

**REQUEST FOR PROPOSALS  
CONSULTANT FOR ECONOMIC IMPACT AND FEASIBILITY  
ASSESSMENT**

**LOWER MANHATTAN DEVELOPMENT CORPORATION**

*The Lower Manhattan Development Corporation, a subsidiary of  
the New York State Urban Development Corporation  
d/b/a Empire State Development Corporation,  
seeks proposals and statements of qualifications for professional  
consulting services related to the evaluation of the economic  
impact of various major funding proposals submitted to LMDC on  
the downtown Manhattan area South of Houston Street, directly  
or indirectly affected by the events of September 11, 2001.*

**Lower Manhattan Development Corporation**  
John Whitehead, Chairman  
Louis R. Tomson, President

**May 16, 2002**

**Deadline for responses: June 18, 2002, 5:00 PM EST**

Questions must be submitted in writing no later than June 4, 2002.

## **GENERAL INFORMATION**

The Lower Manhattan Development Corporation (“LMDC”) is a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”). ESDC is a political subdivision and public benefit corporation of the State of New York, created by Chapter 24 of the Laws of New York, 1968, as amended.

LMDC was established in the fall of 2001 to redevelop and revitalize Lower Manhattan in the aftermath of the events of September 11, 2001. As it relates to the work of LMDC, Lower Manhattan refers to all areas South of Houston Street.

Bidding firms are requested to follow the recommended guidelines and instructions contained in this Request for Proposals (RFP). In the event it becomes necessary to revise any part of this RFP, revisions will be provided to all firms who received the initial RFP.

Proposals should be prepared providing a straightforward and concise description of the bidding firm’s capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Each copy of the proposal should be bound in a single volume and include any documentation you may wish to submit. LMDC reserves the right to reject any or all proposals submitted if such election is deemed to be in the best interest of LMDC.

LMDC assumes no responsibility and no liability for costs incurred by the bidding firm(s) prior to the issuance of a contract.

**Subject to annual review and yearly approval by the LMDC Board of Directors, the successful bidder will be retained for two years with an option for LMDC to renew for two additional years.**

**If you choose to respond to this RFP, please prepare four (4) copies of your proposal and deliver them to:**

Patrice Derrington  
Vice President for Corporate Development  
Lower Manhattan Development Corporation  
One Liberty Plaza – 20th Floor  
New York, NY 10006

**Proposals must be received no later than 5:00 PM, June 18, 2002.**

### **Oral Presentation**

Firms submitting a proposal in response to this RFP may be required to give an oral presentation of their proposal to LMDC. This will provide an opportunity for the bidding firm(s) to clarify or elaborate on the proposal but will in no way change the original submission.

### **Contract Terms and Other Requirements**

The contents of the proposal prepared by the successful bidding firm(s) will become a part of the contract awarded as a result of these specifications. The terms outlined should be considered all inclusive.

The successful bidding firm(s) will be required to:

- (1) work with LMDC staff and its consultants to provide consulting advice to LMDC on the economic impact of various funding proposals submitted to LMDC on revitalization of Lower Manhattan, in accordance with the Scope of Work described in Exhibit C hereof;
- (2) maintain accurate accounting records and other evidence pertaining to costs incurred in providing services and to make such records available to LMDC at all reasonable times during the contract period and for five (5) years after the date of the final payment to the bidding firm(s) under the contract, upon request of LMDC;
- (3) assume sole responsibility for the complete effort as required by this RFP, and be the sole point of contact with regard to contractual matters, and;
- (4) refrain from assigning, transferring, conveying, subletting or otherwise disposing of the contract or its rights, titles or interest therein or its power to execute such agreement to any other person, firm, partnership, company, or corporation without the prior consent and approval in writing of LMDC.

LMDC may hire more than one firm that responds to this RFP. LMDC reserves the right to terminate any contract entered into as a result of this RFP at any time, provided that written notice has been given to the firm at least thirty (30) days prior to such proposed termination date.

### **INTRODUCTION**

LMDC was established following the disastrous events of September 11, 2001 to oversee the rebuilding and revitalization of lower Manhattan, and is governed by a 16-member Board of Directors. LMDC is funded by federal appropriation to be administered by the United States Department of Housing and Urban Development through its Community Development Block Grant program. To date, \$2 billion has been allocated to LMDC under such appropriation. (See Defense Appropriations Act of 2002, Public Law 107-117.)

