Benefiting		
Number of M/WBE Businesses Benefiting		
Number of Public Facilities		
Number of Linear Feet of Public Improvement		
Number of Temporary Jobs Created		
Number of Permanent Jobs Created		

EXHIBIT A-5: MONTHLY PROGRESS REPORT

ENVIRONMENTAL PERFORMANCE COMMITMENTS:

Commitment	Implementation Measure	Implementation Date

REPORT NARRATIVE FOR THIS PROJECT FOR THIS PERIOD (Include Monitoring efforts):

Exhibit A-6
Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING GUIDELINES

I. INTRODUCTION

To fulfill its program management responsibilities, LMDC will monitor the subrecipient's grant activities during the term of the subrecipient agreement to ensure the subrecipient has expended HUD Community Development Block Grant (CDBG) funds only for the specified purposes and has performed the terms of the subrecipient agreement. This process may include, but is not limited to, audits of relevant program records and data, site visits, progress reports, and regular communication about the project's status. The broad areas to be monitored include general compliance, procurement practices and contract execution, and financial management/audit controls.

II. SUBRECIPIENT RESPONSIBILITIES

The subrecipient is responsible for carrying out all terms of the subrecipient agreement, and for maintaining records of the program activities and making them available to the LMDC and its designees for monitoring or audit purposes. The subrecipient is obligated to appropriately manage and monitor its contractors (often referred to as subcontractors in LMDC materials).

These guidelines are provided to assist the subrecipient in monitoring its contractors. These guidelines measure compliance with work performance, equal opportunity and other workforce requirements, procurement procedures, and financial management. These forms are intended to be used in an interview or site visit. Such monitoring should be conducted at reasonable and relevant intervals (such as early in the contract and then annually or at contract completion).

More routine monitoring of project performance, workforce and expenditures could be captured in monthly status reports, invoices, workforce reports (Exhibits A-7; A-8; C-1; C-2) and other similar reports. The Subrecipient is responsible for resolving any monitoring findings (i.e., findings of non-performance or non-compliance with applicable requirements) in a timely manner. The subrecipient shall report its monitoring findings and any corrective actions in its Monthly Progress Reports (Exhibit A-5).

Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT
Summary Sheet

Subcontractor: _____ Contract #: _____

Completed By: _____ Date(s): _____

Summary of Checklists Used

The following forms or checklists were used to monitor this contract on the date(s) indicated above. (Forms not used or not applicable for this contract can be indicated by NA.)

- _____ 1. General Compliance
- _____ 2. Procurement Checklist
- _____ 3. Vendor Contracts Checklist
- _____ 4. Financial Management/ Audit Controls

Summary of Exit Interview

Persons in attendance:

<u>Name</u>	<u>Title</u>	<u>Organization</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Items discussed:

Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT

General Compliance Checklist

Subcontractor: _____ Contract #: _____

Completed by: _____ Date(s): _____

Checklist Table of Contents

- A. Work Performance
- B. Equal Opportunity
- C. Employment
- D. Drug-Free Workplace
- E. Recordkeeping
- F. Insurance
- G. Signs

(Asterisked items can be completed prior to the monitoring):

***A. Work Performance**

*1. <u>Names of Activities (including Gen Adm):</u>	<u>Budgeted Amount</u>	<u>Expended to date</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTALS:	\$ _____	\$ _____

Y N *2. Has the subcontractor met the contract or grant expenditure milestones?

