

SCHEDULE A

**CONDITIONS APPLICABLE TO THE CORPORATION'S AGREEMENTS
FOR SERVICES/MATERIALS**

ARTICLE 1
GENERAL TERMS

1.1 THE CORPORATION. As used herein, the "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") unless the Contract for Materials/Services of which this Schedule A forms a part has been entered into by a subsidiary entity of ESD, in which case the "Corporation" shall mean such subsidiary.

1.2 SUPERVISION BY THE CORPORATION. The services to be performed by Contractor 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 Contractor of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.3 CONTRACTOR'S REPRESENTATIVE. The Contractor 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 Contractor and who shall be the Corporation's normal point of contact with the Contractor on matters relating to such services. Such individual shall be replaced upon the Corporation's written request.

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

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

1.6 APPROVAL OF SUBCONTRACTORS.

(a) The Contractor 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 Contractor shall inform the Corporation in writing of the name, proposed service to be rendered, and compensation of the Subcontractor, and of any interest the Contractor may have in the proposed Subcontractor. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

(b) If the Contractor 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 Contractor to the Corporation. The Contractor 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 Contractor will retain ultimate responsibility for all services performed under the contract.

(d) Unless waived in writing by the Corporation, all subcontracts between the Contractor 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 Contractor 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 Contractor's duties under the contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation under its contract with the Corporation.

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

1.8 CONFLICT-OF-INTEREST. The Contractor represents and warrants that:

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

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

(d) The fulfillment of obligations by the Contractor, 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 Contractor and any State agency or authority; (ii) create any conflict of interest with any current role or responsibility that the Contractor has with regard to any existing contracts or agreements between the Contractor and any State agency or authority; or (iii) compromise the Contractor'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 Contractor has with any State agency or authority will not affect or influence its ability to perform under this Agreement with the Corporation.

(f) The Contractor 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. The Contractor may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation, or management of this contract, within at least 30 days from the time that the employee's involvement in this matter closed.

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

(h) The Contractor 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 1.8. The Contractor 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.

1.9 NO BROKER. The Contractor 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.

1.10 NOTICE OF OVERRUNS AND DELAYS. The Contractor shall promptly give written notice to the Corporation's 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 Contractor; (b) reimbursable expenses; (c) the number of hours necessary to perform the work; and/or (d) which may delay completion of the work or extend the Completion Date.

ARTICLE 2

DOCUMENTS AND RECORDS

2.1 OWNERSHIP OF INTELLECTUAL PROPERTY, DOCUMENTS AND OTHER MATERIALS. All intellectual property and proprietary materials, including originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Contractor under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Corporation, and the Corporation shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specifications and other documents without payment of any additional royalty, charge or other compensation to Contractor. Upon request of the Corporation during any stage of the work, Contractor shall deliver all such materials to the Corporation. The Contractor further 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 the Corporation, except that Contractor may retain copies of such reports and other documents for general reference use.

2.2 MAINTENANCE OF RECORDS. The Contractor shall maintain, and shall require any and all subcontractors to maintain, until six (6) years after completion of services hereunder or termination of this Agreement by the Corporation: (a) the original books, documents, materials and other records created or collected in the course of Contractor's (and Subcontractors') 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 Contractor (and Subcontractor) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Contractor 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 Contractor (and Subcontractors) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Contractor (and Subcontractor) in performing its obligations hereunder (or under any subcontract). Contractor (and Subcontractor) 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. Contractor shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Contractor invoices in accordance with this Agreement.

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

ARTICLE 3 TERMINATION

3.1 DEFAULTS BY CONTRACTOR. If any material representation made by the Contractor in this Agreement shall prove to be false or misleading in any material respect, or if the Contractor shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of ten (10) days after written notice from the Corporation specifying the occurrence, omission or failure giving rise to

such default, or if, in the opinion of the Corporation, by reason of the nature of such default, such default cannot be cured within such ten (10) day period, then if the Contractor 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 the Corporation shall not be required to give Contractor such written notice and Contractor shall not have such right to cure for Contractor's failure to comply with Section 1.10 hereof, the Corporation, 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 Contractor. In the event of such termination, the Corporation, without waiving any such remedy or claims, (including consequential damages) shall not be required to pay the Contractor 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 the Corporation's notice of termination.