At LMDC's direction, ESDC will perform certain administrative and financial functions on behalf of LMDC, namely accounting, personnel, and information technology. In addition, ESDC will assist LMDC in satisfying the reporting requirements relating to federal appropriations.

## CONTENT OF PROPOSAL

Please letter and number your responses exactly as the questions are presented herein, and limit to 10 one-sided pages, except item A.6, which may be included in a separately bound appendix.

Interested firms are invited to submit proposals that contain the following information:

### **A. Background, Experience, and Personnel.**

1. A history of the firm's experience as consultants for economic development organizations, municipalities, or other governmental entities.
2. A description of services to be provided.
3. A description of economic impact analysis departments, including resumes of the partner(s), associates, and technical staff who would regularly work on such projects.
4. A description of the scope of the firm's ability to provide related services in urban economics and real estate analysis.
5. A list of up to 5 economic impact analysis projects in which the firm acted as consultant. Include the client, the name of a contact person who is able to provide a reference, a description of the nature of the work, the size of the project analyzed, and the amount and the agreed on fee arrangements. Such matters, preferably, should be for projects located in New York City.
6. Four (4) copies of documents prepared by your firm for municipalities, economic development organizations, or other governmental entities.
7. The number of full time employees in New York State.
8. All bidding firm(s) with 50 or more employees shall submit a copy of their nondiscrimination or affirmative action plan. Bidding firm(s) with less than 50 employees shall submit a statement of commitment to equal opportunity and affirmative action executed by the chief executive officer.
9. Any other information that you believe would make your representation of LMDC superior to that of other consultants.

**B. Fees and Costs.**

10. Please detail the following:
  - a. The normal hourly rate of each professional whose resume is provided and the hourly rate you propose to charge.
  - b. Costs of any anticipated clerical support.
  - c. A schedule of all disbursements that you anticipate will result in a charge and the rate of each.
  - d. Any reduced fees charged other municipalities, economic development or nonprofit organizations, and governmental entities.
  - e. Whether you would be willing to agree to a cap on fees.
  - f. Any other fees or charges.

Although proposed fees will be taken into account, LMDC reserves the right to negotiate a lower or different fee structure with any firm(s) selected.

**C. Conflicts of Interest.**

11. Please submit a statement describing whether the representation of the LMDC would create any potential conflict of interest, or appearance of impropriety, relating to other clients of the firm or officers, directors, and employees of LMDC. Please indicate what procedures will be followed to detect and notify LMDC of, and resolve any conflicts of interest.
12. Indicate any pending litigation and/or regulatory action by any oversight body or entity that could have an adverse material impact on the firm's ability to serve as counsel to LMDC.

**CRITERIA FOR SELECTION**

In evaluating proposals submitted pursuant to this request, LMDC places high value on the following factors, not necessarily in order of importance:

- (a) Experience in general, and, in particular, as economic impact consultants on behalf of municipalities, economic development organizations, or other governmental entities, as pertaining to the Scope of Work outlined in Exhibit C hereof.
- (b) Quality of work product. For those bidding firm(s) that have worked as consultants for ESDC, the quality of that work will be considered.
- (c) Innovative or outstanding analysis by your firm which demonstrates your unique qualifications as consultants.
- (d) Demonstrated commitment of time and resources to LMDC, ESDC, or other economic development organizations.
- (e) Number, complexity, and nature of economic impact analyses handled by the firm as well as experience as counsel for governmental entities.

- (f) Stability of staff, and availability in and facility for working with LMDC professional staff.
- (g) Anticipated cost of services and willingness to work with LMDC to minimize costs.

### MISCELLANEOUS CONDITIONS

- (a) The issuance of this RFP and the submission of a response by any bidding firm(s) or the acceptance of such response by LMDC do not obligate LMDC in any manner. Legal obligations will only arise on the execution of a formal contract by LMDC and the firm(s) selected by LMDC.
- (b) LMDC reserves the right (i) to amend, modify, or withdraw this RFP, (ii) to revise any requirements of this RFP, (iii) to require supplemental statements or information from any bidding firm, (iv) to accept or reject any or all responses hereto, (v) to extend the deadline for submission of responses thereto, (vi) to negotiate or hold discussions with any respondent and to correct deficient responses which do not completely conform to the instructions contained herein, and (vii) to cancel this RFP, in whole or in part, if LMDC deems it in its best interest to do so. LMDC may exercise the foregoing rights at any time without notice and without liability to any bidding firm or any other party for their expenses incurred in the preparation of the responses hereto or otherwise. Responses to this RFP will be prepared at the sole cost and expense of the bidding firm(s).
- (c) ESDC's nondiscrimination and affirmative action policy will apply. A copy of such policy and related contract provisions are attached as Exhibit B.