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

General Compliance Checklist

B. Equal Opportunity Compliance

- Y N 1. Does the subcontractor complete Schedule C-1 as required? If not, ask subcontractor to produce at monitoring interview. What is the date of the last submission? _____
- Y N 2. Does the subcontractor complete Schedule C-2 as required? If not, ask subcontractor to produce at monitoring interview. What is the date of the last submission? _____
- Y N 3. Does the subcontractor complete Exhibit A-7 as required? If not, ask subcontractor to produce at monitoring interview. What is the date of the last submission? _____
- Y N 4. Does the subcontractor complete Exhibit A-8 as required? If not, ask subcontractor to produce at monitoring interview. What is the date of the last submission? _____
5. What actions (e.g., outreach; processing; written policies prohibiting discrimination, segregation, or separate treatment) does the subcontractor take to ensure that CDBG activities are carried out in a manner that does not discriminate against persons on the grounds of race, color, national origin, sex, age, disability or religion?
- Y N 6. Have there been any discrimination complaints? If yes, what was the basis and how has the subcontractor resolved them?
- Y N 7. Did the subcontractor complete a Section 504 Self-Evaluation? (Section 504 refers to the Federal regulations prohibiting discrimination against the handicapped in any federally assisted program).
- Y N 8. If the self-evaluation of Section 504 compliance revealed deficiencies, did the jurisdiction take adequate steps to modify deficient policies and practices or explain why infeasible? Explain

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

General Compliance Checklist

C. Employment

Y N 1. Does the subcontractor have written employment and personnel policies which cover equal opportunity provisions? If not, explain:

Y N 2. Is the subcontractor required to undertake an affirmative action program because of past compliance problems or court action? If yes, explain what actions have been taken:

Y N 3. Are there currently any lawsuits or administrative complaints pending due to alleged problems in equal employment opportunity practices? If yes, explain:

“SECTION 3” CLAUSE: (HUD Act of 1968, as amended, and as implemented by regulations set forth in 24 CFR Part 135)

Section 3 clause 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.

Y N 4. Does Section 3 apply to the subcontractor? *(If yes, answer questions 4a-4c):*

Y N 4. a. Has the subcontractor submitted an annual Section 3 report? If no, explain:

Y N 4. b. Are the subcontractor's Section 3 records maintained? Explain:

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

General Compliance Checklist

- Y N 4. c. Has the subcontractor filled any employee vacancies in positions involved in working on CDBG activities covered by Section 3? If yes, explain what efforts the subcontractor has made to offer training and employment opportunities to Section 3 residents:

D. Drug-free Workplace Certification

- Y N 1. Has the subcontractor published and distributed a statement notifying employees that it is unlawful to:
- _____ manufacture,
 - _____ distribute,
 - _____ dispense,
 - _____ possess, or
 - _____ use a controlled substance, and
 - _____ detailed specific actions to be taken against employees for violations, as required by Government Code Section 8355 (b)?

If no, explain deficiencies:

- Y N 2. Has the subcontractor established a Drug Free Awareness Program to inform employees about all of the following:
- _____ the dangers of drug abuse in the workplace;
 - _____ the organization's policy of maintaining a drug free workplace;
 - _____ any available counseling, rehab., and employee assistance programs;
 - _____ penalties that may be imposed upon employees for drug abuse violations.

Explain any deficiencies:

- Y N 3. Has the subcontractor, as required by Government Code Section 8355 (c), insured that every employee who works under this contract:
- _____ received a copy of the subcontractor's drug free policy statement; and
 - _____ will agree to abide by the terms of the subcontractor's statement as a condition of employment under this contract.

Explain any deficiencies:

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

General Compliance Checklist

E. Recordkeeping

- Y N 1. Does subcontractor have a recordkeeping system that includes all of the following:
- ☐ financial,
 - ☐ contractual,
 - ☐ environmental,
 - ☐ performance,
 - ☐ beneficiary,
 - ☐ complaint data, and
 - ☐ budget and approved amendments

Explain any deficiencies noted when monitoring:

F. Insurance

- Y N 1. Does subcontractor have documentation showing current appropriate amounts of insurance coverage (e.g., liability, property)? Explain:

G. Signs

- Y N 1. If subcontractor posted signs regarding the financing of the project, did it include the LMDC and HUD as a funding source? If not, explain why not:

- Y N 2. Is subcontractor complying with Exhibit A-3, Grantor and Grantee Recognition? If not, explain why not:

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

General Compliance Checklist

H. Site Inspection:

- Y N 2. For projects still under construction, were each of the following posted on a bulletin board prominently located on the project site which can be seen easily by the workers?

