



Request for Proposals

Canalside Interpretive Structures Project

CONSTRUCTION MANAGEMENT SERVICES

Buffalo, New York

Solicitation Issue Date: **November 9, 2017**

Proposal Due Date: **December 1, 2:00 PM, EST**

Issued by:

Erie Canal Harbor Development Corporation

A subsidiary of the New York State Urban Development Corporation d/b/a

Empire State Development

95 Perry Street, Suite 500

Buffalo, NY 14203

716-846-8200

Table of Contents

| | | |
|-------|---|----|
| I. | INVITATION TO SUBMIT PROPOSALS..... | 3 |
| II. | PROJECT BACKGROUND..... | 3 |
| III. | PROJECT DESCRIPTION..... | 4 |
| IV. | SCOPE OF SERVICES..... | 5 |
| V. | SELECTION PROCESS..... | 17 |
| | a. Skills Required | |
| | b. Selection Process | |
| | c. Proposal Requirements | |
| | d. Other Certifications & Requirements | |
| VI. | PRE-SUBMITTAL CONFERENCE..... | 35 |
| VII. | PROJECT COST & SCHEDULE..... | 35 |
| VIII. | TIME & PLACE OF SUBMISSION..... | 36 |
| IX. | ADDITIONAL INFORMATION..... | 37 |
| X. | GENERAL TERMS & CONDITIONS..... | 37 |
| XI. | ATTACHMENTS..... | 37 |
| | Exhibit A – Commercial Slip Pavilion Plans | |
| | Exhibit B – Union Block Building Plans | |
| | Exhibit C – General Term & Conditions | |
| | Exhibit D – Diversity Practices Questionnaire | |
| | Exhibit E – Required Forms | |

I. **INVITATION TO SUBMIT PROPOSALS**

The Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), is seeking proposals from well-qualified Construction Management firms (“CM”) to enter into an agreement to provide pre-construction, construction, and post-construction management services as related to the Canalside Interpretive Structures Project located in the public spaces of Canalside, a twenty-one acre waterfront district in downtown Buffalo, New York. The CM shall represent ECHDC as an owner’s representative in all aspects. The CM will work closely with the design architect for the project to implement the design of the Commercial Slip Pavilion and the Union Block Building. The Project is expected to break ground in September 2018, and be completed by May 2019.

II. **PROJECT BACKGROUND**

For decades Buffalo, New York’s Inner Harbor and Waterfront sat desolate and underutilized until 2005, when ECHDC was formed to spearhead Buffalo’s Waterfront revitalization and reclaim the area as one of America’s brightest historical treasures. Millions of dollars in both public and private investment have transformed the Inner Harbor into what is now known as Canalside- a mixed use urban entertainment destination. Open to the public since May 2008, Canalside features several fully restored facets of the original Erie Canal Harbor including the Commercial Slip, Boardwalk, and the Historic Public Canals. A year round attraction that hosts over one million visitors annually, Canalside boasts thousands of events, concerts, festivals, family activities, attractions, historical and cultural programming, art, food, and tours that capitalize on and showcase the diverse resources of the Western New York Region. In addition, the Historic Public Canals are frozen in the winter months to become New York State’s largest outdoor ice skating rink. For more information, visit www.CanalsideBuffalo.com.

In addition to creating a densely developed area with a mix of amenities and open space on parcels that have been vacant and underutilized for decades, Canalside, and this Project specifically, aims to provide for the following public uses and purposes described in the Canalside MGPP adopted November, 13, 2013:

- Providing ample, visually interesting, and diverse public spaces encouraging year-round use.
- Creating an urban, mixed-use setting that builds upon and complements the 2004 ECHMP urban design guidelines set forth in the City’s Waterfront Urban Renewal Plan, as amended.
- Promoting and incorporating architectural elements that celebrate and interpret the historical significance of the Erie Canal and its terminus on the 12.5-acre Erie Canal Harbor Project site, as provided for in the 2004 ECHMP.

One of the key points of the Canalside MGPP is “promoting and incorporating architectural elements that celebrate and interpret the historical significance of the Erie Canal and its terminus on the 12.5-acre Erie Canal Harbor Project site, as provided for in the 2004 Erie Canal Harbor Master Plan (ECHMP). The 2004 ECHMP and this Project focuses on achieving these goals in the context of better interpreting the site's rich history and importance to the development of the region and the nation as a whole, while providing public amenities to enhance the visitor experience.”

III. **PROJECT DESCRIPTION**

The Project consists of two new facilities located at Canalside, with the focus on the former buildings along the Commercial Slip; Commercial Slip Pavilion and Union Block Building.

Commercial Slip Pavilion: With an approximate 5,000 sf perimeter footprint, this masonry and steel open structure recalls the historic 19th-century building massing. It provides an approximate 1,000 sf enclosed space for toilets and concessions, as well as an approximate 2,000 sf elevated outdoor deck above. The Pavilion will have the ability to lengthen Canalside’s programming seasons; and house seasonal markets, recurring programming, and private events. Located at the historic corner connecting the Commercial Slip to the Central Wharf, it will further highlight the interpretation of the Erie Canal terminus. In addition to providing covered programming and vending space, the historic massing will assist exhibits in interpreting the relationship and interplay between Commercial Slip and Central Wharf, and the themes Commercial Slip: Portal to the World, Transshipment and Transportation, and Center of Trade and Commerce. See **Exhibit A**.

Union Block Building: With the popularity of Canalside as a regional tourist destination, the demand for visitor services and public restrooms has been growing. The Union Block Building, located on one of Canalside’s smallest parcels, is envisioned to satisfy the demand for these services with a masonry, concrete, steel and wood "ghosted" (partially open), three (3) and four (4) story tall structure. It will allow for added year-round and seasonal programming with possible semi-permanent exhibits and/or experiences contained within. The approximately 2,800 sf one (1) story ground level (which is technically two stories tall) will be fully-enclosed and environmentally controlled. An open 1,800 sf crawl space is provided at the slip tow path below. Restrooms, visitor information, and public programming spaces are located within the ground/street level of this permanent structure. The building recalls the historic 19th-century building massing, while enabling a modern use, architectural, and street scale interpretation. The approximately 3,000 sf roof level, located directly above the one-story enclosed space (technically at the third-floor story building level), is partially enclosed on three (3) side by masonry walls recalling window portals, but is actually open-air to enable outdoor gathering uses including; observation of Canalside and the waterfront, public programming, private events, and/or interpretive gatherings. See **Exhibit B**.

Project Designers

The consultant team completing the architectural/engineering design for the Project is led by:

Hamilton Houston Lownie Architects, LLC
172 Allen Street
Buffalo, New York 14201

Total Project Construction Cost

ECHDC project budget for Construction is \$10,000,000.

Project Schedule

ECHDC is expected to go out to bid for Construction in April 2018; break ground in September of 2018; and complete the Project by May 2019.

IV. SCOPE OF SERVICES

ECHDC is seeking innovative CM proposals that are cost effective while producing a high quality outcome and ensure the construction contractors meet their commitments in terms of quality, price and schedule. The primary responsibility of the CM shall be to represent ECHDC throughout the pre-construction, construction, and post-construction processes; maintain responsibility for the day-to-day management of the construction process; and to deliver the Project on time, within budget, and of the highest quality. The successful CM will be responsible for all of the Tasks and sub-tasks outlined below as well as assume all responsibility and accountability standards as if the selected firm were a part of ECHDC. ECHDC is looking for a firm with extensive experience coordinating with the Design Architect to identify value engineering solutions to save cost and schedule; and developing and implementing a work plan that ensures there are no deviations from cost, quality and completion dates; and ensures the most cost effective Project outcome.

Please note that for all reviews outlined in the following tasks, the notation shall read, “Reviewed and Approved”, “Reviewing and Disapproved”, “Revise and Resubmit”, and “Approved – Make Corrections Noted”. Never is “Reviewed Only” permitted. Other notations are subject to approval by ECHDC.

1. Pre-Construction Phase

1.1 Commencement & Duration – The Pre-Construction Phase shall commence sometime during *Design Development Phase*.

1.2 Meetings – The CM shall plan to meet with ECHDC and the Architect/Engineer Team (“A/E”) and other project stakeholders on a *bi-weekly* basis to review design progress and collaboratively plan the construction delivery. Additional meeting shall be

scheduled as need arises. The CM shall also coordinate onsite activities and project milestones with the Canalside Management Group.

1.3 Planning & Scheduling – the CM shall assist with planning the Project in the Pre-Construction Phase. The CM shall develop the preliminary Project schedule and logistic plans, refine, revised, and maintain as the design is finalized. The CM shall be responsible for preparing and maintaining the Master Project Schedule, logistical planning, and any phasing plans, which will define the parameters for performing the work without disruption to the operation of Canalside’s high programming season. The Master Project Schedule shall identify and coordinate milestones and activities for, but not limited to;

- a. Project Planning, design, procurement, pre-construction, construction, post-construction/close-out
- b. ECHDC specific milestones (i.e. Board meetings/approvals)
- c. Ordering and delivering of long lead items
- d. Permit filings where applicable and other governmental agency approvals

1.4 Constructability Review – The CM shall be required to perform a focused review of the proposed bid documents at the conclusion of *Design Development* design phase, and provide written comments and recommendations to ECHDC concerning constructability of the documents. The Contract Documents (drawings and specifications), in conjunction with a Site evaluation, shall be review for clarity, consistency, and completeness. Such review shall be for the sole benefit of ECHDC, and any benefit derived by the A.E shall be merely incidental. The Constructability Review is a priority task for ECHDC.

1.5 Permitting – The CM shall confer with the A/E and be responsible for the identification of the permitting requirements for the Project. The CM shall incorporate the permit filing milestones in the Master Project Schedule and monitor the progress of the required filings and approvals.

1.6 Construction Cost Estimate – The CM shall complete and reconcile a construction cost estimate at the conclusion of *Design Development* and *Contract Documents 75% and 100%* broken down by Trade and CSI Code. The cost breakdown structure of the cost estimate shall be tied to the Master Project Schedule. Each

estimate shall be based on quantity take-off, local trade and materials indexes, and current prevailing wages. The CM shall reconcile each estimate with the independent estimate prepared by the A/E. In the event the reconciled estimates exceed the budget, the CM shall discuss with the A/E and prepare joint recommendations for bringing the Project within budget through value engineering solutions. With ECHDC's approval, the CM shall revise the reconciled estimates to reflect the effect of implementing the joint recommendations. Such revisions shall be at no additional cost to ECHDC.