**Timetable for Request for Proposals  
Consultant for Economic Impact and Feasibility Assessment**

<b>Mailing of RFP</b>	May 21, 2002
<b>Bid Deadline</b>	June 18, 2002
<b>Oral Presentation</b>	June 20- 21, 2002 (if requested)
<b>Final Evaluation of Proposals</b>	June 21, 2002
<b>Board Approval of Selections</b>	July 17, 2002



**ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION  
POLICY AND RFP DOCUMENT PROVISIONS**

**Non-Discrimination and Affirmative Action Provisions**

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

**I. Definitions**

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

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

Shall mean the Vice President for Affirmative Action of ESDC or his/her designee.

**"Contracting Party"**

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

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

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

**"Minority Group Member"**

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

**"ESDC Contract"**

Shall mean a written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of \$5,000, whereby ESDC or any of its subsidiaries is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to ESDC or any of its subsidiaries.

**"ESDC Subcontract"**

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

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

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

**II. Policy**

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

- (a) Contracting Party shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, shall undertake or continue existing programs of affirmative action to insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on ESDC Contracts. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

- (b) Any Contracting Party performing work in connection with a ESDC Contract must comply with all State, Federal and local laws, orders, rules and regulations which prohibit discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and all such parties shall affirmatively cooperate in the implementation of Contracting Party's obligations hereunder.
- (c) The Contracting Party shall state in all solicitations or advertisements for employment that, in the performance of the ESDC Contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.
- (d) At the request of the AAO, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.
- (e) After an award of a ESDC Contract, the Contracting Party shall submit to the AAO a workforce utilization report, satisfactory to the AAO in form and substance with respect to the workforce actually utilized on the ESDC Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO.
- (f) The Contracting Party shall comply with the provisions of Sections 291-299 of the Executive Law and with the applicable provisions of the Civil Rights Law of the State of New York and (i) shall furnish all information and reports deemed necessary by the AAO under this Agreement and (ii) shall furnish all information and reports required by such sections of the Executive Law and the Civil Rights Law.
- (g) Contracting Party will permit access to its books, records and accounts, with respect to the ESDC Contract, by the AAO for purposes of investigation to ascertain compliance with the provisions herein.
- (h) The Contracting Party shall remit payment in a timely fashion, pursuant to the State and ESDC's Prompt Payment Policy, for work performed by M/WBE firms in connection with the Project.
- (i) The Contracting Party will include, or cause to be included, the provisions of clauses (a) through (h) in every purchase order or contract that it enters into in order to fulfill its obligations under the ESDC Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any ESDC Contract or Subcontract.

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

- (a) The Contracting Party is required to use its best efforts to achieve an overall M/WBE participation goal of \_\_\_\_% of the total dollar value of the ESDC Contract.
- (b) The goal for M/WBE participation in the conduct of the work is expressed as a percentage equal to the Contract price.
- (c) The total dollar value of the work performed by M/WBEs will be determined as:
  - (i) the dollar value of the work subcontracted to M/WBEs; or
  - (ii) where the Contracting Party is a joint venture including one or more M/WBEs as joint ventures -- the contract price multiplied by the percentage of the joint venture's profits/losses which are to accrue to the M/WBE joint venture(s) under the joint venture agreement; or
  - (iii) where the M/WBE is the Contracting Party -- the contract price.
- (d) Contracting Party will include, or cause to be included, paragraphs (a) through (c) in every subcontract or purchase order unless exempt by the Affirmative Action Officer, so that such provisions will be binding upon each Contracting Party.

### **IV. Best Efforts**

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

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with M/WBE participation on the ESDC Contract;

- (e) Utilizing the resources of the New York State Urban Development Corporation Affirmative Action Department to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts; and
- (f) Encouraging the formation of joint ventures, partnerships, or other similar arrangements, where appropriate, to ensure that the Contracting Party will meet its obligations hereunder.

