

## REQUEST FOR PROPOSALS

For Consulting Services

HARVESTWORKS, Inc. (HARVESTWORKS) and Electronic Music Foundation, Ltd. (EMF), registered 501(c)(3) non-profit organizations in the State of New York, seek proposals to provide institutional consulting services relating to the creation of an International Electronic Arts center in Lower Manhattan.

June 15, 2007

Deadline for responses: July 6, 2007, 5:00PM EDT

Questions should be submitted by email before June 29, 2007 to:

[carolp@harvestworks.org](mailto:carolp@harvestworks.org)

### I. GENERAL INFORMATION

HARVESTWORKS and EMF, under contract from the Lower Manhattan Development Corp., are conducting a joint capital planning project for an international electronic arts center in Lower Manhattan. Initiated in 2005 with a grant from the LMCC/ADNY Capital Grants Program, this project will comprehensively address the physical property and financial and organizational aspects of the capital project to position the organization for site selection and a capital campaign. Our goal is to establish an electronic music and arts center that will reinforce and sustain New York's cultural leadership in the field worldwide and that will provide a destination for national and international audiences and artists.

The Center will support a wide-range of New York-based, national and international creators of electronic arts and provide ongoing, high-quality public programs both for established and emerging audiences. Further, it will be a community nexus in the international network of electronic arts institutions, artists, audiences, and scholars that stretches from Tokyo to Paris to London to Canada.

### A. MISSION AND STRUCTURE OF HARVESTWORKS and EMF

Founded by artists in 1977, Harvestworks supports the creation and presentation of art works achieved through the use of new and evolving technologies. For the last thirty years we have offered artists on-site recording studios, workshops and classes in emerging technologies. Harvestworks has become a national media arts center commissioning and producing work by composers, choreographers, writers and film, video and visual artists experimenting with technology in the production of art.

Harvestworks' central activity is the creation of new work, and all our programs are designed to support different aspects of the creative process from conception to presentation. Our core program, the **Creative Residencies Program**, commissions artists and supports them through

the production process with a wide array of digital media equipment, and the assistance of expert engineers. **Sponsored Projects** gives financial, administrative, and production assistance to artists, sponsors their applications for grants from private and public funders, and helps the artists find venues for their work. **Listen In**, is a program of concerts, lectures, seminars, conferences and exhibitions featuring innovative artists who integrate advanced technology into their work. The presentations take place in our studios and in collaboration with other organizations. This program has developed an expanding audience, and we also stimulate public interest and critical discussion of the changing relationships between art and technology through focused conferences and symposia. In 2005/6 we began to consolidate our Education and Production Services into a new program called **Project Management**. This move reflects the artists' changing needs. In the 90s, artists needed access to equipment and instruction in the new commercial digital software. As artists mastered digital, practice and as sophisticated production equipment became cheaper, artists began to need expert advice, and technical engineering during their creative process. Project Management is more personal in its response to the artist's need, offering referrals to engineers, to classes and tutorials, to our studios, and other resources. This year Project Management has expanded into a complementary virtual manifestation— a Web based Reference Library (currently available in prototype on our Website offering demonstrations, tutorials and problem solving forums of practical use to artists all over the country. Our studios are among the best multi-media **Production Studios** in the city and we offer artists low cost rentals and high-quality engineers to create, edit and record their work.

EMF's mission is to explore the new creative potential in the convergence of music, sound, technology, and science, and foster understanding of its benefits to the public. Addressing both artists and public, we organize concerts, festivals, symposia, and conferences in New York City and elsewhere. We present and commission innovative work, publish CDs and DVDs, support research, develop collaborative projects with partners and contacts worldwide, and maintain websites on the history and current practice of electronic music, thereby providing resources for creativity and encouraging the development and exchange of new ideas throughout the world. Through a powerful internet presence and global outreach, we view ourselves as a center and beacon for the empowerment of individual creativity and access to information and materials that foster understanding of the new roles that music can play in the world.

## **B. OVERVIEW OF SERVICES REQUESTED AND THE SUBMISSIONS PROCESS**

HARVESTWORKS and EMF seek to work with a consulting firm on institutional planning, to entail board and staff development, operational management, capitalization strategies, long-term planning, a feasibility study, a business plan and an implementation plan.