1.7 Value Engineering Services – The CM shall establish, conduct, and administer value engineering sessions at the conclusion of *Design Development* and *Construction Documents 75% and 100%*. The value engineering sessions shall include documented reviews and recommendations on the following, but not limited to: product alternatives; product placement; feasibility; resident stakeholders; and maintenance and product life cycle costs.

1.8 Contract Documents – The CM shall collaborate with the A/E and ECHDC to create the standard Division 1 (front end) of the Contract Documents to meet the needs of the Project, ECHDC's requirements, and ECHDC's parent corporation's (Empire State Development) legal and contractual requirements. The front end shall include, but not limited to, Supplementary Conditions, site logistics, coordination, Safety Plan requirements, milestone schedules, and narratives. This effort is to delineate for the potential Construction Contract bidders, the parameters for performing the work without disruption to Canalside's operations, maintenance, and programming season.

1.9 Procurement Services – The CM shall discuss with ECHDC regarding procurement strategy, and make recommendations for the packaging Contract Documents and timing of bidding. The CM shall develop and assemble the Bid Scoping Document, including all Bid Forms, Front End Documents, General Conditions/Supplementary Conditions; ECHDC's approved Construction Contract, and other documents or forms necessary to complete the Bid Documents. The CM shall supply and bind all necessary copies of the Bid Documents and distribute to bid information clearinghouses approved by ECHDC. The CM shall assist developing bidder interest; conducting market studies; conducting pre-bid walkthrough meetings with prospective bidders; coordination of Requests for Information (RFI); preparing and distributing addendums; tabulating and analyzing bids and informing ECHDC of any discrepancies with the values/amounts submitted in the bids; investigating bidders; and in negotiating, providing recommendations, and awarding contracts of the construction

of the Project. The CM shall coordinate the review and analysis of bids with the A/E team to then provide a final recommendation to ECHDC for award.

1.10 Project Labor Agreement – The CM shall perform a Project Labor Agreement (PLA) feasibility study, to determine whether it is in ECHDC’s best interest to negotiate a PLA, and if so, determined; negotiate a PLA, in conjunction with ECHDC and counsel, with the construction trade unions. In the event the PLA is executed with the construction trade unions, the CM shall incorporate the PLA in the Contract Documents, and shall administer the PLA during the construction phase of the Project.

1.11 Inspection Services - CM shall inspect, interpret, and certify as proper, correct, and in compliance with the applicable Contract Documents, all work performed by the Construction Contractor; all equipment and materials furnished and installed on the Project throughout the entire construction process. The CM shall inspect for, but not limited to, quality of materials, good workmanship; adherence to Specifications, codes, standards, and Contract Documents; verification of additional work; and approval of payment requests. CM shall complete shop inspections for critical equipment as necessary. The CM will be responsible to provide the following, but not limited to:

- a. Perform daily site inspection to determine if facilities are complete and being construction in compliance with the Contract Documents, approved contract Change Orders, and any other permit requirements.
- b. Performing field inspection and other quality control activities including necessary materials testing.
- c. Monitoring of corrective actions taken by the Contractor needed to fix work that is not in compliance with Contract Documents.
- d. Reviewing and approving Contractor’s survey layouts, lines, grade, elevation, etc. of all work.
- e. Keep daily log, fill out incident/accident reports, and take pictures of the construction progress. A daily Inspection Report identifying work done by the Contractor and pay items worked on shall be completed by the next business day for review and filing.
- f. Reviewing Contractor’s compliance with all regulatory permits (including NPDES, SWPPP, etc.) and mitigation measures.
- g. Reviewing Contractor’s compliance with workplace safety and health standards and notification to ECHDC of any instances of noncompliance.
- h. CM shall be responsible for providing all inspection services during construction close-out. As well as within One Year of Notice of Completion,

perform a site inspection; check all warranty items; and provide completed punch list to ECHDC.

- i. CM shall inspect and determine the suitability of materials on site and those delivered to the site to be incorporated in the construction of the Project.

1.12 Quality Assurance – The CM shall create, document/publish, submit for review and approval to ECHDC, implement, and maintain throughout the Project’s lifecycle (from Design to Closeout) a quality assurance and control program through a Quality Management Plan, and shall include the following at a minimum;

- a. Requirements for a project execution/management plan
- b. All stages of the Project lifecycle
- c. A system for submittal reviews for design and general conditions conformance. The CM shall receive the Construction Contractors’ (CC) submittals such as shop drawings, product data, and promptly review for completeness and responsiveness, log, and then distribute to A/E for review and approval; all within 48 hours of receipt from the CC. The CM shall return submittals to the CCs within 24 hours of receipt from the A/E, and shall update the submittal log accordingly. All submittals are to be processed through the designated project management system/software.
- d. A system to collect and compile as-built drawings, operations and maintenance manuals, spare parts and excess materials provided by the CCs and other close out documents.
- e. A system to document and review foreseeable risks with documentation to ECHDC providing an analysis on the schedule, budget, quality, and personnel (program team and community) during the Pre-Construction and Construction Phases.
- f. A change order procedure. The procedure shall include a system to address scope creep and additional impact analyses. The CM shall perform all necessary cost and time negotiations with the CCs on behalf of ECHDC and document the same.
- g. A system to maintain an incomplete items list of deficiencies, tasks, and deliverables from the Contract Documents that logs, at a minimum, the

observation/recording date, reporting date, and completion date throughout the Construction Phase.

- h. Requirements for onsite inspections, special inspections, etc. The requirements shall include, but not limited to, frequency, system for recording, and reporting.
- i. A system for documenting lessons learned throughout the Project and shall be turned over to ECHDC as the end of the Project in the summary report.

1.13 Quality Control & Testing – If Testing is required during the Pre-Construction Phase, the CM shall review the A/E’s proposed testing plan and associated costs, and provide ECHDC recommendations. The CM shall review the conditions with the A/E during the testing and the CM shall assist and advise ECHDC and the A/E with solutions to any issues discovered.

2. Construction Phase

2.1 Commencement & Duration – The Construction Phase shall commence with the award of the construction contracts for the Project and end upon completion of all contractually required physical work, including punch-list item.

2.2 General Construction Administration – The CM shall administer the Project, the construction contracts, and the PLA, if applicable, on ECHDC’s behalf. Administration of the Project shall include scheduling of the work and coordination of the Construction Contractors (CCs), ECHDC’s project staff, Canalside Management Group, and any other entities/persons on site, so that the work may be accomplished in a timely and efficient manner, and with minimum inconvenience/disruption to the operation of Canalside. The CM shall maintain competent full-time staff at the Project site to administer the Project and at all times while work is being performed by the CCs. The CM shall provide its staff with all necessary equipment to administer the Project, including but not limited to, computers/laptops, printers, digital cameras, personal projection equipment, office furnishings, etc.

2.3 Site Conditions – As portions of the site/work become accessible, the CM shall promptly and diligently investigate existing conditions through both as-built drawings and site visits, and then report to ECHDC and the A/E, any conditions that differ minimally and substantially from the information in the Contract Documents. The CM shall also provide these possible conditions in a separate report to ECHDC and the A/E

and the opportunity to mitigate cost and risk. If necessary, the CM shall collaborate with ECHDC and the A/E to develop the appropriate modifications to the Contract Documents.

2.4 Quality Control & Testing – The CM shall create, document/publish and implement the a quality control program which shall be included in the Project’s Quality Management Plan, per Section 1.12, consisting at the minimum inspection services per Section 1.11, testing, controlled inspections, special inspections, and the CM’s routine observation of the work by the Construction Contractors (CCs) with respect to the conformance to the Contract Documents. The CM shall ensure that the Division 1 front end specifications align with the plan and that they require to proper testing and inspections. The CM shall be required to contract, coordinate and manage the proper testing and inspections. The CM shall work diligently to guard ECHDC from defects and deficiencies in the work and shall coordinate the testing and inspections by third parties with the CCs’ work. The CM shall promptly notify ECHDC, the A/E, and the CCs, if applicable, of any and all defective, deficient, and/or non-conforming work, provide recommendations for correction/resolution. The CM shall track all defective and non-conforming work through correction until final acceptance by ECHDC.

2.5 Scheduling – The CM shall, with the cooperation of Construction Contractors, prepare and monitor the Master Project Schedule. The Master Project Schedule shall be broken down in sufficient detail to be useful for monitoring progress, delay analysis, and administration the CC’s contract provisions. The Master Project Schedule shall include all ECHDC’s and CC’s activities. The CM shall include all necessary operational milestones provided by the Canalside Management Group. All CC’s scheduled shall be imported into the Master Project Schedule on a monthly basis. The CM shall prepare and distribute the following reports biweekly;

- a. Two week look-ahead schedules from the Master Project Schedule and include the same details from the CCs.
- b. List of tasks completed since the last report.
- c. Schedule updates as necessary to reflect changes and indicate the impact of the changes to the critical path and completion milestones.
- d. Changes in total and free float time.
- e. Evaluation of claims for Project delay.

The CM shall discuss with the CCs and prepare recovery schedules, as needed. The CM shall evaluate the CC's requests for extensions of the contract time, and advise ECHDC confidentially on the significance and merits of such requests. The CM shall evaluate potential impact for any CC requests and/or actions to the Master Project Schedule.

2.6 Cash Flow Forecast – With the cooperation of the Construction Contractors, the CM shall prepare and distribute a cash flow forecast for the entire Project based on the Master Project Schedule and Project Cost. The CM shall revise the forecast, whenever that is a significant change in the schedule of Project Cost that would warrant a revision to the cash flow forecast.

2.7 Monitoring Progress – The CM shall monitor the progress of the Construction Contractors work and prepare daily written reports documenting the weather, type and location of work performed, each sub-contractor's labor and equipment on site, and all other pertinent details relevant to the progress of work. The CM shall prepare and distribute the written reports with photographic documentation of the work in progress. Photographs are required when unforeseen conditions, disputed work, or deficiencies in the work are encountered. The CM must pro-actively monitor the progress of the work to ensure that the CCs' workforce is sufficient and the work is being diligently executed. When progress is impeded by the actions/inactions of the A/E or others, the CM must bring such matters promptly to ECHDC's attention for a resolution. The CM must ensure the Project progress conforms to the Master Project Schedule.