## **V. Reporting Requirements**

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

## **VI. Non-Compliance and Sanctions**

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

- (a) Summon the Contracting Party for a hearing with the Affirmative Action Officer.
- (b) After any such hearing, and a determination by the Affirmative Action Officer that the Contracting Party has failed to comply with any of these provisions, and the passage of time in which to remedy such failure has transpired, this Agreement may be cancelled, terminated or suspended, in whole or in part. Alternatively, the Affirmative Action Officer, in his/her sole discretion, may assess liquidated damages against the Contracting Party for failure to demonstrate its best efforts in complying with the Affirmative Action Program. Liquidated damages may be assessed in an amount equal to the dollar value of contracts that would have been realized by MWBE's if the goals had been achieved.
- (c) If such an award is assessed against any Contracting Party, (i) the amount of such assessment may be withheld from any monies due to the Contracting Party by ESDC or; (ii) may be paid to ESDC by the Contracting Party that has been found to fail to comply with the Affirmative Action Program. Any liquidated damages collected hereunder shall be paid into one or more MWBE technical assistance funds administered by ESDC.
- (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.

**SCOPE OF WORK**

**1. Project Area and Purpose**

This Contract for the performance of economic impact analyses of various major funding proposals for economic initiatives in Lower Manhattan is being issued by the Lower Manhattan Development Corporation (LMDC), a subsidiary of the New York State Empire State Development Corporation (ESDC).

The geographic area covered by this scope of work is lower Manhattan, below Houston Street. In addressing its mandate for the revitalization of this area, LMDC has announced a program whereby it will provide the funding or partial funding to various project/programs that contribute to one or more of the following general objectives:

- Restoration or rehabilitation of conditions in Lower Manhattan that were impacted by the events of September 11 in Lower Manhattan.
- Compensation for damage incurred in Lower Manhattan due to the events of September 11.
- Building the infrastructure necessary for the revitalization of Lower Manhattan.
- Sustaining public and private activities necessary for the economic health of lower Manhattan.
- Revitalizing Lower Manhattan economically, culturally, physically and/or socially.
- Facilitating participation in the planning process by the citizens, communities and victims' families associated with the events of September 11.

Through this program, LMDC is the recipient of numerous applications, some of which are immediate/short-term projects and others that are substantial and long term in their impact. It is the latter which will be submitted to the consultants on an as-needed basis for individual economic impact analyses. In performing the analyses, the consultants will refer to the economic baseline developed by LMDC and emphasis must be placed on the impact of the project/program on the economic recovery of lower Manhattan. It is anticipated that some of the impact will be direct, such as providing an increase in economic output, employment, etc. while other forms of impact will be indirect, such as improving the quality of life for business employees and residents. Specific measurements of the impact will be required, though the nature of those metrics may vary.

**2. Scope of Project**

The services of the Consultant shall generally consist of, but not be limited to the following reports:

1. Assess the financial feasibility of the project/program.
2. Evaluate a project/proposal in terms of its impact on the economic recovery of Lower Manhattan (below Houston Street) on a temporal scale, i.e. in 2 years, 5 years, 10 years, etc. as relevant.
3. Analyze the economic repercussions in the areas, within lower Manhattan, adjacent to or related to the project/programs.
4. Establish metrics for the measurement of the impact of the project/program upon implementation.
5. Estimate the extent of the funding requirement, including potential sources other than LMDC.

**3. Project Schedule**

The projects/programs will be submitted to the consultants on an intermittent basis such that the above Scope of Work be performed individually within an agreed-upon time frame relevant to the project/program. It is anticipated that project/program proposals will be received over two years at a rate averaging approximately six per year.

The relevant reports for each project are to be submitted to LMDC in written form with the necessary graphics. Ten(10) copies of the report for each project are required.

## SCHEDULE A

### CONDITIONS APPLICABLE TO LMDC\* CONSULTANT AGREEMENTS

#### ARTICLE I

##### RELATION OF CONSULTANT TO LMDC

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

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

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

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

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

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

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\* Lower Manhattan Development Corporation, a subsidiary of the New York State Urban Development Corporation, doing business as Empire State Development Corporation.

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

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

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

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

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

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

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

The Consultant shall give prompt written notice to the LMDC Representative of the occurrence of an event or action, discovery of a condition, or failure of an event or action to occur or a condition to exist as anticipated that may delay completion of the work (or extend the Completion Date).

