

SCHEDULE A

**CONDITIONS APPLICABLE TO THE CORPORATION'S RETAINER
AGREEMENTS WITH LAW FIRMS**

ARTICLE 1
RELATION OF FIRM TO THE CORPORATION

1.1 DEFINITIONS.

"Corporation" as used herein shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") unless the retainer agreement ("Agreement") of which this Schedule A forms a part has been entered into by a subsidiary corporation of ESD or an affiliated entity, in which case the "Corporation" shall mean such subsidiary corporation or affiliate.

"Firm" as used herein shall mean the lawyer or law firm executing the Agreement and/or short form contract to which this Schedule A applies.

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

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

1.4 APPROVAL OF SUBCONTRACTORS.

(a) The Firm shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subcontractor") in connection with the performance of its obligations under this Agreement without the prior written consent of the Corporation. The Firm shall inform the Corporation in writing of the name, proposed service to be rendered, and compensation of the Subcontractor, and of any interest the Firm may have in the proposed Subcontractor. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

(b) If the Firm determines to subcontract a portion of the services, the Subcontractor must be clearly identified and the nature and extent of the Subcontractor's involvement in and/or proposed performance under the contract must be fully explained by the Firm to the Corporation. The Firm shall only use Subcontractors who (1) have the financial and organizational capacity to perform the assigned work; (2) have the legal authority to perform the assigned work; (3) demonstrate integrity; and (4) have performed satisfactorily on previous contracts, whether for private or governmental clients.

(c) The Firm will retain ultimate responsibility for all services performed under the Agreement.

(d) Unless waived in writing by the Corporation, all subcontracts between the Firm and Subcontractors shall expressly name the Corporation as the sole intended third party beneficiary of such subcontract. The Corporation reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Corporation a party to any subcontract or create any right, claim or interest in the Subcontractor or proposed Subcontractor against the Corporation.

(e) The Firm shall give the Corporation immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a Subcontractor or which may affect the performance of the Firm's duties under the Agreement. Any subcontract shall not relieve the Firm in any way of any responsibility, duty and/or obligation under the Agreement with the Corporation.

1.5 CONFLICT OF INTEREST. The Firm represents and warrants that:

(a) The Firm has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Firm'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 the Corporation shall be permitted by the Firm to share in any benefit to arise from the Firm's work.

(c) The Firm shall not permit any officer, employee, agent or director of the Corporation 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 the Corporation be permitted by the Firm to have any interest, direct or indirect, in this Agreement.

(d) The fulfillment of obligations by the Firm, as set forth in this Agreement and including any subcontracting arrangements, does not and will not (i) violate any existing contracts or agreements between the Firm and any State agency or authority; (ii) create any conflict of interest with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and any State agency or authority; or (iii) compromise the Firm's ability to carry out its obligations under any existing contracts between the Corporation and any State agency or authority.

(e) The fulfillment of any other contractual obligations that the Firm has with any State agency or authority will not affect or influence its ability to perform under this Agreement with the Corporation.

(f) The Firm has not and shall not offer to any employee, member or director of the Corporation any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to or could reasonably be expected to influence said employee, member or director in the performance of his or her official duty or was intended as a reward for any official action on the part of said employee, member or director.

(g) If any conflict(s) as described in paragraphs (a) through (e) above arises during the term of this Agreement, the Firm shall provide written notice to the Corporation as soon as practicable. The Firm will use good faith efforts to work with the Corporation to prevent or mitigate any such conflicts.

(h) The Firm shall cause, for the benefit of the Corporation, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), (c), (d), (e) and (f) of this Section 1.5. The Firm will take such action in enforcing such provisions as the Corporation may direct, or, at its option, assign such rights as it may have to the Corporation for enforcement by the Corporation.

1.6 THE CORPORATION'S REPRESENTATIVE. The Corporation will designate an individual who will serve as the Corporation's Representative and normal point of contact for the Firm in regard to this Agreement and the Firm's services and obligations hereunder. The Corporation may from time to time change this designation by written notification to the Firm.