2.8 Construction Contractors' Payments – The CM shall receive, review, certify, and approve for processing by ECHDC, all schedules of values, invoices, and requests for payment prepared by the Construction Contractors. The CM shall ensure that all necessary backup documentation is included in the Payment Application, including but not limited to; certified payrolls, certification of material compliance, subcontractors' and supplies' waivers of liens, M/WBE utilization report, and current insurance certificates with the proper listing of additionally insured. The CM shall correlate the CCs' payment requests with the progress of the work, and take into account any deficiencies in the work for which the payment is being requested, in preparing a payment recommendation. The CM shall provide an earned and planned value report with their recommendation. The CM's recommendation for payment shall constitute as a representation to ECHDC, to the best of the CM's knowledge and belief, the work has progressed to the point indicated, and the quality of the work is in accordance with the Contract Documents. The CM shall track payments to CCs, document construction

expenditures, and assist ECHDC in preparing documentation required to obtain funding agency approval and funding.

2.9 Meetings – The CM shall schedule, conduct, and document regular weekly meetings with Construction Contractors, the A/E, ECHDC, and others where necessary, to plan and coordinate the work, discuss the progress, and solve problems related to the Project. In addition, attend meetings with ECHDC and/or A/E on a regular basis. The CM shall be responsible for preparing and timely distributing meeting minutes and agendas.

2.10 Reporting – The CM shall be responsible for preparing monthly written progress reports and deliver bound copies to ECHDC, no later than the 10th day of the following month. The monthly reports must include the following information, at a minimum;

- a. Executive Summary – high level summary of the current Project progress and changes from the previous month’s report. The Summary must indicate whether the Project is on or off schedule and budget, and any recovery steps that may be necessary.
- b. Progress Narrative – supported by photographs and the current Master Project Schedule to show progress.
- c. Issues Report – a summary report of all critical and important issues that require ECHDC’s attention.
- d. Change Orders – log of the status of change orders (estimated, potential, proposed, pending, processed)
- e. Construction Contractors’ Payment Summary – include a discussion of variances between amounts paid to date and the cash flow forecast.
- f. CM Budget Report – include the total contracted amount, projection of labor usage through completion of the Project in terms of CM personnel. The reports shall show the current earned value and planned value for each billable employee, and how they related to percentage of construction complete.
- g. Incomplete Items and Deficiency Log – log of non-conforming or deficient work that details the date reported, ball in court, due date, status and description.

- h. Manpower Summary
- i. Foreseeable Risk that may impact schedule, contract values and Project Budget.
- j. Permit Log – detailing the permit date, issuing agencies, agency contact information, inspections pertaining to the permit and status of inspection date, and permit expiration date.
- k. Closeout Status – punch list, operation and maintenance manuals, trainings, warranties, as-builts, etc.
- l. Attachments – attach pertinent photographs, logs, reports, etc.
- m. Lesson Learned

2.11 Safety – The CM shall require the Construction Contractors’ to submit their site specific health and safety plan and review the plan for completeness based on the requirements outlined in the Contract Documents. The CM shall serve as a central role in dissemination of safety related information between the CCs and ECHDC. The CM shall not have control over or be responsible for the means, methods, techniques, sequences or procedures for safety precautions and programs in connection with the CC’s work, as this is the CCs’ responsibility. The CM shall have the requirement and right to implement an immediate stop work order or correction condition action to the CCs on behalf of ECHDC in the event of an unsafe working condition. The CM shall notify ECHDC immediately after event has been mitigated. The CM shall not be responsible for the CCs’ failure to carry out the work in accordance with the approved CCs’ health and safety plan, and/or applicable safety rules and regulations. The CM shall promote safety and try diligently to guard against the creation of an unsafe work environment by any CC.

2.12 Changes – The CM shall review all supplementary reports prepared by the A/E prior to their issuance, prepare cost estimates, review Construction Contractors’ proposal for acceptable quantities, quality, unit prices, and mark ups and submit formal written recommendations, including a memoranda to ECHDC, clearly delineating the scope of, and reason for the changed work. The CM shall evaluate the CC’s proposed adjustment to the construction contract price and time, and assist ECHDC in negotiating

change orders. Where changes are or may be the result of the A/E's error or omission, the CM shall inform ECHDC of such, and shall track all such changes separately on ECHDC's behalf. The CM shall keep a log that documents requests for information, supplementary reports, unforeseen conditions, scope creep, which lead to new proposals and/or change orders.

2.13 Partial Occupancy and Beneficial Use – The CM shall assist ECHDC in determining the requirements and dates of partial occupancy or beneficial use, substantial completion, and final acceptances; and shall assist in obtaining any necessary temporary occupancy certificates, final occupancy certificates, or certificates of approval from the permitting agency. The CM shall review any lists prepared by the A/E of incomplete or unsatisfactory work, and prepare schedules for completing and correcting the work and monitor the completion/correction.

2.14 Construction Contractors' Claims & Disputed Work - The CM shall promptly review Construction Contractors' claims for additional compensation and/or extensions of time, whether these claims are received during or after construction. Where the work is disputed, the CM shall promptly defer the matter(s) under dispute to the A/E for interpretation. The CM shall discuss with the A/E, and advise ECHDC on the significance and merits of each claim, and/or recommended resolution for each dispute. At ECHDC's request, the CM shall schedule and attend dispute resolution meetings related to each claim/dispute, whether or not such meetings are scheduled during the Construction or Post-Construction Phase. With ECHDC's concurrence, prepare written response to CCs' claims, incorporating the A/E's determination, where applicable.

2.15 Field Office - The CM shall provide, maintain, and subsequently remove its own temporary offices during the construction phase. All CM's office equipment and supplies, including, but not limited to, telephones, computer with high-speed internet access, printers, copiers, scanners, etc. shall be provided, maintained and subsequently removed by the CM, and the associated costs shall be included in the cost for the Field Office.

3. Post Construction Phase

3.1 Commencement & Duration – The Post-Construction Phase shall commence upon completion of the Construction Phase and continue through Final Project Closeout.

3.2 Construction Contract Closeout – The CM shall be responsible for the maintenance of all construction records and information for the lifetime of the project. The CM shall provide copies of all forms, logs, reports, and filing procedures that are proposed during the lifetime of the Project. The CM shall prepare all necessary paperwork to finalize all contractor payments, obtain all required permits, and/or Certificates of Occupancy, and submit all project documentation to ECHDC.

3.3 As-Built Drawings – The CM shall compile Project record documents collected during the construction phase and supplement with any information collected following occupancy. The CM shall review the as-built drawings provided by the CCs and verify the as-built drawings, to the best of the CM's knowledge, based on the CM's observations during the progress of the Project, and documented during the actual construction of the Project. The CM shall transmit the verified as-built drawings to the A/E for the preparation of record drawings.

3.4 System Start Up – After all of the systems are up and running, the CM shall verify that all systems are operating within the intent of the Contract Documents, and that all components of the systems comply with the approved Contract Drawings and product data submittals.

3.5 Operation and Maintenance Manuals – The CM shall review, approve, and log all Operation and Maintenance Manuals prior to forwarding to ECHDC.

3.6 Training – The CM shall schedule and record/document the training of ECHDC and Canalside Management Group personnel with respect to the operation and maintenance of the building component and systems.

3.7 Final Project Report – The CM shall provide a detailed closure report with a summary of all contracts, permits, issues, lessons learned, and highlights from the Project.

4. **Additional Services**

4.1 ECHDC may request additional services throughout the term of the CM Contract. The CM shall promptly respond to additional requests for services, provide a detailed scope of services, with personnel, equipment, costs, and duration as requested by ECHDC to complete the services.

4.2 Allowances – The CM shall evaluate the need for and proposed value for the typical reimbursable expenses:

- a. Third-party testing and controlled inspection services
- b. Site Investigation, utility location and mark-out services
- c. Special consultant services
- d. Shipping and/or courier services
- e. Temporary Field Offices
- f. Printing, reproduction, and reporting documents

V. **SELECTION PROCESS**

a. **Skills Required**

The successful respondent will provide design assistance and construction management services on behalf of the Erie Canal Harbor Development Corporation for the Canalside Interpretive Structures Project. ECHDC is looking for a partner who has the knowledge and experience to accomplish the Scope of Services outlined in Section III and who will actively work towards delivering the Project on time, within budget, without claims, and of the highest quality.

The CM and all CM personnel working on the Project shall have expertise and extensive experience in construction management on complex construction projects. The CM's role and experience shall encompass the following, but not limited to;

- a) Providing the as directed services required to complete the Project.
- b) Support ECHDC for the duration of implementation of the Project.
- c) Provide technical expertise to assist in the development, review, and approval of Design and Construction Drawings and Specifications from the Design Team.
- d) Provide technical expertise, consisting of architectural and engineering disciplines; management; materials review and testing; and construction inspection services to monitor the construction of the Project.