3.2 TERM. The term of this Agreement (the "Term") shall commence on the date hereof and continue in full force and effect until the later to occur of (a) the end of the Program, which is anticipated to be completed on or about September 2027, and (b) satisfaction of all obligations hereunder. The expiration or earlier termination of this Agreement shall not affect any party's rights, obligations or remedies, including intellectual property ownership rights under Section 2.1 and Confidentiality under Section 6.5, which shall survive any such expiration or earlier termination of this Agreement.

3.3 OPTIONAL TERMINATION BY THE CORPORATION. The Corporation at any time, in its sole discretion and with or without cause, may terminate this Agreement or postpone or delay all or any part of the Agreement upon written notice to the Contractor. In the event of such termination, postponement or delay, the Corporation shall pay the Contractor for professional time and out-of-pocket expenses incurred by Contractor to the date that notice of such action is received by Contractor. The Contractor agrees to cause any agreement or contract entered into by Contractor with any Subcontractor to provide for an optional termination by Contractor consistent with the provisions of this Section 3.3.

ARTICLE 4 **INDEMNIFICATION**

4.1 Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all injuries to persons (natural and otherwise), including without limitation death, and all physical and other damage(s) sustained by persons while performing or resulting from the performed work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Contractor pursuant to this Agreement.

4.2 Contractor agrees to defend, indemnify and hold harmless the Corporation, the State of New York and, if the Corporation is an ESD subsidiary, ESD and each of their respective officers, directors, commissioners, employees and representatives (collectively, the "Indemnitees") from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons natural or otherwise, and including without limitation death and other damage(s), if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or its Subcontractors, 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 Contractor or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors 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.

4.3 Contractor shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Contractor or its Subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Contractor, its Subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

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

ARTICLE 5 **PROVISIONS REQUIRED BY LAW**

5.1 CONTRACTOR TO COMPLY WITH LEGAL REQUIREMENTS. The Contractor in performing its obligations 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 herein.

5.2 CONTRACTOR TO OBTAIN PERMITS, ETC. Except as otherwise instructed in writing by the Corporation, the Contractor 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 Contractor in connection with this Agreement.

5.3 WORKERS' COMPENSATION INSURANCE. The Contractor 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 the Corporation and of no effect if the Contractor fails to comply with this provision.

5.4 NO ASSIGNMENT WITHOUT CONSENT. The Contractor agrees that:

(a) In accordance with Section 138 of the State Finance Law, this Agreement may not be assigned by the Contractor or any of its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the Corporation's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the Corporation and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, and where the assignment is due to a reorganization, merger or consolidation of

the Contractor's business entity or enterprise. The Corporation retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the Corporation's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

(b) If the prohibition of Section 5.4(a) be violated, the Corporation may revoke and annul this Agreement and the Corporation shall be relieved from any and all liability and obligations thereunder to the Contractor and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Contractor and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

5.4-1 NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY. The Contractor shall comply, and cause each of its subcontractors to comply, with the provisions of Schedule B attached to and made a part of this Agreement, relating to non-discrimination and contractor & supplier diversity.

5.5 TAX LAW SECTION 5-a COMPLIANCE.

(a) If this Agreement has a value in excess of \$100,000 during the term of this Agreement, the Contractor 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 (Found here: https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). A copy of the Contractor's initial Form ST-220-CA is attached hereto as Appendix A.

(b) The Contractor's certification shall be updated 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 Contractor is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Contractor is exempt), the Contractor shall so certify to the Corporation, including in such certification the reason(s) for exemption, in affidavit submitted in lieu of Form ST-220-CA (the form of affidavit may be found here: http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf).