ARTICLE 2 **DOCUMENTS AND RECORDS**

2.1 MAINTENANCE OF RECORDS. The Firm shall, and shall require any and all Subcontractors to, until six (6) years after completion of services hereunder or termination of this Agreement by Corporation, maintain (a) the original books, documents, materials and other records created or collected in the course of Firm's (and Subcontractor's) performance of its (their) obligations under this Agreement (and any subconsulting agreement), and indexes of the same; (b) unless waived or modified in writing by the Corporation, complete and correct records of time spent by Firm (and Subcontractor) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Firm is being reimbursed for out-of-pocket expenses, complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement (and any subcontract), including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Firm (and Subcontractors) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Firm (and Subcontractor) in performing its obligations hereunder (or

under any subcontract). Firm (and Sub consultant) shall make such books, records and indexes available to the Corporation, the State of New York, any other governmental entity having an interest in the performance of services under this Agreement (or any subconsulting agreement) and any of their authorized representatives for review and audit at all such reasonable times as the Corporation or any such other entity may from time to time request. Firm shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Firm invoices in accordance with this Agreement.

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

ARTICLE 3 **TERMINATION**

3.1 OPTIONAL TERMINATION BY THE CORPORATION. The Corporation at any time, in its sole discretion, may terminate this Agreement or postpone, or delay all or any part of the Agreement upon written notice to the Firm. In the event of such termination, postponement or delay, the Corporation shall pay the Firm for professional time and out-of-pocket expenses incurred by Firm to the date notice of such action is received by Firm. The Firm agrees to cause any agreement or contract entered into by Firm with any Subcontractor to provide for an optional termination by Firm similar to the provisions of this Section 3.1.

ARTICLE 4 **REQUIRED PROVISIONS**

4.1 CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS. The Firm 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 the Corporation, the Firm shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Corporation or the Firm in connection with the services to be provided under this Agreement.

4.3 NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY. The Firm shall comply, and cause each of its Subcontractors to comply, with the provisions of Schedule B and Schedule B-1 attached to and made a part of this Agreement, relating to non-discrimination and contractor & supplier diversity.

4.4 TAX LAW SECTION 5-a COMPLIANCE.

(a) During the term of this Agreement, the Firm shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law. A copy of the Firm's initial Form ST-220-CA is attached hereto as Attachment 4.4(a). Immediately upon delivery, such updated form shall form a part of this Agreement.

(b) The Firm's updated certification shall be made if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

(c) If the Firm is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Firm is exempt), the Firm shall so certify to the Corporation, including in such certification the reason(s) for exemption, in a notarized statement submitted in lieu of Form ST-220-CA. A sample affidavit is attached hereto as Attachment 4.4(b).

4.5 STATE FINANCE LAW SECTION 139-J AND 139-K COMPLIANCE. The Firm hereby certifies that all information provided to the Corporation with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j, attached to this Agreement as Attachment 4.5 – (1), and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment 4.5 – (2), is complete, true and accurate. The Firm acknowledges that the preceding sentence is a material representation upon which the Corporation is relying in entering into this Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement shall be subject to termination pursuant to Section 3.1 hereof.

4.6 COMPLIANCE WITH EXECUTIVE ORDER 177. The Firm hereby certifies that the Firm's policies and practices address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability or other basis protected by law.

ARTICLE 5
OTHER STANDARD PROVISIONS

5.1 GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of New York without giving effect to the choice of law provisions thereof, except where the Federal supremacy clause requires otherwise.

5.2 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.

5.3 CONFIDENTIALITY. Firm hereby agrees that all data, recommendations, reports and other materials relating to the matters to which consultant's services relate are strictly confidential between Firm and the Corporation and Firm 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 the Corporation, other than as required by law. Notwithstanding the preceding sentence, Firm shall cooperate fully with such third parties as the Corporation may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Firm in connection with this study.

5.4 NO WAIVER. No failure by the Corporation 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 Firm, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Firm. 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.

5.5 NOTICES. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

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

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

5.6 NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where required by statute), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

5.7 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 other part of this Agreement.

ARTICLE 6
BILLING POLICY

6.1 INVOICES. The Firm is required to submit detailed documentation in support of Firm's request for reimbursement. All invoices and their accompanying documentation must be forwarded to:

General Counsel
New York State Urban Development Corporation
d/b/a Empire State Development
633 Third Avenue
New York, New York 10017.