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

- Approach in methodology with respect to the Scope of Services that demonstrates maximum comprehension of and ability to provide such services;
- Commitment of principles to lead the team and devote time to the Project;
- Experience of staff being assigned to the Project in general, and in particular, providing construction management services to municipalities, economic development agencies, and other governmental agencies;
- Quality of work product demonstrated in past projects;
- Quality of work product including client satisfaction and problems that may have arisen during construction reflecting on the constructability of the Design Drawings;

- Ability to complete projects in accordance with schedules and maintain budget;
- Conformity with or exceeding applicable ECHDC policies noted herein, including specific policies relating to non-discrimination of affirmative action subcontracting goals;
- Manhours and cost of services;
- Diversity Practices

b. Selection Process

Selection of the firm considered to be the "best value" shall be made in accordance with the following evaluation criteria and weights (100 total points) as follows:

1. Experience/qualifications of the company (or companies) and staff to undertake the specific requirements of the Scope of Services outlined in Section III – 20 points;
2. Approach in methodology with respect to the Scope of Services, and specifically on technical aspects of the services – 15 points;
3. Experience of staff dedicated to the project in the Preconstruction Phase and Construction Phase; specifically with extensive experience in constructability reviews that produce great documents, little to no Change Orders, and maintains high quality design; experience assisting in making design decisions based on extensive knowledge of Architectural and Engineering design and systems; and experience providing construction management services to municipalities, economic development agencies, and other governmental agencies – 20 points;
4. Appropriateness of manpower and cost of services in addressing the entire Scope of Services outlined in Section III – 20 points;
5. Quality of work product demonstrated by completed projects, including high profile projects and efforts representing outstanding principles of design quality – 10 points;
6. Ability of the team to complete project in accordance with schedules and maintain budgets – 10 Points;
7. Diversity Practices – ESD and ECHDC have determines, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of their proposal, as described in Exhibit D herein, a completed Diversity Practices Questionnaire – 5 points

It is expected that a maximum of three (3) applicants will be selected, or 'short-listed' for interviews. **Interviews will be held on December 13 and 14, 2017 at ECHDC Office.** 'Short-Listed' proposers will be notified by close of business on **December 7, 2017**. Selection for interviews will be based on an independent evaluation of the submitted proposals using the above factors. ECHDC reserves the right to forego the interview phase as determined in ECHDC's sole judgment.

Final selection will be based on the above factors, as well as the interview performance. The final selection will be a “best value” selection. ECHDC reserves the right to;

- Seek clarification and revisions of proposals
- Seek a final and best offer from those firms short-listed.
- Make an award under the RFP in whole or in part.
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring full and complete understanding of an offerer’s proposal and/or to determine an offerer’s compliance with the requirements for the solicitation.
- Make revisions to the scope of work after contract award to ensure that the project goals are met.
- To amend, modify, or withdraw this RFP;
- To revise any requirements of this RFP;
- To accept or reject any or all Proposals;
- To extend the deadline for submission of Proposals;
- To waive or modify minor irregularities in Proposals received;
- To eliminate qualification requirements unmet by all Respondents;
- To disqualify proposals that fail to meet the qualification requirements;
- To require clarification, supplemental statements or information from any Respondent, for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- To negotiate with any or all Respondents, within the proposal requirements, to best serve the interests of ECHDC
- To amend the scope after release of this RFP, with due notice given to all those solicited to modify their proposals to reflect the changed scope;
- To cancel, or reissue in whole or in part, this RFP, if ECHDC determines in its sole discretion that it is its best interest to do so;
- To award contract(s) for any or all parts of a proposal;
- To elect to award contract(s) to one or more responsive and responsible

Respondents, provided that the basis for the election among multiple contracts at the time of award shall be the most practical and economical alternative and shall be in the best interest of ESD; and to extend the term of any agreement on terms consistent with this RFP.

c. Proposal Requirements

Respondents or teams are required to submit one signed original, ten (10) hard copies, and two (2) electronic copies on USD memory stick of the proposal. The proposal shall be limited to no more than 25, double-sided pages that shall be spiral bound. Required forms (Exhibit E) do NOT count against the page limit. Three-ring binders will not be accepted.

The following is a list of the required information that must be provided by the proposer. Proposers are to organize their response in the same order in which it is requested using numbered side tabs that correspond with each numbered section below.

- 1. Description of Firm**
 - a. Professional Capabilities
 - b. Staffing
 - c. Project Mix/Client Mix
 - d. Litigation (Last five years)
 - e. Changes/trends in above over last five years

- 2. Project Team**
 - a. Resumes of partners, principles, associates and other staff proposed to provide services outlined in the Scope of Services
 - b. List of a contact information of subconsultants required to perform work
 - c. Description or outline of the Project Team Organization, including Project role/function chart
 - d. Total relevant human resource availability throughout agreement, particularly for the Project manager and key personnel
 - e. Ability to have staff work at ECHDC facilities if required

- 3. Qualifications and Expertise**
 - a. Description of the firms experience providing similar services including recent relevant projects, for public and private sectors.
 - b. Proposers shall demonstrate specific technical experience and competence in each of the following areas:
 - Management of General and Sub-Contractors
 - Construction Monitoring of high-quality mixed use projects, delivered on schedule and on budget
 - Coordination with multiple users and a large multi-disciplinary team of engineering and specialty consultants
 - Experience with Project Labor Agreements

- 4. Project Management Methodology**
 - a. Overall project management approach and methodology as they relate to the Scope of Services outline in Section III above.
 - b. Schedule, quality, and cost control procedures
 - c. Project tracking and performance monitoring procedures
 - d. Project progress reporting procedures

- 5. Technical Approach**

Describe your approach to the Scope of Services that clearly demonstrates your understanding and your ability to manage and complete multiple projects in a timely and cost-efficient manner. The proposal must include a detailed statement of your approach and ability to provide the required Scope of Services and Work Product including, but not limited to a schedule for completing all aspects of the services.

- 6. References**
 - a. List representative experiences for the past three years.
 - b. List the references to which you provided services of a similar nature. Indicate scope of work, total compensation paid, and the term of contract.
 - c. List any previous work experience for the ECHDC as either a prime or sub-consultant.
 - d. Provide your information in the following format:
 - Project name and description
 - Your firm's scope of work or role on Project
 - Client name, address and telephone number
 - Client contact (Full Name and Title)

- 7. Cost Proposal**
 - a. Hourly Billing Rates— provide the hourly billable rates for all positions, including, but not limited to, the Principal in Charge, Project Manager, Project Engineer, and Contract Administrator – submit in tabular format.
 - b. A fully loaded resource schedule broken down by task and classification – submit rates in a tabular format.
 - c. Typical cost/person—hours per TASK

d. Other Certifications & Requirements (Section 8 of Proposal)

- 1. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145 ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority and Women-Owned Business Enterprises: Evidence from New York” (“Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified Minority-owned Business Enterprises (“MBE”) participation and 15% for New York State certified Women-owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that ESD may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and ESD may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting ESD’s Office of Contractor and Supplier Diversity (OCSD) at OCSD@ESD.NY.GOV. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

Additionally, a Bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan (Form OCSD-4) with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD.

ESD will review the submitted MWBE Utilization Plan and advise the Bidder of ESD’s acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to ESD, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or

d) If ESD determines that the Bidder has failed to document good faith efforts.

The Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form OCSD-1, to ESD with their bid or proposal.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Form OCSD-2) identifying the anticipated work force to be utilized on the Contract. If awarded a Contract, Bidder shall submit a Workforce Utilization Report (Form OCSD-3) and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a quarterly basis during the term of the contract.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1:

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf

Form OCSD-2: http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf

Form OCSD-3:

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_WorkforceUtilizationReport.xlsx

Form OCSD-4:

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4MWBEUtilizationPlan.pdf

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Exhibit D).

2. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses

NEW YORK STATE LAW

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York 19

State, respondents for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Respondents need to be aware that they will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, Respondents are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

For purposes of the RFP, ESD hereby establishes a goal of 3% for SDVOBs, based on the current availability of qualified SDVOBs. The Contractor must document Good Faith Efforts to provide meaningful participation by SDVOBs in the performance of the Contract.

A copy of each Respondent's SDVOB Contract Performance Use form proposing specific certified firms to be utilized or industries where SDVOB firms shall be sought is to be included as part of the response to this RFP. A copy of the form is available at: <http://esd.ny.gov/CorporateInformation/Data/RFPs/SDVOBContractPerformanceUse.pdf>

General inquiries or questions relating to aforementioned policies, MWBE and SDVOB participation and the goals specified herein may be addressed to OCSD at OCSD@ESD.NY.GOV.

3. State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all respondents to this solicitation must include in their responses a properly completed Form ST-220-CA, a copy of which is accessible at the Required Forms for Vendors link at the ESD web site. (<http://esd.ny.gov/CorporateInformation/RFPs.html>).** Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete

and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

4. State Finance Law Sections 139-j and 139-k

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements (1) govern permissible communications between potential respondents and ESD, ECHDC or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that (x) all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed below; (y) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD web site under “RFPs/RFQs”); and (z) periodic updating of such forms during the term of any contract resulting from this RFP. **Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law as part of their submittal.**

The Procurement Requirements also require ESD and ECHDC staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

For the purpose of compliance with State Finance Law Sections 139-j, contact with Kaitlin McGee Chmura, Project Manager of ECHDC is considered permissible. Contact information for Ms. Chmura is provided in Section VIII.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

<http://esd.ny.gov/CorporateInformation/RFPs.html> (under “ESD Policy Regarding Permissible Contacts under SFL 139”)

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and the sub-consultants complete the forms required above.

5. Insurance Coverage

Please note that **upon selection** for this Project, the Consultant will be required to demonstrate/provide the following insurance coverage protecting against any and all claims brought in the Canalside district. The Manager shall maintain or cause to be maintained 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-contract agreement.

(1) **Workers' Compensation Insurance:**

- (a) Workers' Compensation - Statutory Limits; Employer's Liability
- (b) Employer Liability Limits:
 - 1. \$1,000,000 Bodily Injury each Accident
 - 2. \$1,000,000 Bodily Injury by Disease – Policy Limit
 - 3. \$1,000,000 Bodily Injury by Disease – Each Employee
- (c) Coverage shall include US Longshore and Harbor Workers' Compensation Act Insurance.

(2) **Commercial General Liability Insurance**

- (a) Limits of Liability
 - 1. \$1,000,000 Each Occurrence
 - 2. \$2,000,000 General Aggregate
 - 3. \$2,000,000 Products/Completed Operations Aggregate
 - 4. \$ 5,000 Medical Expense Limit (any one person)
 - 5. \$ 50,000 Fire Damage Legal liability (any one fire)
- (b) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.
 - 1. These limits shall apply on a “per project” basis.
 - 2. 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.

3. Contractual Liability and Additional Insured Coverage shall not include any limitations for injuries to your own employees.
4. Products and Completed Operations Liability shall be maintained for three (3) years beyond completion and acceptance of the Project.
5. There shall be no XCU exclusion (Explosion, Collapse or Underground),
6. There shall be no "Labor Law" or other gravity related injuries exclusion.
7. Shall include coverage for Independent Contractors
8. Shall include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the Project
9. Delete contractual exclusion, or any other policy exclusions, for work done within 50 Feet of a Railroad, Light Rail, Subway or similar tracked conveyance or provide endorsement CG2417-Contractual Liability-Railroads
10. Additional Insured Endorsements: All commercial general liability policies shall include the ESD and ECHDC as additional insureds pursuant to endorsements satisfactory to ESD and ECHDC.