_____ Wage decision?

_____ Notice to Employees?

Comments:

- Y N 3. Is the subcontractor prepared to keep all payroll records for at least four years after the final reports are submitted by the Subrecipient to the Grantee? If not, discuss:

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING GUIDELINES**

Procurement Checklist

Subcontractor: _____ Contract #: _____

Completed by: _____ Date(s): _____

(To be completed by the subrecipient at the time of procurement. Note that all subcontractors must be approved by the LMDC in writing).

- Y N 1. Is there documentation on file of how the contractors were selected and equipment or supplies procured?

(Procurement File)

- _____ Documentation of price quotes received for items or services procured with **small purchase method**
- _____ Request for Proposals (**RFPs**) and/or Invitations for Bid (**IFBs**)
- _____ **Public notices** of RFPs or IFBs
- _____ **Mailing list** of RFP or IFB recipients
- _____ All **qualification statements, proposals and/or bids received**
- _____ RFP ratings and **documentation of selection process**
- _____ Documentation of selection for IFB, if lowest bidder not selected
- _____ **Sole source/single bid** justification and approval letters, if applicable
- _____ Cost estimates/data used to determine **cost reasonableness**
- _____ Verification of **contractor eligibility**

(Contracts File)

- _____ Signed **contracts** and all approved amendments
- _____ For all of its contractors and subcontractors, does subrecipient have documentation showing **adequate insurance coverage**

Comments:

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

Private Vendor Subcontracts Checklist

Subcontractor: _____ Contract #: _____
Completed by: _____ Date(s): _____

1. Are the following clauses from the subrecipient agreement found in the subcontract(s)?

List of Required Terms

Pursuant to Section X.D.2.c. of the Subrecipient Agreement, the Subrecipient must include the following provisions in any private vendor subcontracts executed in the performance of the Agreement.

VII.A. General Compliance
VII.C. Hold Harmless
VII.D. Workers' Compensation
VII.E. Insurance and Bonding
VII.E.1 Commercial General Liability Insurance
VII.E.2 Automobile Liability and Property Damage Insurance
VII.E.3 Workers' Compensation
VII.E.4 Excess Liability Insurance
VII.E.5 Certificates of Insurance
VII.F. Grantor/Grantee Recognition
VII.H. Suspension or Termination
VIII.B.2. Records Retention
VIII.B.3. Personal Data
VIII.B.4. Disclosure
VIII.B.5. Property Records
VIII.B.6. Close-Outs
VIII.B.7 Audits and Inspections
IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT
X. PERSONNEL AND PARTICIPANT CONDITIONS
X.A. Civil Rights
X.A.1. Compliance
X.A.2. Nondiscrimination
X.A.3. Land Covenants
X.A.4. Section 504
X.B. Affirmative Action
X.B.1. Compliance with E.O. 11246
X.B.2. M/WBE (Schedule C)
X.B.3. Access to Records

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

Private Vendor Subcontracts Checklist

X.B.4. Notifications
X.B.5. EEO/AA Statement
X.B.6. Subcontract Provisions
X.C. Employment Restrictions
X.C.1. Prohibited Activity
X.C.2. Labor Standards (Davis-Bacon Act)
X.C.3. "Section 3" Clause
X.C.3.a. Compliance
X.C.3.b. Notifications
X.C.3.c. Subcontracts
X.C.3.d. Reporting. (Quarterly reports - Exhibit A-7)
X.C.4. September 11, 2001 Recovery
X.C.4.a. Compliance
X.C.4.b. Reporting. (Quarterly reports - Exhibit A-8)
X.D.3. Hatch Act
X.D.4. Conflict of Interest
X.D.5. Lobbying
X.D.6. Copyright
X.D.7. Religious Organization
XI. ENVIRONMENTAL CONDITIONS
XI.A. Air and Water
XI.A.1 Clean Air Act, 42 U.S.C. § 7401, <i>et seq.</i> ;
XI.A.2 Federal Water Pollution Control Act;
XI.A.3 Environmental Protection Agency ("EPA") regulations pursuant to 40 CFR Part 50, as amended.
XI.B. Flood Disaster Protection
XI.C. Lead-Based Paint
XI.D. Historic Preservation
XI.E. Environmental Performance Commitments

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING GUIDELINES**

Financial Management / Audit Controls Checklist

Subcontractor: _____ Contract #: _____

Completed by: _____ Date(s): _____

A. CASH RECEIPTS

Y N 1. Are LMDC/HUD funded cash receipts accounted for separately by grant or activity? Explain:

Y N 2. Does the cash received reported to the subrecipient or LMDC agree with the Subcontractor's recorded cash receipts? Explain:

B. CASH DISBURSEMENTS

Y N 1. Does the Subcontractor account for HUD CDBG expenditures separately by:
a. Grant?