## **ARTICLE II**

### **DOCUMENTS AND RECORDS**

**2.1 OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photograph, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Consultant under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of LMDC, and LMDC shall



have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specification and other documents without payment of any additional royalty, charge or other compensation to Consultant. Upon request of LMDC during any stage of the work, Consultant shall deliver all such material to LMDC.

The Consultant agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of LMDC, except that Consultant may retain copies of such reports and other documents for general reference use.

**2.2 MAINTENANCE OF RECORDS.** The Consultant shall, until three years after completion of its services hereunder or termination of this Agreement by LMDC, maintain and shall require each Subconsultant to maintain (a) complete and correct records of time spent by Consultant (and Subcontractor) in the performance of its obligations under this Agreement and (b) complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultant) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder. Consultant shall make such books and records available to LMDC or its authorized representatives for review and audit at all such reasonable times as LMDC shall from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.

### **ARTICLE III**

#### **TERMINATION**

**3.1 DEFAULT BY CONSULTANT.** If any material representation made by the Consultant in this Agreement shall prove to be false or misleading in any material respect, or if the Consultant shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of three (3) days after written notice from LMDC specifying the occurrence, omission or failure giving rise to such default, or if, in the opinion of LMDC, by reason of the nature of such default, such default cannot be cured within such three (3) day period, then if the Consultant shall not within such period commence with due diligence the curing of such default and thereafter prosecute and complete the curing of such default as promptly as possible, except that LMDC shall not be required to give Consultant such written notice and Consultant shall not have such right to cure for Consultant's failure to comply with Section 1.9 hereof, LMDC, in addition to any other remedies or claims it may have with respect to such representation or such default may terminate this Agreement immediately upon verbal or written notice to the Consultant. In the event of such termination, LMDC, without waiving any such remedy or claims, (including consequential damages) shall not be required to pay the Consultant any portion of the fee specified in this Agreement remaining to be paid for which valid vouchers have not been submitted pursuant to this Agreement on or before the date of LMDC's notice of termination.

**3.2 OPTIONAL TERMINATION BY LMDC.** At any time, LMDC, in its sole discretion, may terminate this Agreement or postpone, delay, all or any part of the Agreement upon written notice to the Consultant. In the event of such termination, postponement, or delay, LMDC shall pay the Consultant for professional

time and out-of-pocket expenses incurred by Consultant to the date notice of such action is received by Consultant. The Consultant agrees to cause any agreement or contract entered into by Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provisions of this Section 3.2.

## ARTICLE IV

### PROVISIONS REQUIRED BY LAW

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

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

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

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

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

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

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

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

**4.5 NON-DISCRIMINATION & AFFIRMATIVE ACTION**

The Consultant shall comply and cause each of its subconsultants to comply with the provisions of Schedule C attached to and made a part of this Agreement, relating to non-discrimination and affirmative action.

## ARTICLE V

### OTHER STANDARD PROVISIONS

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

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

This Article shall survive the expiration or earlier termination of this Agreement.

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

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

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

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

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

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

## **ARTICLE VI**

### **BILLING POLICY**

*(ONLY APPLICABLE WHERE REIMBURSEMENT IS PART OF THE AGREEMENT)*

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

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

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

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

**6.3 MEALS.** Reimbursed in accordance with the LMDC Schedule of Reimbursable Allowances "names of attendees to be included," a copy of which is attached.

**6.4 PRINTING.**

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

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

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

**6.5 TELEPHONE.**

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

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

**6.5 TRANSPORTATION.** Reimbursed in accordance with the LMDC Schedule of Reimbursable Allowances.

**6.7 LODGING.** Reimbursed in accordance with the LMDC Schedule of Reimbursable Allowances.

**6.8 NON-REIMBURSABLE ITEMS.**

(a) Flight insurance

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

(c) Personal expenses of any type

(d) Expenses paid for LMDC employees.

(e) Travel to any LMDC office to "deliver vouchers or pick up check".

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

(a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, insurance or other reimbursable items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).

(b) Title to all equipment purchased pursuant to this Agreement is vested in LMDC. LMDC has the option of claiming any or all of such equipment.

**6.10 NO REIMBURSEMENT FOR SALES TAX.** LMDC is a public benefit corporation and as such is exempt from all sales taxes in New York State. LMDC will not reimburse the Consultant for sales or use taxes over \$10.00 incurred in connection with the contract. If the Consultant will make purchases of goods

or services that involve sales or use taxes in excess of that amount, the Consultant must, in advance of making such purchases, obtain a sales tax certification from LMDC so that no such taxes are incurred.