(3) **Automobile Liability Insurance**

- (a) \$1,000,000 Bodily Injury/Property Damage Combined Single Limit
- (b) Commercial Automobile Liability Insurance to cover all vehicles including owned, non-owned and hired.

(4) **Excess Liability**

Limits of Liability: \$25,000,000

Coverage should be at least as broad as and follow form of Employer's Liability, General Liability, and Auto Liability. Policy to include a drop down provision over primary policies.

(5) **Security Guards**

Limits of Liability: \$1,000,000 Per Occurrence / \$10,000,000 Aggregate

Manager shall maintain or cause to maintain coverage for security personnel. (see Task 1.2)

(7) **Event Coverage**

Limits of Liability: \$25,000,000

Manager shall maintain or cause to be maintained, coverage for events produced by third parties or in-house produced events. (see Task 2.2 & 2.3)

(8) **Liquor Liability**

Limits of Liability \$25,000,000

Manager shall maintain or cause to be maintained, coverage for in-house beverage facilities, third party events, and any other offerings (see Task 4)

(9) **Crime/Fidelity**

Employee theft \$10,000,000

Forgery or alteration \$10,000,000

Theft, robbery and
burglary (inside and
outside premises) \$10,000,000

Third-party off
Premises \$10,000,000

Computer fraud \$10,000,000

Money orders and
counterfeit paper
currency \$10,000,000

Single loss deductible shall not be more than \$25,000.

Certificates of Insurance - Certificates of insurance reasonably acceptable to the ESD/ECHDC shall be filed with the ESD/ECHDC within ten (10) days after award of the contract to the Manager and prior to commencement of the Work. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be materially modified, cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to ESD/ECHDC. The provisions of this Section shall apply to all policies of insurance required to be maintained by the Manager pursuant to the Contract Documents.

Other Insurance - Any type of insurance or any increase of limits of liability not described in this section which the Manager requires for their own protection or on account of any statute shall be their own responsibility and at their own expense.

As respects General Liability, the additional insured endorsements shall be on a form at least as broad as ISO Forms CG2010 07 04 & CG2037 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 ESD & ECHDC, are required to be named as Additional Insureds. The additional insured coverage shall include completed operations coverage for the Additional Insureds for a period of not less than 36 months after completion of the project.

- (a) Manager shall, by specific endorsement to its primary commercial general liability policy, and automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and not concurrent with any other valid and collectible insurance available to the Additional Insureds.
- (b) Manager shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds and not concurrent with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis.
- (c) Manager shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements;
- (d) Manager shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include products liability and completed operations, with the provision that coverage shall extended for a period of at least 36 months after completion of the project;
- (e) Manager shall, by specific endorsement to its primary and umbrella/excess liability policies, provide that defense costs are not be considered as damages so as to erode the policy limits required under sections 1 – 5 above.
- (f) All policies shall contain a waiver of subrogation in favor of ESD and all others as required by contract.
- (g) Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by ESD
- (h) The Contractor shall require all subcontractors to include Additional Insured endorsement CG 2038 04 13 and CG 20 37 07 04 with respect to General Liability.
- (i) Certificates evidencing the foregoing insurance coverages must be furnished by Manager to, and be approved by ESD, before the proposal can be considered. Certificates, Notices of Cancellation, or changes, etc., are to be sent by Manager, directly to ESD at 633 Third Ave., Contracts Administration, 35th Floor, New York, NY

10017. Manager or Manager's agent and Manager's insurance carrier(s) must reconcile all policy requirements to the satisfaction of ESD. Manager shall provide certified copies of all policies required under this OR within 15 days after receipt of request by the Contactor for such information.

No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.

B. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least A- VII by A.M. Best and Company, or meet such other requirements as are acceptable to the ESD/ECHDC.

C. Should the Manager fail to provide or maintain any insurance required by this contract, the ESD/ECHDC may, after providing written notice to the Manager, purchase insurance complying with the requirements of this Article and charge back such purchase to the Manager.

D. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Manager shall immediately cease work on the Project. The Manager shall not resume work on the Project until authorized to do so by the ESD/ECHDC. Any delay or time lost as a result of the Manager not having insurance required by this Article shall not give rise to a delay claim or any other claim against the ESD/ECHDC or the Client.

E. Notwithstanding any other provision in this Article, the ESD/ECHDC may require the Manager to provide, at the expense of the ESD/ECHDC, any other form or limit of insurance necessary to secure the interests of the ESD/ECHDC.

F. The Manager shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Manager. The requirement to secure and maintain such insurance is solely for the benefit of the Manager. Failure of the Manager to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

G. Neither the procurement nor the maintenance of any type of insurance by the ESD/ECHDC or the Manager shall in any way be construed or deemed to limit, discharge, waive or release the Manager from any of the obligations or risks accepted by the Manager or to be a limitation on the nature or extent of said obligations and risks of the Manager.

H. The Manager may, at the sole option of the ESD/ECHDC, be declared void and of no effect if the Manager fails to comply with the provisions of this Article.

I. The Manager and its Trade Managers shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the ESD/ECHDC and of the insurance companies issuing such policies.

An individual certificate (including hold harmless) must be provided to each of the following organizations: New York State Urban Development Corporation d/b/a as Empire State Development, the Erie Canal Harbor Development Corporation, the State of New York, the Buffalo Sewer Authority, the New York State Department of Transportation, the City of Buffalo and Be Our Guest, Ltd.

6. Vendor Responsibility

ESD ask vendors to register in the State's Vendor Responsibility System (VendRep System). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are asked to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company's trade industry.

7. Project Sunlight

Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract for services as contemplated in this RFP, must be

reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Proposers and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

8. Iran Divestment Act

As part of ECHDC/ESD procurement guidelines, upon submission of proposal, the prime Consultant shall comply with the Iran Divestment Act. The following language shall be submitted on company letterhead and signed by the Consultant;

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law."

9. Encouraging use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as sub-contractors, suppliers, protégés or other supporting roles (herein collectively called "Subcontractors").

Bidders/proposers need to be aware that, if selected through this ESD solicitation, they will strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in performing the contract, including without limitation: (i) purchasing commodities that are of equal quality and functionality; and (ii) in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the questions below:

(A) Do you anticipate the need for Subcontractors fulfilling the requirements of this ESD contract? Yes No

(B) Will New York State businesses be used in the performance of this ESD contract as Subcontractors? Yes No

NOTE: If the answer to question (B) is Yes, please identify New York State businesses that will be used and attach identifying information (e.g., name, address, contact information, nature of business).

10. Compliance with Standard Conditions

ECHDC’s standard conditions contained in Exhibit C shall be made part of any agreement with ECHDC and the Manager.

VI. PRE-SUBMITTAL CONFERENCE

The Erie Canal Harbor Development Corporation will be made available at a non-mandatory, pre-submittal conference **on November 17, 2017 at 12:00 Noon Eastern Standard Time (EST)** at 95 Perry Street, Suite 500. A tour of the site will follow at 1:00pm. Please contact Kaitlin Chmura, ECHDCCMServices@esd.ny.gov or (716) 846-8238, if you plan to attend the pre-submittal conference and tour by **November 16, 2016.**

VII. PROJECT COST & SCHEDULE

The major projected milestones on the consultant selection schedule are as follows:

- | | |
|---------------------------------|-----------------------------------|
| 1. RFP Advertised | November 9, 2017 |
| 2. Pre-Proposal Site Tour: | November 17, 2017 (12:00noon EST) |
| 3. Questions Due: | November 21, 2017 |
| 4. Answers to Questions Issued: | November 27, 2017 |

- | | |
|---------------------------------------|-------------------------------|
| 5. Proposals Due: | December 1, 2017 (2:00pm EST) |
| 6. Notification of shortlisted firms: | December 7, 2017 |
| 7. Interviews: | December 13 & 14, 2017 |
| 8. ECHDC Board Approval: | January 17, 2017 |

The Contract Term is expected to begin February 2018 and estimated to be completed by May 2019.

VIII. TIME & PLACE OF SUBMISSION

Respondents will not receive compensation or reimbursement of any expenses associated with preparing and/or submitting the proposal.

Respondents are required to submit one (1) original, five (5) copies, and one (1) electronic copy on a flash drive of their submittal **prior to 2:00 P.M. EST on December 1, 2017**. Responses shall be firmly sealed in an envelope or box, and contain the Respondent's name and return address.

Please be advised that under no circumstances will ECHDC obligate itself to consider a response which is received after the deadline or does not include the basic items described above.

Responses shall be delivered to:

Thomas P. Dee, President
Erie Canal Harbor Development Corporation
Attn: Canalside Interpretive Structures: Construction Management RFP
95 Perry Street, Suite 500
Buffalo, New York 14203

The ECHDC reserves the right to reject a submittal if any document or item listed in this RFP is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a respondent without further consideration:

- Evidence of collusion among Respondents;
- Any attempt to improperly influence any member of the evaluation panel or Committees;
- Discovery that a Respondent purposely misled or knowingly provided false or inaccurate information in a submittal;
- A Respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Existence of any unresolved litigation or legal disputes

The ECHDC reserves the right to reject any and all submittals and to waive any informalities or

irregularities in procedure.

IX. ADDITIONAL INFORMATION

Any all questions or requests for additional information or documents will be accepted no later than **close of business on November 21, 2017** to:

Erie Canal Harbor Development Corporation
95 Perry Street, Suite 500
Buffalo, New York 14203
(716) 846-8238
ECHDCCMServices@esd.ny.gov

Questions shall be **submitted in written form** and answers will be sent posted in the New York State Contract Reporter Website www.NYSCR.org on **November 27, 2017**. Additional information may become available and, substantive questions and document requests may be made available at any point during this process.

X. GENERAL TERMS & CONDITIONS

In addition to the terms and conditions stated elsewhere in this RFP, it is subject to the terms and conditions set forth in Exhibit C hereto.