Y N b. Grant activity? (i.e., Rehab, Program Admin., General Admin.)
Explain:

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

Financial Management / Audit Controls Checklist

Y N 2. Are the audit trails in the Subcontractor's records adequate to trace back to the source documents? Explain:

Y N 3. Does the cash disbursed reported to the subrecipient or LMDC agree with the Subcontractor's records? Explain:

4. Answer the following questions based on your review of the Subcontractor's expenditures:

Y N a. Are the expenditures being charged to the proper activities?

Y N b. Are they eligible CDBG costs?

Y N c. Are source documents maintained to support the charges?

Y N d. Are the costs budgeted?

Explain:

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

Financial Management / Audit Controls Checklist

C. REPORTING THE STATUS OF CDBG FUNDS

Y N 1. Does the Subcontractor maintain records that will reconcile the accrued expenditures reported to the subrecipient or LMDC to their books of original entry? Explain:

Y N 2. If the subcontractor prepares the financial reports submitted to the Subrecipient, does the Subrecipient reconcile the reported amounts to their books of original entry? Explain:

Y N 3. Are the reports submitted within the allowable time frame? Explain:

Y N 4. Is program income used before requesting CDBG funds when applicable? Explain:

D. OTHER

Y N 1. If audits disclose any findings for the CDBG program, does the subcontractor have a procedure for resolving the findings? Explain:

**Lower Manhattan Development Corporation
SUBRECIPIENT MONITORING REPORT**

Financial Management / Audit Controls Checklist

- Y N 2. Has the subcontractor established internal controls? Explain:
- Y N 3. Does the subcontractor have an audit plan? Explain:
- Y N 4. Is the subcontractor following the audit plan? Explain:
- Y N 5. Are the audit costs charged to the CDBG program properly documented?
Explain:
- Y N 6. If the audit costs are a shared cost, is the method used to determine CDBG share
of the audit costs reasonable and properly supported? Explain:

Exhibit A-7: Workforce Utilization Report for Section 3 Clause

Type of Report (Check One) / / Total Workforce / / Contract Specific Workforce

Type of Service (Check One) / / Professional, Construction, Consultant / / Service/ Consultant / / Commodities

Contractor Name: Contractor Start Date:

Address: Reporting Period:

/ / Quarterly Report / / Semi-Annual Report

Telephone Number Project Name:

Federal ID NO: Project Location:

Check One: / / Prime Contractor / / Subcontractor County: Zip:

Contract Number: Product/Services Provided:

Contract Amount:

Number of Employees							
Federal Occupational Category	Total Number of Employees Working on this Project	Low Income Employees Residing in Metropolitan Area	Very Low Income Employees Residing in Metropolitan Area	Low Income Employees Residing in Service Area or Neighborhood in which Project is Located	Very Low Income Employees Residing in Service Area or Neighborhood in which Project is Located	Low Income Employees Participating in Other HUD Programs	Very Low Income Employees Participating in Other HUD Programs
Official/Administrator							
Professionals							
Technicians							
Sales Workers							
Office & Clerical							
Craft Workers							
Operatives							
Laborers							
Service Workers							
TOTALS							

Certification: I, (Print Name) the, (Title)

do certify that (i) I have read this Workforce Utilization Report on Section 3 Clause and (ii) to the best of my knowledge, information, and belief the information herein is complete and accurate.