**6.11 GENERAL.**

(a) All receipts must be legible. Illegible receipts will not be reimbursed.

(b) Whenever possible original receipts should be presented for reimbursement.

(c) At any time or times until three years after completion of Consultant's services or earlier termination of this Agreement by LMDC, LMDC may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by LMDC on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

**ARTICLE VII**

**INSURANCE**

7.1 The Consultant shall insure and shall require each of his Sub-Consultants to carry the following insurance to the extent stated.

7.2 Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars (\$2,000,000) aggregate and One Million Dollars (\$1,000,000) per occurrence. Such insurance is to be written on an occurrence basis. The Lower Manhattan Development Corporation shall be named as an additional insured.

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

7.4 Professional Liability Insurance (Specify requirements as applicable)

7.5 Workers' Compensation: Employers liability and disability benefits as required by New York State.

7.6 Excess Liability Insurance (specify requirements as applicable)

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

**LOWER MANHATTAN DEVELOPMENT CORPORATION  
SCHEDULE OF REIMBURSABLE ALLOWANCES**

	<u>BREAKFAST</u>		<u>LUNCH</u>		<u>DINNER</u>	
	With Receipt	Without Receipt	With Receipt	Without Receipt	With Receipt	Without Receipt

**I. MEALS ALLOWANCES**

**A. OVERTIME**

NORMAL WORKDAY - 8:00 PM  
(10 or more hours worked) \$15.00

SAT., SUN & HOLIDAYS

OVER 4 HOURS \$10.00

OVER 10 HOURS \$15.00

**B. BUSINESS GUESTS (PER PERSON)**

METRO N.Y. & OUT OF STATE \$10.00 \$25.00 \$45.00

UPSTATE N.Y. \$ 8.00 \$20.00 \$35.00

**C. NON-OVERNIGHT TRAVEL DAY TRIPS**

\$8.00<sup>(a)</sup> \$15.00<sup>(b)</sup>

**D. OVERNIGHT TRAVEL**

1st & last day (partial) \$7-\$9<sup>(a)</sup> \$27-\$37<sup>(b)</sup>

Interim full days

(REIMBURSEMENT RATES ARE BASED ON LOCALITY-See Attached)

**BREAKDOWN OF MEALS BASED ON  
LOCATION**

<u>DAILY</u>	<u>BREAKFAST</u>	<u>DINNER</u>
\$46	\$9	\$37
\$42	\$8	\$34
\$38	\$8	\$30
\$34	\$7	\$27

**II. LODGING** (See attached)

**III. TRANSPORTATION ALLOWANCES**

**A. PERSONAL CAR MILEAGE**

32.5 cents per mile.

**B. PERSONAL CAR - OVERTIME**

Actual \$50 limit on overtime

**C. CAR RENTAL**

Actual

Note: Be sure that sales tax is not charged and that collision damage waiver insurance is declined when renting in NYS.

**D. AIRLINE & OTHER PUBLIC TRANSPORTATION**

Actual - evidenced by receipt (limited to Government/corporate coach rate.)