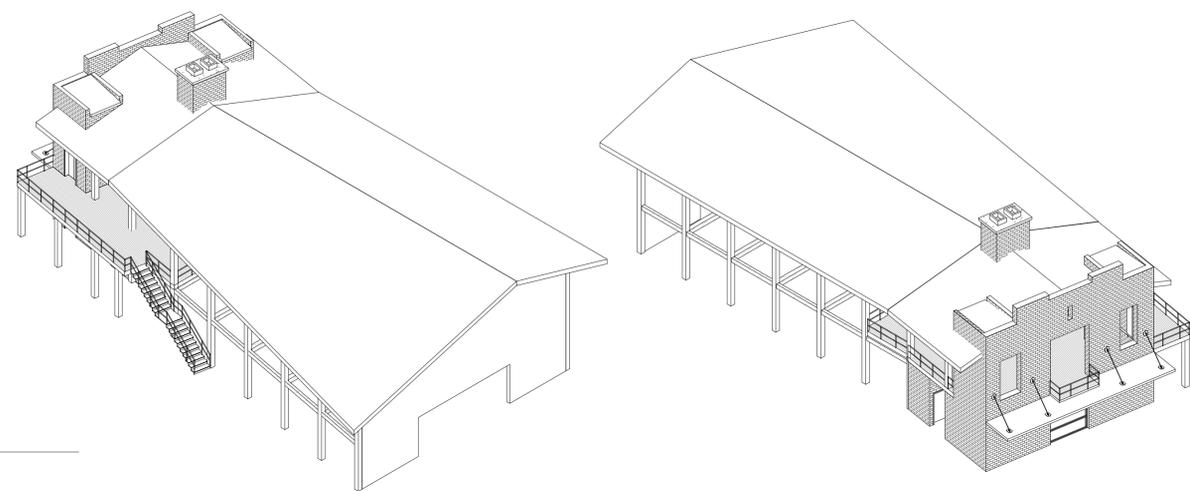
XI. ATTACHMENTS

- Exhibit A – Commercial Slip Pavilion Plans
- Exhibit B – Union Block Building Plans
- Exhibit C – General Term & Conditions
- Exhibit D – Diversity Practices Questionnaire
- Exhibit E – Required Forms

Exhibit A – Commercial Slip Pavilion Plans

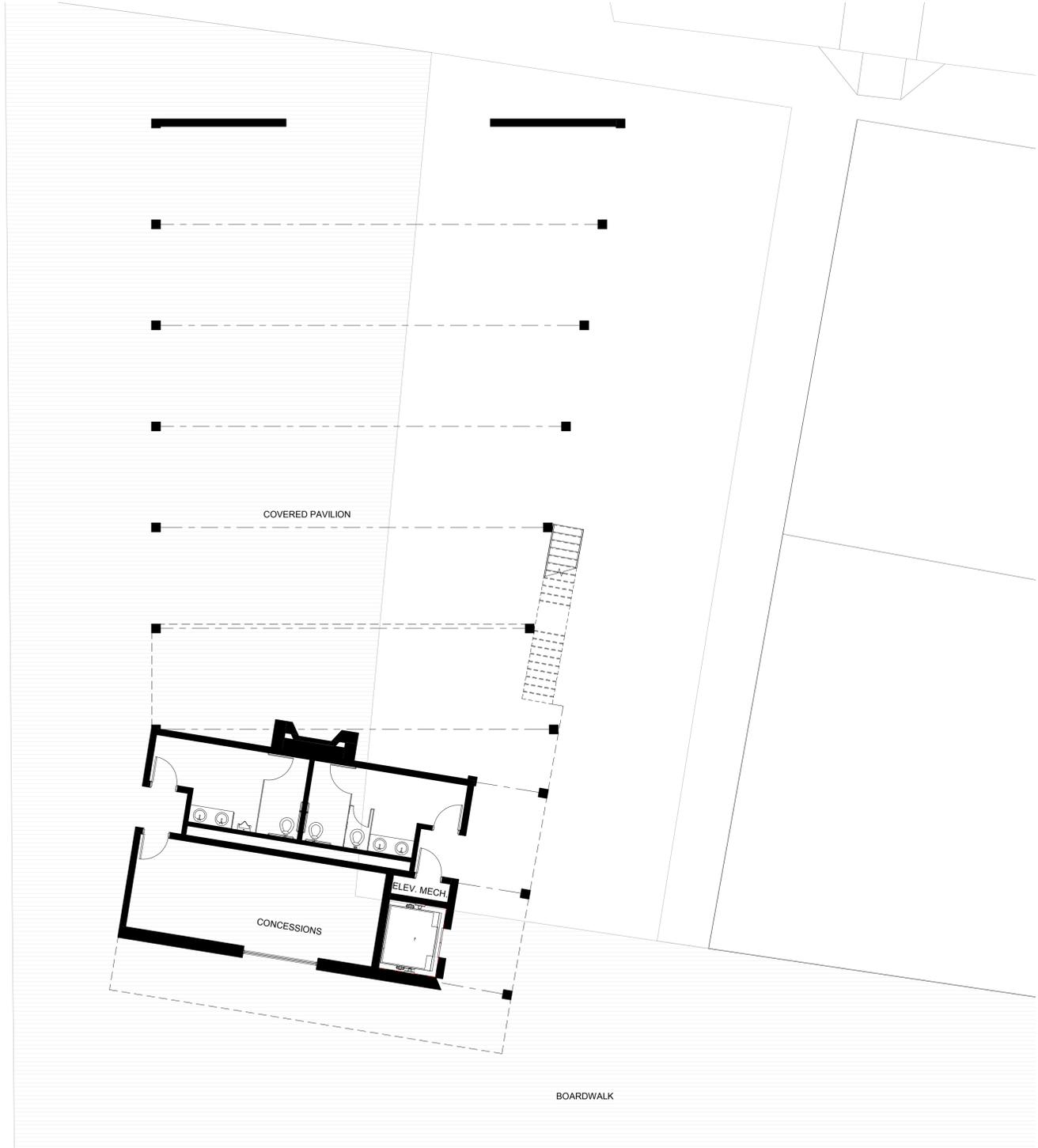


5 NORTH ELEVATION
1/8" = 1'-0"

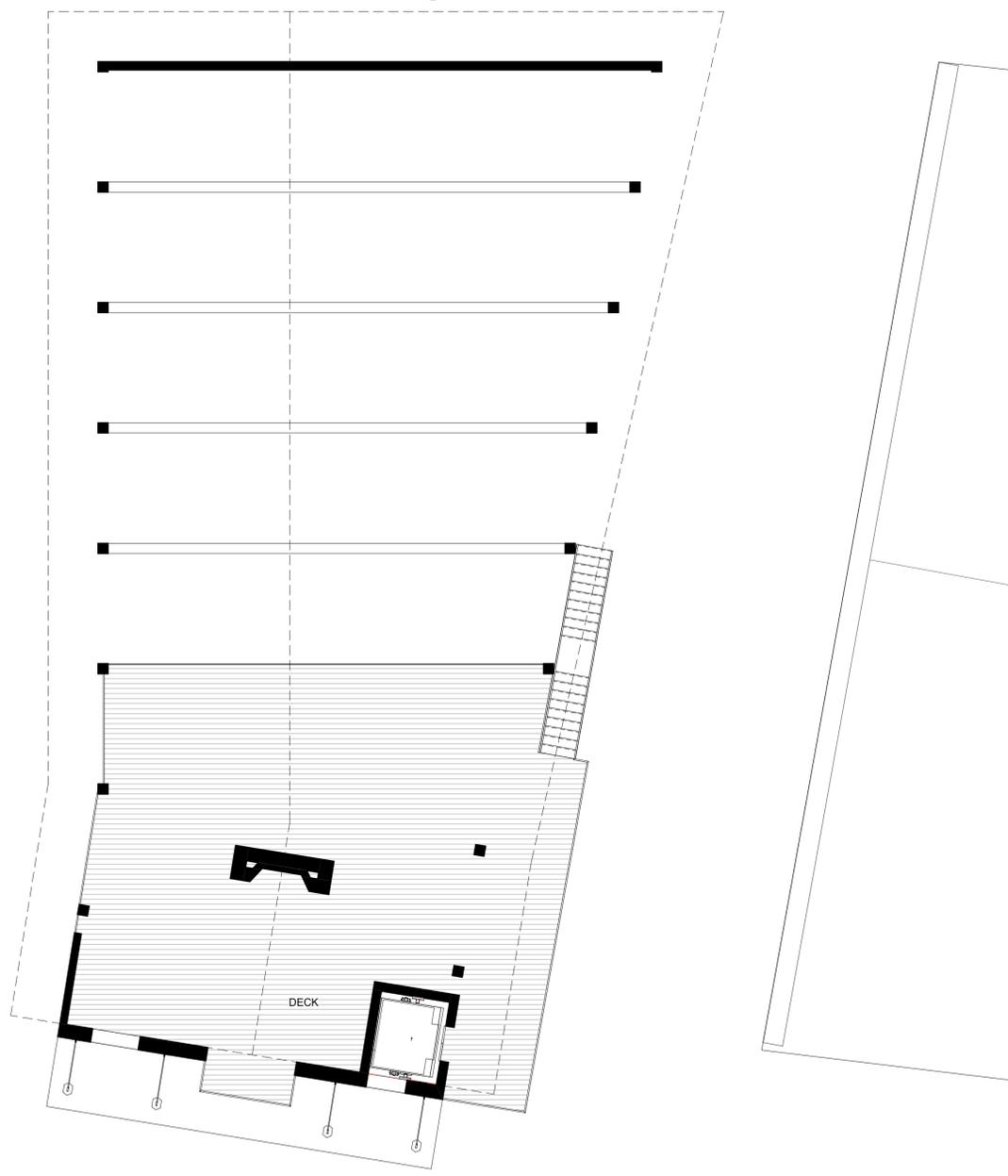


3 3D VIEW

4 3D VIEW



1 FIRST FLOOR PLAN
1/8" = 1'-0"



2 SECOND FLOOR PLAN
1/8" = 1'-0"

DRAWING SUBMISSION STATUS: NOT FOR CONSTRUCTION SCHEMATIC DESIGN DESIGN DEVELOPMENT CONSTRUCTION DOCUMENTS ISSUED FOR CONSTRUCTION