5.6 STATE FINANCE LAW SECTION 139-J & 139-K COMPLIANCE. If the value of this contract is over \$15,000, the Contractor 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 s.139-j (Found here: http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf), attached to this Agreement as Appendix B, and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment Appendix C, is complete, true and accurate. The Contractor 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.

5.7 COMPLIANCE WITH EXECUTIVE ORDER 177. Contractor hereby certifies that Contractor'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.

5.8 COMPLIANCE WITH THE NEW YORK STATE PUBLIC OFFICERS LAW. Contractors, consultants, vendors, and subcontractors may hire former Corporation employees. However, as a general rule, former employees may neither appear nor practice before the Corporation, nor receive compensation for services rendered on a matter before the Corporation, for a period of two years following their separation from State service. In addition, former State employees are subject to a "lifetime bar" from appearing before the Corporation or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with the Corporation. The Contractor shall not knowingly engage any person in violation of the provisions of the New York Public Officers Law, other laws, applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors.

5.9 COMPLIANCE WITH NEW YORK STATE EXECUTIVE LAW 4-A. New York State Executive Law 4-A established the Office of the State Inspector General and provides that the state inspector general shall, among other responsibilities, receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in any covered agency. Covered agencies, state officers and employees shall report promptly to the state inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings.

6.0 RESPONSIBILITY IN STATE CONTRACTS

- a) The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Corporation, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- b) The Corporation, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Corporation issues a written notice authorizing a resumption of performance under the Contract.
- c) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Corporation officials or staff, the Contract may be terminated by the Corporation at the

Contractor's expense where the Contractor is determined by the Corporation to be non-responsible. In such event, the Corporation may complete the contractual requirements in any manner deemed advisable, and may pursue available legal or equitable remedies for breach.

ARTICLE 6
OTHER STANDARD PROVISIONS

6.1 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 Contractor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Corporation. 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.

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

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

6.4 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.

6.5 CONFIDENTIALITY. Contractor hereby agrees that all data, recommendations, reports and other materials developed in the course of performance under this Agreement are strictly confidential between Contractor and the Corporation and Contractor 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. Notwithstanding the preceding sentence, Contractor 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 Contractor in connection with performance under this Agreement.

6.6 RELEASE AND DISCHARGE. Simultaneously with request for final payment hereunder, Contractor shall execute and deliver to the Corporation an instrument releasing the Corporation 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 as Appendix D and made a part hereof.

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

- (a) by certified or registered United States mail, return receipt requested;
- (b) by personal delivery;
- (c) by FedEx, UPS or other recognized expedited delivery service; or
- (d) by e-mail.

Such notices shall be addressed to the parties as set forth in the Contract to which this Schedule A is appended, or to such different addresses as the parties may from time-to-time designate in writing transmitted as set forth above. 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.

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

6.9 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 7 **BILLING POLICY**

7.1 Contractor is required to submit detailed documentation in support of Contractor's request for reimbursement. Invoices should be submitted monthly and include the Corporation's contract and project numbers, if any. Contractor should also include federal identification number with the first invoice. All invoices and their accompanying documentation must be forwarded with a letter of transmittal to:

NYS Urban Development Corporation
Att'n: Accounts Payable Department
633 Third Avenue
New York, New York 10017-6754

Out-of-pocket expenses should be delineated on any invoices by general category. The Contractor must submit supporting documentation for each individual expense category in excess of \$250.

7.2 REIMBURSABLE EXPENSES. Where the Agreement provides that the Corporation will reimburse Contractor for out-of-pocket expenses, the following maximum amounts apply:

7.2.1 MEALS AND INCIDENTAL EXPENSES. Reimbursed in accordance with the Federal General Services Administration (“GSA”) per diem rate schedule of the fiscal year of this agreement (see <http://www.gsa.gov/portal/content/104877>), provided that the names of all attendees shall be included in the request for reimbursement.