**E. TAXI FARES**

Actual - evidenced by receipt  
\$50 limit on overtime

(a) When travel status begins prior to 7:00 AM

(b) When travel status ends after 8:00 PM

<u>City</u>	<u>County</u>	Maximum Lodging Amount	Meal Date	Maximum Per Diem Date
NEW YORK				
Albany .....	Albany.....	74	42	116
Bronx/Brooklyn/Queens ..	The boroughs of the....	170	46	216
.....	Bronx, Brooklyn & Queens			
Buffalo .....	Erie.....	78	42	120
Glens Falls .....	Warren			
(June 1 - Sept. 30)	.....	74	34	108
(Oct 1 - May 31) ..	.....	55	34	89
Ithaca .....	Tompkins.....	56	34	90
Kingston .....	Ulster.....	79	38	117
Lake Placid .....	Essex			
(June 1 - Oct. 31)	.....	79	38	117
(Nov. 1 - May 31) .	.....	58	38	96
Manhattan .....	Manhattan.....	198	46	244
Nassau County/Great Neck	Nassau County.....	190	42	232
Niagara Falls .....	Niagara			
(June 1 - Sept. 15)	.....	89	34	123
(Sept. 16 - May 31)	.....	65	34	99
Nyack/Palisades. ....	Rockland.....	62	38	100
Owego .....	Tioga.....	76	30	106
Poughkeepsie .....	Dutchess.....	74	38	112
Rochester .....	Monroe.....	58	42	100
Saratoga Springs .....	Saratoga			
(June 15 - Oct. 31)	.....	95	38	133
(Nov. 1 - June 14)	.....	56	38	94
Staten Island .....	Richmond.....	94	42	136
Suffolk County .....	Suffolk County.....	149	38	187
Syracuse .....	Onondaga.....	70	34	104
Tarrytown .....	Westchester.....	114	42	156
.....	(except White Plains)			
Waterloo/Romulus .....	Seneca.....			
(Apr. 1 - Nov. 1) .	.....	89	34	123
(Nov. 2 - Mar. 31)	.....	65	34	99
Watkins Glen .....	Schuyler.....			
(May 1 - Oct. 31) .	.....	89	34	123
(Nov. 1 - Apr. 30)	.....	69	34	103
West Point .....	Orange.....	121	34	155
White Plains .....	City limits of White Plains	165	42	207
.....	(see Westchester County)			

Effective January 1, 2000



INVOICE SUMMARY  
(Submit with Letter of Transmittal)

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

Date: \_\_\_\_\_  
Invoice No: \_\_\_\_\_  
Amount \$ \_\_\_\_\_

Consultant \_\_\_\_\_

Address \_\_\_\_\_

Project \_\_\_\_\_

LMDC Contract No. \_\_\_\_\_ Project No. \_\_\_\_\_

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

Latest Contract Amount      \$ \_\_\_\_\_  
Billed to Date                      \$ \_\_\_\_\_  
Paid to Date                          \$ \_\_\_\_\_  
Balance Due                          \$ \_\_\_\_\_

\*Attach letters of Authorization  
\*\*Attach back-up

S A M P L E

Lower Manhattan Urban Development Corporation

**RELEASE**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby acknowledges that pursuant to an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the "Agreement"), pursuant to which the undersigned agreed to furnish to the Lower Manhattan Development Corporation ("Corporation") all the work necessary to complete the \* \_\_\_\_\_, \_\_\_\_\_, the Corporation has paid or will pay the undersigned, or a person, firm or corporation claiming by or through the undersigned, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars and up to \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars in reimbursable expenses, in each case subject to the terms, covenants and conditions of the Agreement, said amounts being the full and entire sum due from the Corporation to the undersigned pursuant to the Agreement by reason of work, labor or materials furnished or performed by the undersigned, in connection with the Agreement. In consideration of such payment, the undersigned hereby releases and discharges the Corporation, its officers, agents, and employees, of and from all claims of liability for any payment, fee or expenses payable to the undersigned pursuant to the Agreement.

The undersigned further acknowledges that neither the aforesaid payment nor acceptance by the Corporation of the work covered by the Agreement, shall in any way or manner operate as or constitute a release or waiver of the undersigned's obligations, undertakings or liabilities under the Agreement or in any way affect or limit the same.

**IN WITNESS WHEREOF**, the undersigned has caused its name to be hereunto subscribed and its seal to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

\_\_\_\_\_  
Name of Firm

(Corporate Seal)

By: \_\_\_\_\_

\*Indicate type of work performed: i.e., architectural design, engineering services, consulting etc.

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

### **Non-Discrimination and Affirmative Action Provisions**

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

#### **I. Definitions**

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

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

Shall mean the Vice President for Affirmative Action of LMDC or his/her designee.

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

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

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

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

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

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

#### **"LMDC Contract"**

Shall mean a written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of \$5,000, whereby LMDC or any of its subsidiaries is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to LMDC or any of its subsidiaries.

#### **"LMDC Subcontract"**

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

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

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: at least fifty-one percent (51%)

owned by one or more citizens or permanent resident aliens who are women; an enterprise in which the ownership interest of such women is real, substantial and continuing; an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; an enterprise authorized to do business in the State of New York and is independently owned and operated; and an enterprise certified by New York State as woman-owned.