CONSULTANT
CONSULTANT
STREET ADDRESS
CITY, STATE, ZIP
PHONE & MAYBE WEB

HHL Architects
172 Allen Street, Buffalo, New York 14201
716.885.0748 • F: 716.885.6414
HHLArchitects.com

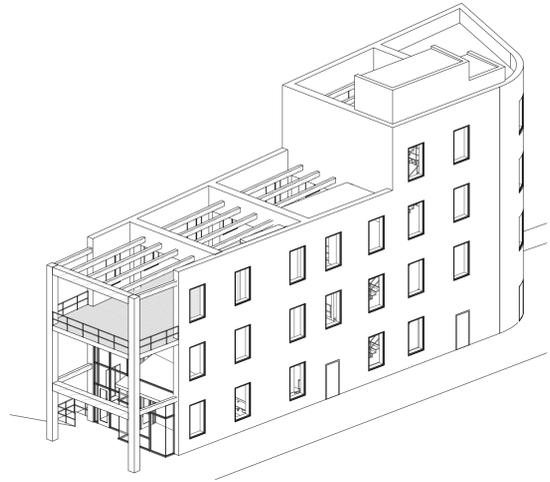
DRAWING
FLOOR PLANS_PAVILION
REVISIONS AFTER ISSUANCE
NO. DATE DESCRIPTION

ISSUE DATE/ISSUE DATE
SHEET:3 / 35
DRAWING NUMBER

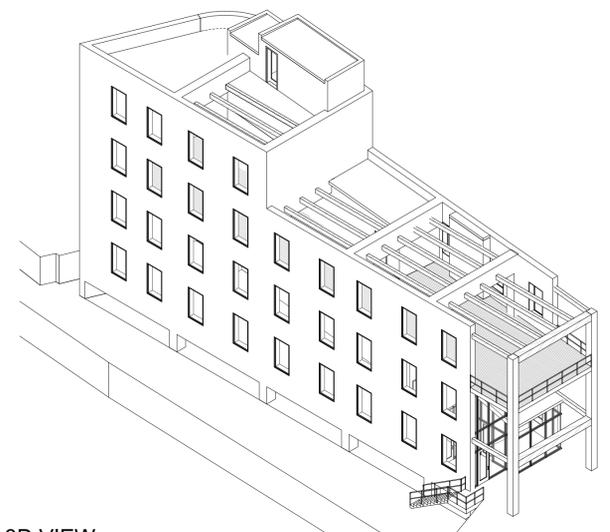
A-100

PROJECT NAME/LOCATION:
**CANALSIDE INTERPRETIVE
STRUCTURES**
OWNER NAME
OWNER ADDRESS
PROJECT NUMBER:
XXXXXX

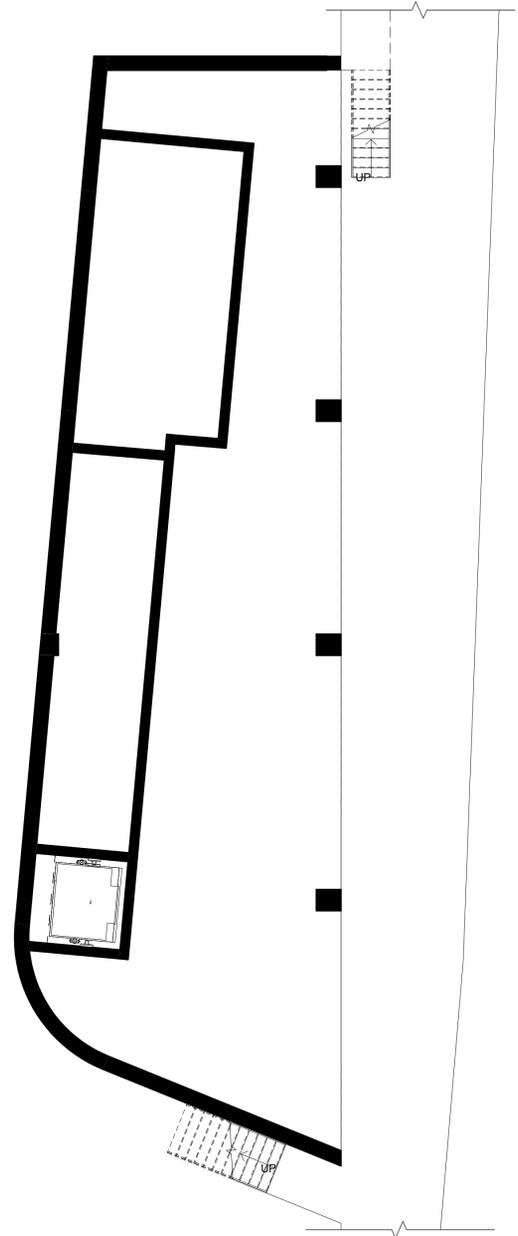
Exhibit B – Union Block Building Plans



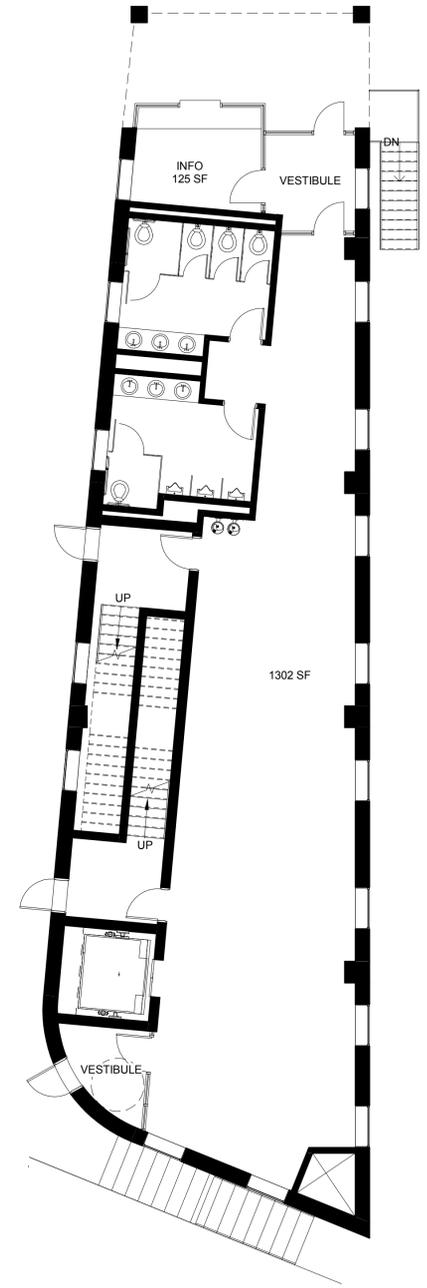
6 3D VIEW



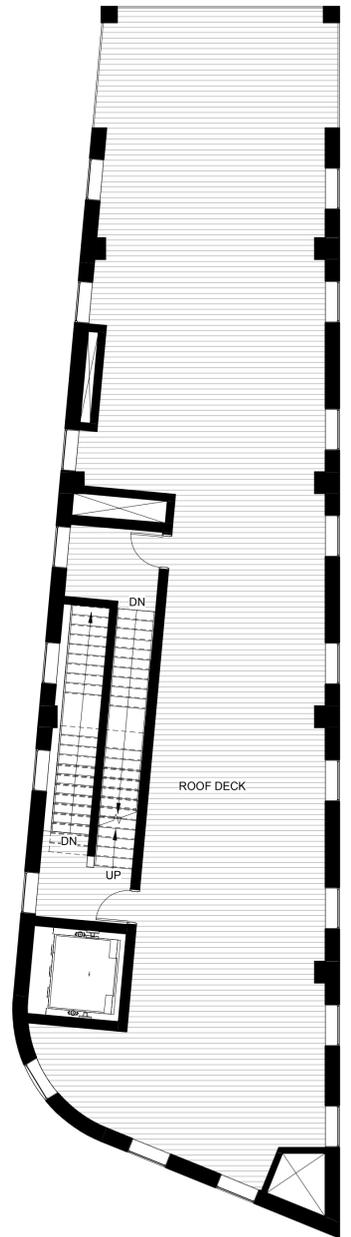
7 3D VIEW



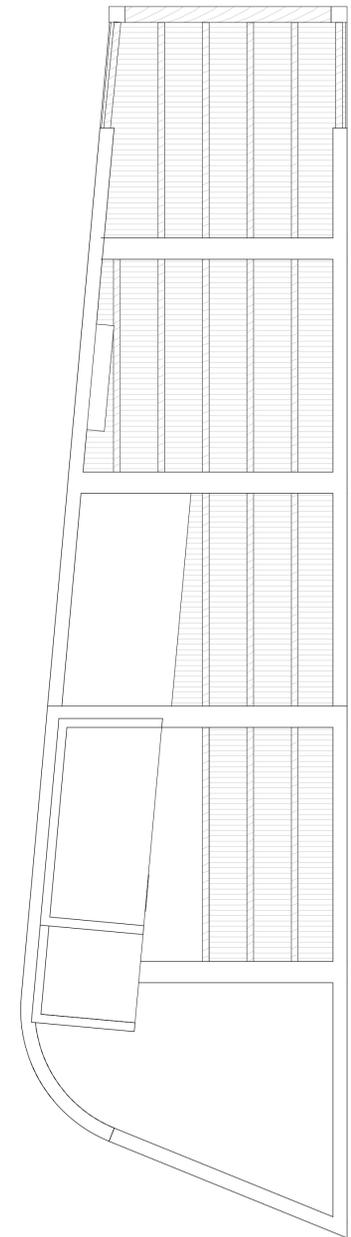
2 TOW PATH LEVEL
1/8" = 1'-0"



1 FIRST FLOOR PLAN
1/8" = 1'-0"



3 ROOF DECK PLAN
1/8" = 1'-0"



4 ROOF PLAN
1/8" = 1'-0"

| | | | |
|---|--|--|----------------------------------|
| DRAWING SUBMISSION STATUS: <input type="checkbox"/> NOT FOR CONSTRUCTION <input type="checkbox"/> SCHEMATIC DESIGN <input type="checkbox"/> DESIGN DEVELOPMENT <input type="checkbox"/> CONSTRUCTION DOCUMENTS <input type="checkbox"/> ISSUED FOR CONSTRUCTION | | PROJECT NAME/LOCATION: DESCRIPTION [ALTERATION, RENOVATION, ETC.] CANALSIDE INTERPRETIVE STRUCTURES | PROJECT NUMBER: XXXXXX |
| CONSULTANT HHL Architects 172 Allen Street, Buffalo, New York 14201 716.885.0748 • F: 716.885.6414 HHLArchitects.com | | OWNER NAME OWNER ADDRESS | |
| ARCHITECT OF RECORD | | CONSULTANT STREET ADDRESS CITY, STATE, ZIP PHONE & MAYBE WEB | |
| DRAWING FLOOR PLANS | | | |
| SEAL | REVISIONS AFTER ISSUANCE NO. DATE DESCRIPTION | | |
| ISSUE DATE SHEET: 4 / 35 | | | |
| DRAWING NUMBER A-101 | | | |

Exhibit C – Schedule A, General Terms & Conditions

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.