7.2.2 PRINTING.

- (a) Internal printing or copying is not reimbursable, unless ordered by or for the specific use of the Corporation.
- (b) Outside printing will be reimbursed only to the extent of prints requested by the Corporation, and at cost evidenced by a receipt.
- (c) No postage will be reimbursed for printing requested by the Corporation.

7.2.3 TRANSPORTATION. Privately Owned Vehicle (POV) Mileage will be reimbursed in accordance with the Federal General Services Administration (“GSA”) POV Mileage Reimbursement Rate found here: <http://www.gsa.gov/portal/category/104715>.

7.2.4 LODGING. Reimbursed in accordance with the Federal General Services Administration (“GSA”) per diem rate schedule of the fiscal year of this agreement (see <http://www.gsa.gov/portal/content/104877>).

7.2.5 NON-REIMBURSABLES.

- (a) Flight insurance
- (b) Valet Services (except five or more consecutive days of travel)
- (c) Personal expenses of any type
- (d) Expenses paid for the Corporation’s employees.
- (e) Travel to or from any office of the Corporation for administrative reasons.

7.3 EQUIPMENT AND SUPPLIES. Where the Agreement allows reimbursement for equipment and supplies, insurance or similar items, the Contractor 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 the Corporation. The Corporation has the option of claiming any or all of such equipment.

7.4 GENERAL.

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

(b) Whenever possible original receipts should be presented.

(c) At any time or times until three years after completion of Contractor's services or earlier termination of this Agreement by the Corporation, the Corporation 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 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.

ARTICLE 8
INSURANCE

8.1 The Contractor shall carry, and shall require each of its Subcontractors to carry, insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required depending on the nature of the services to be performed under this Agreement or a sub consulting agreement. Any such additional types or amounts of coverage shall be specified attached hereto as Appendix E.

8.2 COMMERCIAL GENERAL LIABILITY INSURANCE.

Limits of Liability:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$10,000 Medical Expense Limit (any one person)

\$1,000,000 Damage to Rented Premises (each occurrence)

(a) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.

(b) Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.

(c) Policy shall include coverage for Independent Contractors;

(d) Policy shall include Contractual Liability for liability assumed under this contract

8.3 COMMERCIAL AUTO LIABILITY INSURANCE. If applicable:

Limit of Liability:

\$1,000,000 Each Accident

(a) Policy shall be written on ISO Form Number CA 00 01 covering any auto (Symbol 1), or if Contractor has no owned autos, covering hired, (Symbol 8) and non-owned autos (Symbol 9)

8.4 WORKERS' COMPENSATION INSURANCE. Workers' Compensation and Disability Benefits as required by New York State. Proof of compliance shall be in the form specified on Appendix F.

Employer's liability

\$1,000,000 Bodily Injury each Accident

\$1,000,000 Bodily Injury by Disease - Policy Limit

\$1,000,000 Bodily Injury by Disease - Each Employee

8.5 UMBRELLA/EXCESS LIABILITY. If applicable, see Appendix E.

8.6 PROFESSIONAL LIABILITY INSURANCE. If applicable, see Appendix E.

8.7 Certificates of Insurance for all of the aforementioned coverages shall be of form and substance acceptable to the Corporation and shall be provided to the Corporation prior to the commencement of work under this Agreement.

8.8 OTHER REQUIREMENTS.

(a) The Corporation and, if different, the New York State Urban Development Corporation d/b/a Empire State Development Corporation, other additional insured as the Corporation may specify in writing attached hereto as Appendix G, and each of their directors, officers, employees, agents and representatives shall be named as an additional insureds.

(b) As respects General Liability, additional insured endorsements shall be on a form at least as broad as ISO Forms CG 20 10 07 04 & CG 20 37 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which the above parties are required to be named as Additional Insureds.