## II. Policy

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

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

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

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

- (a) The Contracting Party is required to use its best efforts to achieve an overall M/WBE participation goal of % of the total dollar value of the LMDC Contract.
- (b) The goal for M/WBE participation in the conduct of the work is expressed as a percentage equal to the Contract price.
- (c) The total dollar value of the work performed by M/WBEs will be determined as:
  - (i) the dollar value of the work subcontracted to M/WBEs; or
  - (ii) where the Contracting Party is a joint venture including one or more M/WBEs as joint ventures -- the contract price multiplied by the percentage of the joint venture's profits/losses which are to accrue to the M/WBE joint venture(s) under the joint venture agreement; or
  - (iii) where the M/WBE is the Contracting Party -- the contract price.
- (d) Contracting Party will include, or cause to be included, paragraphs (a) through (c) in every subcontract or purchase order unless exempt by the Affirmative Action Officer, so that such provisions will be binding upon each Contracting Party.

### **IV. Best Efforts**

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

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with M/WBE participation on the LMDC Contract;
- (e) Utilizing the resources of the New York State Urban Development Corporation Affirmative Action Department to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts; and
- (f) Encouraging the formation of joint ventures, partnerships, or other similar arrangements, where appropriate, to ensure that the Contracting Party will meet its obligations hereunder.

## **V. Reporting Requirements**

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

## **VI. Non-Compliance and Sanctions**

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

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

**MBE/WBE COMPLIANCE REPORT**  
**CONSULTANT**

Project Sponsor/Developer: \_\_\_\_\_

LMDC AA Representative: \_\_\_\_\_

Address: \_\_\_\_\_

Project Name: \_\_\_\_\_

Telephone: \_\_\_\_\_

Project Start Date: \_\_\_\_\_ Complete Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_

*Attach M/WBE contract/subcontract documentation,  
i.e. executed contracts, signed purchase orders or cancelled checks.*

Total # of Subcontractors \_\_\_\_\_

Total \$ Amount of Subcontracts \_\_\_\_\_

Consultant Name, Address, Contact Person & Phone	Type of Contract (Trade/Service)	Contract Amount	M/WBE Subcontract Date	Name, Address, Contact Person & Phone of MBE/WBE Subconsultant	Scope of Services	Amount Contracted to MBE/WBE

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

*This report should be completed by an officer of the reporting company, and  
forwarded to the LMDC AA Representative with the appropriate documentation.*



**WORK FORCE EMPLOYMENT UTILIZATION REPORT  
SERVICE and/or CONSULTANT FIRMS**

Agency \_\_\_\_\_ /Code \_\_\_\_\_ Reporting Period \_\_\_\_\_

Check one:  Quarterly Report  Semi-Annual Report

Contractor Firm Name \_\_\_\_\_ Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Report:  Contract Specific Work Force  Total Work Force

Check if NOT-FOR-PROFIT

Federal Id/Payee Id No. _____ Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor Contract Amount: \$ _____	Contract No. _____ Location of Work _____ County _____ Zip _____ Product/Service Provided: _____ Contract Start Date: _____ Percent of Job Completed: _____
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Number of Employees											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Labors												
Service Workers												
TOTALS												

Company Official's Name \_\_\_\_\_ Title \_\_\_\_\_

Company Official's Signature \_\_\_\_\_ Date \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_



WORK FORCE EMPLOYMENT UTILIZATION REPORT  
SERVICE and/or CONSULTANT FIRMS  
INSTRUCTIONS FOR COMPLETION

**PURPOSE:** The *Work Force Employment Utilization Report for Service and/or Consultant Firms* is prepared by all contractors, and subcontractors if any, providing services (skilled or non-skilled) or professional consulting services 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 work force cannot be separated out, the contract's *total work force* 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 to 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 contractor is a NOT-FOR-PROFIT.
4. **Type of Report:** check to indicate whether report cover (i) the *Contract Specific Work Force* or (ii) the *Company's Total Work Force* (in the event the contract specific work force 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 (seven digits).
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 work force 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 work force, 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 (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race;
- **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;
- **Native American or Alaskan Native:** all persons having origins in any of the original peoples of North America.

**TOTAL % MINORITY =** sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

**TOTAL % FEMALE =** total number of female employees in the FOC (column 2) divided by the total number of all employees in the FOC (column 1 + column 2).

**TOTALS:** column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

**SUBMISSION:** The work force utilization report is to be completed by both prime and subcontractors and signed and dated by an *authorized representative* before submission. The 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 work force, collect reports completed by each subcontractor, and prepare a summary report of the entire combined contract work force. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N* to the *NYCRR* pursuant to *Article 15-A of the Executive Law*.