Proposals should provide a concise description of the consulting agency's

capabilities to satisfy the requirements of this RFP. Consulting agencies may be requested to meet with senior staff and/or board members of HARVESTWORKS and EMF to clarify and elaborate on the proposal, although it will not alter the original submission. Proposals must be received no later than 5.00 PM EDT, July 6, 2007. Proposals may be submitted as PDF documents by email or mailed to:

Carol Parkinson  
HARVESTWORKS  
596 Broadway Suite 602  
New York, NY 10012

HARVESTWORKS and EMF reserves the right to reject any or all of the proposals if such election is deemed to be in the best interest of HARVESTWORKS and EMF. HARVESTWORKS and EMF assumes no obligation, no responsibility, and no liability for costs incurred by the responding firms prior to the issuance of a contract.

The current schedule for this call is as follows:

RFP issued: June 15, 2007  
Responses Due: July 6, 2007  
Firm Selected: July 19, 2007

## **II. ANTICIPATED SCOPE OF SERVICES**

HARVESTWORKS and EMF seeks to retain the services of a consulting agency to provide institutional planning services towards the creation of an electronic art center in New York City.

### **A. PROJECT AREA**

As part of the overall association with HARVESTWORKS and EMF, working with the program staff, HARVESTWORKS and EMF senior staff and Board of Directors, the consulting agency will carry out a thorough space needs assessment, identify site selection criteria, site evaluation and designation, and the development of an implementation plan.

### **B. SCOPE OF PROJECT**

Under direction from the HARVESTWORKS and EMF Program Directors, and in cooperation with the project manager, other project staff, and utilizing all available HARVESTWORKS and EMF resources:

- Board and Staff Development: assessing effectiveness, facilitating restructuring and developing strategies for expanding our members; and

- Capitalization Strategies: assessing need and assisting with the planning for working capital, reserves and facilities investments, measuring the impact of changes and the risks of growth; and
- Operational Management: ensuring there is an appropriate fit between the scale and culture of an organization and the expansion plan, including partnership workshops; and
- Long Term Planning: development of a strategic plan that is based on a thorough understanding of the organizational environment and representative of the board and staff regarding the future direction of the organization; and
- Feasibility Study: conduct a number of personal and confidential interviews, group discussions and telephone/email surveys with key stakeholders, funders and colleagues in the field to determine viability of capital campaign for Center
- Business Plan: writing a five-year business plan for joint facility that includes operations plan and market analysis
- Implementation plan: including timeline, the report would detail next steps

### **C. PROJECT SCHEDULE**

The project schedule will be established with the consulting agency whose appointment will be announced on July 19, 2007. Work on the project is expected to start immediately. Final reports are to be completed by January 30, 2008 to be coordinated with completion of the overall program by February 29, 2008.

## **III. SUBMISSION REQUIREMENTS**

Please order and title your responses exactly as the questions are presented herein.

### **A. CONTACT INFORMATION**

On a single cover page in your proposal, please provide:

1. The lead consulting agency or individual practice name.
2. The lead consulting agency's contact person.
3. License or certification information of lead consulting agency principal or individuals working on the HARVESTWORKS and EMF project.
4. Telephone and fax numbers for consulting agency principals or individuals

working on the HARVESTWORKS and EMF project.

5. E-mail address for consulting agency principals or individuals working on the HARVESTWORKS and EMF project.
6. The street address of the lead consulting agency or individual.
7. The year the consulting agency or individual practice was established.
8. The MBE/WBE status of the consulting agency (Minority-owned Business Enterprise or Women-owned Business Enterprise, as certified by New York State).
9. The type of work or specialty and size of consulting agency.
10. The signature of the lead individual, and the date of the signature.