(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 DOCUMENTS AND OTHER MATERIALS. All 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 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 3.2.

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.

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 |
|--|---|--------------------------------------|

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 |
|---|---|--------------------------------------|

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: **1-800-353-3092**.

APPENDIX G
ADDITIONAL INSUREDS

Exhibit D – Diversity Practices Questionnaire



DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

¹ Do not include onsite project overhead.



4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.



If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan



All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official

Printed Name of
Signatory

Title

Name of Business

Address

City, State, Zip



STATE OF _____

COUNTY OF _____) ss:

On the ____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

New York State Diversity Practices Scoring Matrix

Questions

| | | | | | | | |
|---|--------|--------|--------|----------|---------|-------|-------|
| Q1 - CDO or other person tasked with function | | | | | Yes | No | Total |
| | | | | | 5 pts | 0 pts | |
| Q2 - Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners | 20%+ | 15-19% | 10-14% | 5-9% | 1-4% | 0% | |
| | 20 pts | 14 pts | 10 pts | 6 pts | 2 pts | 0pts | |
| Q3 - Percentage of overhead expenses paid to M/WBEs | 20%+ | 15-19% | 10-14% | 5-9% | 1-4% | 0% | |
| | 16 pts | 10 pts | 7 pts | 4 pts | 1 pts | 0pts | |
| Q4 - M/WBE Training | | | Robust | Moderate | Minimum | None | |
| | | | 16 pts | 8 pts | 4 pts | 0 pts | |
| Q5 - M/WBE Mentoring | | | Robust | Moderate | Minimum | None | |
| | | | 12 pts | 8 pts | 4 pts | 0 pts | |
| Q6 - Written M/WBE goals included in the Company's procurements | | | Robust | Moderate | Minimum | No | |
| | | | 20 pts | 12 pts | 6 pts | 0 pts | |
| Q7 - Formal Supplier Diversity Program | | | Robust | Moderate | Minimum | No | |
| | | | 6 pts | 4 pts | 2 pts | 0 pts | |

New York State Diversity Practices Scoring Matrix

| | | | | | | | |
|--|--|--|--------|----------|---------|-------|--|
| Q8 - Utilization Plan | | | Robust | Moderate | Minimum | No | |
| | | | 5 pts | 3 pts | 1 pts | 0 pts | |
| Total Diversity Score (Max 100 pts) | | | | | | | |
| Weighted Score | | | | | | | |

Exhibit E – Required Forms

Erie Canal Harbor Development Corporation

Request for Proposals Checklist

I _____, a principal of the firm _____ certify that the following information has been submitted as part of the response to this Request for Proposals.

- Submitted all required information with respect to the Proposal, including but not limited to information specifically outlined in Section V.C
- Submitted hard copy and electronic copies of the proposal (Section VIII)
- Completed and submitted State Finance Law Sections 139-j and 139-k forms (Section V.D)
- Completed and submitted ST-220-CA Form or affidavit (Section V.D)
- Copy of VendRep receipt (Section V.D)
- Completed and Equal Employment Opportunity Policy Statement (Form OCSD-1, Section V.D)
- Completed and submitted Iran Divestment Act Statement (Section V.D)
- Completed and submitted Use of NYS Business Form (Section V.D)
- Diversity Practices Questionnaire (Section V.D)

Note: Incomplete responses may not be considered by Erie Canal Harbor Development Corporation

Signed: _____ Date: _____

Name: _____

Phone: _____

E-mail: _____

I, _____ (CONTRACTOR REPRESENTATIVE), the _____ (AWARDEE/CONTRACTOR) agree to adopt the following policies with respect to the project being developed or services rendered at _____.

M/WBE PARTICIPATION (M/WBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EQUAL EMPLOYMENT OPPORTUNITY POLICY (EEO)

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color,

national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.

- (d) This organization will include the provisions of sections (a) through (c) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed on this _____ day of _____, 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____

Minority Business Enterprise Liaison

_____ (Name of Designated Liaison) is designated as the Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____ % Minority Business Enterprise Participation

_____ % Women’s Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

_____ % Female Labor Force Participation

(Authorized Representative)

Print Name: _____

Title: _____

Date: _____

Submit with Bid or Proposal – Instructions on page 2

| | | |
|---------------------------|--------------------------|--|
| Solicitation No.: | Reporting Entity: | Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor Subcontractor's Name: _____ |
| Offeror's Name: | | |
| Offeror's Address: | | |

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

| EEO-Job Category | Total Work force | Work force by Gender | | Work force by Race/Ethnic Identification | | | | | | | | | | | | | |
|--------------------------|------------------|----------------------|------------------|--|-----|-------|-----|----------|-----|-------|-----|-----------------|-----|----------|-----|---------|-----|
| | | Total Male (M) | Total Female (F) | White | | Black | | Hispanic | | Asian | | Native American | | Disabled | | Veteran | |
| | | | | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) | (M) | (F) |
| Officials/Administrators | | | | | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | | | | | |
| Office/Clerical | | | | | | | | | | | | | | | | | |
| Craft Workers | | | | | | | | | | | | | | | | | |
| Laborers | | | | | | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | | | | | | |
| Temporary /Apprentices | | | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | | | |

| | | |
|---------------------------------|---|---|
| PREPARED BY (Signature): | NAME: _____ TITLE: _____ DATE: _____ | TELEPHONE NO.: _____ ALTERNATE TEL: _____ EMAIL: _____ |
|---------------------------------|---|---|

Submit completed with bid or proposal M/WBE 101 (Rev 04/2012)

General Instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OM/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES:

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Federal Employer Identification No. (FEIN): _____

Offeror's Name: _____

Offeror's Address: _____

City, State, Zip Code: _____

Telephone No.: _____

Region/Location of Work: _____

Solicitation No.: _____

Project No.: _____

M/WBE Goals in the Contract: MBE - _____% WBE - _____%

| 1. Certified M/WBE Subcontractors/Suppliers Federal Employer Identification Number (FEIN), Name, Address, Phone, Fax and Email Address. | 2. Classification | 3. Federal ID No. | 4. Detailed Description of Work (Attach additional sheets, if necessary) | 5. Dollar Value of Subcontracts / Supplies / Services and intended performance dates of each component of the contract. |
|---|--|----------------------|---|---|
| A. | <u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE | | | |
| B. | <u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE | | | |

6. If unable to fully meet the M/WBE goals set forth in the contract, the Offeror must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at OCSD@ESD.NY.GOV.

| | | | | | | | | | | | |
|--|---|-----------------------|-----------------------|--------------------------------------|--|---------------------|--------------|---|--|---|--|
| <p>PREPARED BY (Signature): _____</p> <p>DATE: _____</p> <p>Preparer's Name (Print or Type): _____</p> <p>Preparer's Title: _____</p> <p>Date: _____</p> <p style="margin-top: 20px;">SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p> | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">TELEPHONE NO.:</td> <td style="width: 50%; padding: 2px;">EMAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 5px;">** FOR OCSD-M/WBE USE ONLY **</td> </tr> <tr> <td style="padding: 2px;">REVIEWED BY:</td> <td style="padding: 2px;">DATE:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work:</p> <p>_____</p> <p>_____</p> <p>_____</p> </td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p>NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> </td> </tr> </table> | TELEPHONE NO.: | EMAIL ADDRESS: | ** FOR OCSD-M/WBE USE ONLY ** | | REVIEWED BY: | DATE: | <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work:</p> <p>_____</p> <p>_____</p> <p>_____</p> | | <p>NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p>NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> | |
| TELEPHONE NO.: | EMAIL ADDRESS: | | | | | | | | | | |
| ** FOR OCSD-M/WBE USE ONLY ** | | | | | | | | | | | |
| REVIEWED BY: | DATE: | | | | | | | | | | |
| <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work:</p> <p>_____</p> <p>_____</p> <p>_____</p> | | | | | | | | | | | |
| <p>NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p>NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> | | | | | | | | | | | |

5 NYCRR §142.8 - Contractor's Good Faith Efforts

- (a) The contractor must document its good faith efforts toward meeting certified minority and women-owned business enterprise utilization plans by providing, at a minimum:
 - (1) Copies of its solicitations of certified minority and women-owned business enterprises and any responses thereto;
 - (2) If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
 - (3) Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
 - (4) Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses;
 - (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
 - (6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.

- (b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
 - (1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
 - (2) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
 - (3) The actions taken by the contractor to contact and assess the ability of certified minority and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
 - (4) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
 - (5) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions



Contractor Certification to Covered Agency

ST-220-CA

(6/06)

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

| | | | | |
|---|--|---|-------|--|
| Contractor name | | | | For covered agency use only Contract number or description |
| Contractor's principal place of business | | City | State | |
| Contractor's mailing address (if different than above) | | | | Estimated contract value over the full term of contract (but not including renewals) |
| Contractor's federal employer identification number (EIN) | | Contractor's sales tax ID number (if different from contractor's EIN) | | |
| Contractor's telephone number | | Covered agency name | | \$ |
| Covered agency address | | | | Covered agency telephone number |

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20 _____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

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 an 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.

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

Name: _____

Title: _____

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 § 139j(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).

Signed: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____



ADDENDUM
DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

¹ Do not include onsite project overhead.



4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.



If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan



All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official

Printed Name of
Signatory

Title

Name of Business

Address

City, State, Zip



STATE OF _____

COUNTY OF _____) ss:

On the ____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public