Invoices shall be made on the Firm's own invoice forms or letterhead and must include the Corporation's contract and project numbers, if any. Firms shall also include their federal identification number with their first invoice, and a list of each individual who is expected regularly to bill time to this matter, his/her title and hourly billing rate agreed to by the Firm and Corporation. Time shall be billed on a 1/10th of an hour basis.

6.2 REIMBURSABLE EXPENSES.

Firm's monthly invoices should present out-of-pocket expenses on a daily, itemized basis, grouped by general category. The Firm must submit supporting documentation for each individual expense item over \$250. Out-of-pocket expenses will be reimbursed only in accordance with the Schedule of Maximum Allowances for the Corporation's Legal Retainer Agreements in Attachment 6. Reimbursable expenses must be billed currently and in any event within 60 days of being incurred.

6.3 NON-REIMBURSABLES.

The following will not be reimbursed:

- (a) Flight insurance
- (b) Personal expenses of any type
- (c) Expenses paid for employees of the Corporation
- (d) Travel to/from any office of the Corporation, except with prior written approval of the Corporation.

6.4 GENERAL.

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible, original receipts should be presented for reimbursement.
- (c) At any time or times until six (6) years after completion of Firm's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment made shall be subject to reduction for amounts included in the related voucher which are found by the Corporation 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.

ATTACHMENT 4.4(a)

Tax Law Section 5-a

Form ST-220-CA

See https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

ATTACHMENT 4.4(B)

AFFIDAVIT OF NON-APPLICABILITY OF STATE TAX LAW § 5-A

State of New York }
 } ss.:
County of }

_____ being duly sworn, do depose and state under penalty of perjury that I am the _____ [state title] of the Firm _____ [state name of contractor] responding to the procurement solicitation by the New York State Urban Development Corporation d/b/a Empire State Development or its subsidiary (collectively, "ESD") herein. I have read and am aware of the requirements of State Tax Law § 5-a with respect to registration with the New York State Department of Taxation and Finance ("NYSDTF") in connection with collection of sales and compensating use taxes imposed by Articles 28 and 29 of the State Tax Law. Neither the Firm nor any affiliate or sub-contractor as defined in the State Tax Law is registered or is required to be registered with NYSDTF for this purpose pursuant to any provision of the State Tax Law. I make this affidavit intending that ESD will rely thereon in considering the Firm's response to the solicitation, and with knowledge that any false information contained herein shall render the Firm's response to the solicitation non-responsive, and may result in other action by ESD including, without limitation, reporting the statement to relevant authorities.

_____ [LS]

Print Name: _____

Sworn to before me, a Notary Public, this _____ day of _____, 20__

STAMP

My commission expires on _____

ATTACHMENT 4.5 – (1)
STATE FINANCE LAW SECTION 139-j

OFFERER’S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

Model Language to Obtain Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Background:

State Finance Law § 139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer’s understanding of and agreement to comply with the Governmental Entity’s procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law § § 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

ATTACHMENT 4.5 – (2)

STATE FINANCE LAW SECTION 139-j

OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by a Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No

Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature: _____

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

See: <http://www.osc.state.ny.us/vendrep/documents/questionnaire/forprofit.pdf>

ATTACHMENT 6

SCHEDULE OF REIMBURSEMENT ALLOWANCES

<u>TYPE OF EXPENSE</u>	<u>RATE OF REIMBURSEMENT</u>
Secretarial	None (unless overtime)
Word Processing	None (unless overtime and then up to \$50/hr)
Local Telephone Expenses	None
Taxis or Private Cars	Actual cost up to \$50; amounts over \$50 must be submitted for approval on a case-by-case basis.
Meal Charges	Actual cost of evening or overtime meals in the office up to \$30 and reasonable cost of outside catering service for meetings.
Time Spent Preparing Bills	None
Long Distance Telephone	Actual cost
Photocopying	Firm's standard rate, up to \$.25/page; Actual cost if outsourced.
Fax Transmission	None for incoming faxes; Firm's standard rate, up to \$1.00/page for outgoing faxes
Computer Research	Actual cost (No overhead)
Out-of-Town Travel	Reasonable expenses, to be submitted for approval on a case-by-case basis.
Postage and Overnight Mail	None for individual letters; FedEx and other special delivery services will be reimbursed at actual cost
Messenger Service	Actual cost up to \$15.