## **B. EXPERIENCE, STRUCTURE AND PERSONNEL**

Please provide:

1. Materials that highlight the consulting agency's unique strengths, talents, philosophy, sensitivity to the public realm, breadth of knowledge, and experience.
2. A description of the consulting agency's organizational structure, including resumes of the principals, project manager(s), and professional staff who would work directly with HARVESTWORKS and EMF and the project staff.
3. Overall description of the consulting agency's relevant work, including synopses of major projects that the consulting agency has completed involving art organizations or other relevant not-for-profit organizations with the client's name, the name of a contact person who is able to provide a reference, a description of the nature of the work, the size and complexity of the project, and the amount and the agreed fee arrangements.
4. A description of innovative and outstanding work experience and unique qualifications related to strategic planning and, more specifically, applied to real estate.
5. Any other information that applicants believe would make the consulting agency's work on behalf of HARVESTWORKS and EMF superior to that of other consulting agencies, or information about applicant's specialty or particular skill to perform a specific requested service.

## **C. METHODOLOGICAL APPROACH**

Please provide:

1. A description of how the consulting agency intends to address the anticipated scope of services set forth in Section II of this RFP.
2. A statement explaining the consulting agency's approach to assessment and evaluation, including methods, analytical techniques, models, etc., that would be employed.

## **D. CONFLICTS OF INTEREST**

Please provide:

1. Submit a statement describing any potential conflict of interest or appearance of impropriety relating to other clients of the consulting agency or officers, directors, and employees of HARVESTWORKS and EMF that could be created by providing services to HARVESTWORKS and EMF.
2. Indicate what procedures will be followed to detect and notify HARVESTWORKS and EMF of and to resolve any conflicts of interest.
3. Indicate any pending litigation and/or regulatory action by any oversight body or entity that could have an adverse material impact on the consulting agency's ability to serve HARVESTWORKS and EMF.
4. Indicate whether the consulting agency has ever had a prior contract with any governmental entity terminated for any reason, and provide an explanation.
5. Submit a completed Standard Background Questionnaire (Attachment 3).
6. Submit a completed Contractor Disclosure Contracts Form and the Contractor Disclosure of prior Non-Responsibility Determinations form (Attachment 4) in compliance with New York State Executive Order 127.

#### **E. NON-DISCRIMINATION POLICY**

Please provide:

1. Consulting agencies with 50 or more employees must submit a copy of their nondiscrimination or affirmative action plan. Firms with less than 50 employees must submit a statement of their commitment to equal opportunity and affirmative action from their chief executive officer.
2. Each responding consulting agency must also complete and submit both
  - a. Attachment 1, relating to the anticipated workforce to be utilized on the contract; and
  - b. Attachment 2, relating to the anticipated participation of minority- and women-owned business enterprises as subcontractors, if any.

#### **F. FEE**

Please provide:

1. A total estimated consulting agency fee for completion of the project.
2. The normal hourly rate of each principal and staff member whose resume is provided or whose job category may be required, and the rate used in the proposal
3. A list of anticipated reimbursable expenses and the rate charged for each.
4. Any reduced fees offered to other municipalities, governmental entities, economic development or nonprofit organizations, and civic organizations
5. Any other direct or indirect fees or charges.

NOTE: The fee proposal must be submitted by post to the address above in a separate, clearly marked, sealed envelope. The fees will not be opened until all proposals have been initially evaluated. Although proposed fees will be taken into account, HARVESTWORKS and EMF reserve the right to negotiate a lower

or different fee structure with any consulting agency that is selected. All information and documents described in subsections A through F above must be included or addressed in the submission.

#### **IV. CRITERIA FOR SELECTION**

In evaluating proposals submitted pursuant to this request, HARVESTWORKS and EMF requires the following minimum qualifications of consulting agencies submitting proposals to be considered for evaluation:

- five years experience providing institutional planning services for projects of similar scope, complexity, and visibility; and
- extensive knowledge of commercial real estate market including, but not limited to, major real estate developers and agents active in Lower Manhattan, city agencies and their proceedings.