(c) Contractor shall, by specific endorsement to its primary commercial general liability policy and, if applicable, automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and non-contributory with any other valid and collectible insurance available to the Additional Insureds.

(d) Acceptance and/or approval by the Corporation of any insurance does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities.

(e) All required insurance shall be obtained at the Contractor's sole cost and expense; shall be primary and non-contributory to any insurance or self-insurance maintained by the Corporation; shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail.

(f) All required insurance shall be maintained with insurance carriers licensed to do business in New York State, acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published

Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

(g) Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Corporation.

(h) Contractor shall require that any of its subcontractors hired in connection with the services to be performed under this Agreement carry insurance of the same types and with the same limits and provisions provided herein and add the Corporation as additional insured on a form at least as broad as ISO Form CG 20 38 04 13 and CG 20 37 07 04 combined.

(i) The Contractor shall cause all insurance to be in full force and effect as of the commencement of this Agreement and to remain in full force and effect throughout its term until conclusion of the services to be performed hereunder or earlier termination of this Agreement. Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

(j) Not less than thirty (30) days prior to the expiration or renewal date, the Contractor shall supply the Corporation with updated replacement Certificates of Insurance, and amendatory endorsements.

(k) The Contractor shall cause to be included in each of its policies a waiver of the insurer's right of subrogation against the Corporation or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the loss, the right of recovery against the Corporation or (ii) any other form of permission for the release of the Corporation.

APPENDIX A
TAX LAW SECTION 5-a
FORM ST-220-CA

See Section 5.5

APPENDIX B
STATE FINANCE LAW SECTION 139-j
OFFERER'S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

See Section 5.6

APPENDIX C
STATE FINANCE LAW SECTION 139-j
OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATION

See Section 5.6

APPENDIX D
RELEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby acknowledges that pursuant to an agreement dated the day of _____, 20 (the "Agreement"), pursuant to which the undersigned agreed to furnish to the Urban Development Corporation d/b/a Empire State Development Corporation or one of its subsidiaries (as the case may be, the "Corporation") all of the work necessary to complete the Agreement, and that the Corporation has paid or will pay the undersigned, or a person, Contractor 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 _____, 20.

Name of Contractor

(Corporate Seal)

By:

APPENDIX E
ADDITIONAL INSURANCE

APPENDIX F
PROOF OF WORKERS' COMPENSATION AND DISABILITY BENEFITS INSURANCE

Insurance To comply, you must submit one of the following proofs:

Private Insurer	-	Form C-1 05.2
State Insurance Fund	-	Form U.26.3
Status as Self-Insured	-	Form SI-12
Status as Member of Group Self Insurance	-	Form GSI-1 05.2

(Please obtain the above forms from your insurance carrier, licensed insurance agent or self-insurance administrator.)

Statement that Applicant Is Not Required to Carry New York State Worker's Compensation Insurance	-	Form CE-200 OR Form CE-200
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Form CE-200 may be found on the Board's website at
http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

If you have questions regarding workers' compensation insurance coverage requirements, please contact the Bureau of Compliance at: **1-800-298-7830**.

DISABILITY BENEFITS INSURANCE

Section 220 of the New York State Workers' Compensation Law requires that before any permit, license or contract is issued by any municipal, county or state government entity, the applicant must submit proof of compliance with NYS disability benefits coverage requirements.

To comply, you must submit one of the following proofs:

All Insurance Carriers	-	Form DB-1 20.1 or DB-820/829
Status as Self-Insured	-	Form DB-155

(Please obtain the above forms from your insurance carrier or self-insurance administrator.)

Statement that Applicant Is Not Required to Carry New York State Disability Insurance	-	Form CE-200 OR Form CE-200
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Form CE-200 may be found on the Board's website at
http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

If you have questions regarding disability benefits insurance coverage requirements, please contact the Disability Benefits Office at: **1800-353-3092**.

APPENDIX G
ADDITIONAL INSUREDS