Signature:

Exhibit A-8: Workforce Utilization Report
Employees Impacted by September 11, 2001

Type of Report (Check One) / / Total Workforce / / Contract Specific Workforce

Type of Service (Check One) / / Professional, Construction, Consultant / / Service/ Consultant / / Commodities

Contractor Name:

Contractor Start Date:

Address:

Reporting Period:

/ / Quarterly Report / / Semi-Annual Report

Telephone Number

Project Name:

Federal ID NO:

Project Location:

Check One: / / Prime Contractor / / Subcontractor

County:

Zip:

Contract Number:

Product/Services Provided:

Contract Amount:

Number of Employees

Federal Occupational Category	Total Number of Existing Employees Working on this Project	Total Number of New Employees Hired for this Project	Existing Employees that Lost Job or Wages as a Result of September 11, 2001	New Employees that Lost Job or Wages as a Result of September 11th, 2001	Low-Income Existing and New Employees that Lost Job or Wages as a Result of September 11th, 2001	Moderate-Income Existing and New Employees that Lost Job or Wages as Result of September 11th, 2001	Low-Income Existing and New employees that live below Houston Street	Moderate-Income Existing and New Employees that Live Below Houston Street
Official/Administrator								
Professionals								
Technicians								
Sales Workers								
Office & Clerical								
Craft Workers								
Operatives								
Laborers								
Service Workers								
TOTALS								

Certification: I,

(Print Name) the,

(Title)

do certify that (i) I have read this Workforce Utilization Report on Employees Impacted by September 11, 2001 and (ii) to the best of my knowledge, information, and belief the information herein is complete and accurate.

Signature:

EXHIBIT A-9

LOWER MANHATTAN ENVIRONMENTAL PERFORMANCE COMMITMENTS

In addition to measures required by applicable environmental laws and regulations, these environmental performance commitments are required on construction projects funded by the Lower Manhattan Development Corporation through its Community Development Block Grant from the United States Department of Housing and Urban Development. Additional environment-specific measures may be included as part of the project's governmental entities coordination plan, construction environmental protection plan, design documents and contracts.

Air Quality:

Commitments
Use ultra low sulfur diesel fuel in off-road construction equipment with engine horsepower (HP) rating of 60 HP and above.
Where practicable, use diesel engine retrofit technology in off-road equipment to further reduce emissions. Such technology may include diesel oxidation catalyst / diesel particulate filters, engine upgrades, engine replacements, or combinations of these strategies.
Limit unnecessary idling times on diesel powered engines to 3 minutes.
Locate diesel powered exhausts away from fresh air intakes.
Control dust related to construction site through a soil erosion sediment control plan that includes, among other things: <ul style="list-style-type: none">a. spraying of a suppressing agent on dust pile (non-hazardous, biodegradable);b. containment of fugitive dust; andc. adjustment for meteorological conditions as appropriate.

Noise and Vibration:

Commitments
Where practicable, schedule individual project construction activities to avoid or minimize adverse impacts.
Coordinate construction activities with projects under construction in adjacent and nearby locations to avoid or minimize impacts.
Consider condition of surrounding buildings, structures, infrastructure, and utilities as appropriate.
Prepare contingency measures in the event established limits are exceeded.

Cultural and Historic Resources:

Commitments
Establish coordination among projects to avoid or minimize interruption in access to cultural and historic sites.
Initiate public information and involvement outreach with sensitivity to local cultural resources.
Receive and provide current information to public about access during construction.

Monitor noise and vibration during construction as appropriate at any culturally significant sites identified by New York State Office of Historic Preservation and New York City Landmarks Preservation Commission.
--

Access and Circulation:

Commitments
Establish a project-specific pedestrian and vehicular maintenance and protection plan.
Promote public awareness through mechanisms such as: <ul style="list-style-type: none">a. signage;b. telephone hotline; andc. web site updates.
Ensure sufficient alternate street, building, and station access during construction period.
Coordinate construction efforts by and among appropriate agencies of the City of New York.

Economic Effects:

Commitments
Undertake coordination and communication efforts to minimize residential and retail impacts.
Add appropriate signage for affected businesses and amenities.

Conservation:

Commitments
Conserve water and other materials and resources as appropriate and practicable.
Incorporate environment-friendly operations and maintenance as appropriate and practicable.
Manage and recycle waste as appropriate and practicable.