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

- Approaches in methodology with respect to the anticipated scope of services that demonstrate maximum comprehension of and ability to provide such services to HARVESTWORKS and EMF; and
- Experience of consulting agency and employees to be assigned to the project in general, and, in particular, providing institutional planning, business planning, feasibility and implementation plans for non profit art or cultural organizations; and
- Experience of consulting agency and employees to be assigned to the project in dealing with municipalities, economic development organizations, or other governmental entities; and
- Experience of consulting agency on projects in New York City; and
- Quality of work product as demonstrated in three submitted work samples with references; and
- Experience of the consulting agency with comparable projects; and
- Innovative or outstanding work by consulting agency that demonstrates the agency's unique qualifications to provide institutional planning; and

- Number, complexity, and nature of institutional planning projects handled by the consulting agency; and
- Consulting agency's staff ability, the availability of the assigned staff (team), their commitment to this project, and their facility for working with HARVESTWORKS and EMF directors, officers, staff and consultants; and
- Conformity with or exceeding of applicable HARVESTWORKS and EMF policies as noted herein, including specific policies relating to nondiscrimination and affirmative subcontracting goals; and
- Projected cost of services.

## **V. CONTRACT TERMS AND REQUIREMENTS**

The contents of the proposal prepared by the successful consulting agency, with any amendments approved by HARVESTWORKS and EMF, will become a part of the contract that is signed as a result of this RFP process. The terms outlined throughout this RFP should be considered all inclusive. The selected consulting agency(s) will be required to:

Work with HARVESTWORKS and EMF staff and program consultants to provide real estate planning services to HARVESTWORKS and EMF on matters that may arise in connection with the planning, development, and revitalization of Lower Manhattan.

Maintain accurate accounting records and other evidence pertaining to costs incurred in providing services, and, on HARVESTWORKS and EMF's request, to make such records available to HARVESTWORKS and EMF at all reasonable times during the contract period and for six (6) years after the date of the final payment to the consulting agency under the contract.

Assume sole responsibility for the complete effort as required by this RFP, and be the sole point of contact with regard to contractual matters.

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, consulting agency, partnership, company, or corporation without the prior consent and approval in writing of HARVESTWORKS and EMF.

Comply with applicable laws governing projects initiated or supported by HARVESTWORKS and EMF, including all applicable HUD requirements and

regulations. HARVESTWORKS and EMF 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 consulting agency at least thirty (30) days prior to such proposed termination

## **VI. MISCELLANEOUS CONDITIONS**

### **A. OBLIGATION ONLY ON FORMAL CONTRACT**

The issuance of this RFP, the submission of a response by any consulting agency, and the acceptance of such response by HARVESTWORKS and EMF do not obligate HARVESTWORKS and EMF in any manner. Legal obligations will only arise on the execution of a formal contract by HARVESTWORKS and EMF and the consulting agency selected by HARVESTWORKS and EMF. Responses to this RFP will be prepared at the sole cost and expense of the proposing consulting agencies. No materials submitted in response to this RFP will be returned.

### **B. HARVESTWORKS & EMF RESERVATION OF RIGHTS**

HARVESTWORKS and EMF reserves the right to:

1. Amend, modify, or withdraw this RFP.
2. Revise requirements of this RFP.
3. Require supplemental statements or information from any consulting agency.
4. Accept or reject any or all responses hereto.
5. Extend the deadline for submission of responses thereto.
6. Negotiate or hold discussions with any respondent and waive defects and allow corrections of deficient responses which do not completely conform to the instructions contained herein.
7. Cancel this RFP, in whole or in part, if HARVESTWORKS and EMF deems it is in its best interest to do so. HARVESTWORKS and EMF may exercise the foregoing rights at any time without notice and without liability to any proposing consulting agency or any other party for their expenses incurred in the preparation of the responses hereto or otherwise.

### **C. NONDISCRIMINATION AND AFFIRMATIVE ACTION POLICIES**

It is the policy of the State of New York and HARVESTWORKS and EMF to comply with all federal, state, and local laws, policies, orders, rules and regulations, which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that Minority- and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by HARVESTWORKS and EMF's participation in projects or initiatives, and/or the use of EMF funds. The selected consulting agency(s) shall be required to use best efforts to provide for the meaningful participation of United States M/WBEs,

Minority Group Members and women in the execution of this contract. A copy of each responding consulting agency's equal employment opportunity policy statement, Attachment 1 relating to the anticipated workforce to be utilized on the contract and Attachment 2 relating to the anticipated participation by M/WBEs as subcontractors, shall be included as part of the response to the RFP. The ESDC Affirmative Action Unit (AAU) is Harvestworks and Electronic Music Foundation RFP, September 2006, page 10 available to assist you in identifying M/WBEs certified by the State of New York that can provide goods and services in connection with the contract anticipated by this RFP. If you require M/WBE listings, please call the AAU at (212) 803-3224.

## VII. HUD / LMDC COMPLIANCE REQUIREMENTS

### I. GENERAL CONDITIONS

#### A. General Compliance

Consultant 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. Consultant also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. Consultant further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

#### B. Workers' Compensation

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

#### C. Insurance and Bonding

Consultant 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 the Society.

Consultant 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. The Society and LMDC shall be named as additional insureds.

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 employers liability and disability benefits as required by the State of New York.

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

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

## II. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

Consultant 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

Consultant 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

Consultant 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. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records 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

Consultant shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the 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 the Society. 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.

Consultant 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, Consultant shall produce to LMDC the index and all records maintained in accordance with this subparagraph B.

3. Disclosure

Consultant understands that personal client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Society's or Consultant'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.

4. Property Records

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

5. Audits and Inspections

All Consultant records with respect to any matters covered by this Agreement shall be made available to the Society, LMDC, HUD, their designees or the Federal Government, at any time during normal business hours, as often as LMDC or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Consultant within 30 days after receipt by Consultant. Failure of Consultant to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Consultant hereby agrees to have an annual agency audit conducted in accordance with current LMDC policy concerning subrecipient audits and OMB Circular A-133.

C. Procurement

1. Compliance

Consultant shall comply with current LMDC policies concerning the 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 LMDC upon termination or completion of this Agreement.

2. OMB Standards

Consultant shall procure all materials, property, or services 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

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

III. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

Consultant 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, 12107 and 12086.

2. Nondiscrimination

Consultant 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. Consultant 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. Consultant 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, Consultant 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 LMDC and the United States are beneficiaries of and entitled to enforce such covenants. Consultant, 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

Consultant 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 Society shall provide Consultant 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

Consultant agrees that it shall be committed to carry out, pursuant to LMDC'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

Consultant 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. Consultant may

rely on written representations by businesses regarding their status as minority and woman-owned female business enterprises in lieu of an independent investigation.

Consultant shall comply with and cause each of its subcontractors to comply with the provisions of Schedule C of the Society's subrecipient agreement with LMDC relating to non-discrimination and affirmative action, incorporated herein by reference. Consultant shall make best efforts to comply with the provisions of Schedule C relating to affirmative action.

3. Access to Records

Consultant 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 the Society, LMDC, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

Consultant 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 Consultant, advising the labor union or worker's representative of Consultant's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. EEO/AA Statement

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

6. Subcontract Provisions

Consultant will include the provisions of Sections III.A (Civil Rights) and III.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

Consultant 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

Consultant 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. Consultant shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Society for review upon request.

Consultant 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 Consultant of its obligation, if any, to require payment of the higher wage. In all such contracts subject to such regulations, Consultant 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 the Society, Consultant and any of Consultant's subcontractors. Failure to fulfill these requirements shall subject the Society, Consultant and any of Consultant's subcontractors, their successors and assigns, to those sanctions specified by this Agreement. Consultant certifies and agrees that

no contractual or other disability exists which would prevent compliance with these requirements.

Consultant 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.

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

b. Notifications. Consultant 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. Consultant 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. Consultant 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. Conduct

1. Subcontracts

a. Monitoring. Consultant will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

b. Content. Consultant shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

c. Selection Process. Consultant shall undertake to insure 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 the Society along with documentation concerning the selection process.

2. Hatch Act

Consultant 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.

3. Conflict of Interest

Consultant 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. Consultant further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by Consultant hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of Consultant, or of any designated public agencies or subrecipients that are receiving funds from HUD under the CDBG program.

4. Lobbying

Consultant 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 subcontractors 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.

## 5. Copyright

If this Agreement results in any copyrightable material or inventions, LMDC and/or HUD 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.

6. Religious Organization

Consultant 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).

IV. ENVIRONMENTAL CONDITIONS

Consultant 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.

##