



**New York State's
Technical Assistance Program
Request for Applications
For
Technical Assistance Providers**

Issued: May 3, 2021

Designated Contacts for this Request for Applications:

Primary Contact: Ralph Volcy, Director of Procurement

Secondary Contact: John Discolo, Director of Procurement

All contacts/inquiries shall be made by email to the following address: TAProgram@esd.ny.gov

APPLICATIONS DUE DATE AND TIME:

On or before May 10, 2021 by 3 pm EST.

Applications must be emailed by this date and time.

Late applications cannot be accepted

I. INTRODUCTION

The mission of Empire State Development (ESD) is to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

A. Program Summary

Up to \$3,500,000 in grant support is available to chambers of commerce, trade associations and community non-profits that provide technical assistance (“Technical Assistance Providers”). The purpose of ESD’s Technical Assistance Program (“the Program”) is to strengthen and expand the capacity, products, and services of Technical Assistance Providers to micro and small businesses, for-profit independent arts and cultural organizations, non-profit organizations, and/or minority and women business enterprises (collectively “M/WBEs”) (see section IX, pages 11-13 of this Request For Application “RFA” for definitions) throughout New York State in applying for various federal and state COVID-19 financial assistance programs, including the soon to be released NYS COVID-19 Pandemic Small Business Recovery Grant Program.

B. Request for Applications Schedule

Release of Request for Applications	May 3, 2021
Deadline for Submission of Questions	May 4, 2021
Deadline for ESD to Respond to Questions	May 5, 2021
Submission of Applications	May 10, 2021 by 3:00 PM EST
Anticipated Announcement of Selections	May 17, 2021
Anticipated Contract Start Date	May 19, 2021

II. PROGRAM GUIDELINES

A. Projects

ESD seeks applications from Technical Assistance Providers that will have the following impacts in the communities in which they are in helping to address issues created by the COVID-19 pandemic. Tasks to be undertaken include:

1. Identify potential applicants applying for various federal and state COVID-19 financial assistance programs, including the soon to be released COVID-19 Pandemic Small Business Recovery Grant Program with emphasis on minority and women-owned enterprises;
2. Provide technical assistance to potential applicants applying for various federal and state COVID-19 financial assistance programs, including the soon to be released COVID-19 Pandemic Small Business Recovery Grant Program.

3. Aid in gathering necessary documentation needed to meet COVID-19 federal and state business program eligibility requirements, including the soon to be released COVID-19 Pandemic Small Business Recovery Grant Program;
4. Assist in reviewing, completing, and submitting applications to federal and state financial assistance programs, including the soon to be released COVID-19 Pandemic Small Business Recovery Grant Program;
5. Provide application follow up to micro and small businesses, for-profit independent arts and cultural organizations, and non-profits as well as track outcomes;
6. Serve as a conduit of information on available federal and state programs and resources for businesses impacted by the COVID-19 pandemic;
7. Assist businesses with resiliency, retention, and operational challenges arising from COVID-19 pandemic; and,
8. Expand the capacity of Technical Assistance Providers to offer multi-lingual counseling, including legal and accounting expertise to micro and small businesses, for-profit independent arts and cultural organizations, and non-profits.

B. Eligibility Requirements

To be eligible to receive grant proceeds from ESD, all applicants must:

1. Obtain New York State Prequalification and related registration standards through the Grants Gateway System. This will ensure eligibility to participate in this and future RFAs and receive potential program awards (see instructions in section X (2);
2. Primarily focus its activities on M/WBEs and/or micro and small business, for-profit independent arts and cultural organizations, and non-profits applicants, as described in section IV, part III of this RFA;
3. Be legally able to receive and use the proceeds as herein stated;
4. Meet any other requirements herein stated for the specific purpose of the grant; and
5. Be current with reporting requirements for any other ESD assistance, including any previous program funding.

C. Applications

1. Organizations must demonstrate the ability to provide technical assistance services in an independent and impactful way; and

2. Applicant must demonstrate strong institutional capacity in providing independent technical assistance services, such as one-on-one counseling (remotely or in-person while adhering to social distancing guidelines) as well as the ability and infrastructure to provide a robust remote or in-person training service delivery component.

D. Grant Amount

Grant awards will generally not exceed \$100,000. **Proposals submitted for greater than \$100,000 will be rejected without review.** ESD reserves the right to award grants in amounts greater than \$100,000 depending upon the number and quality of applications received and other considerations set forth in this RFA. If funding availability increases or decreases during the designation period, ESD will work with designees to adjust budgets accordingly.

E. Project Timeline

Project period will be May 19, 2021 through April 18, 2022.

F. Additional Conditions

1. ESD will establish reporting requirements to account for the utilization of grant proceeds by the Technical Assistance Provider. The grant is to be used only for the purposes stated in the organization's application or otherwise approved, in writing, by ESD;
2. All activities generated by funding from ESD, or toward which ESD grant proceeds are used, shall be conducted according to the standard business practices of the recipient organization and any agreements with ESD; and
3. Applicants agrees to the terms and conditions of the Grant Disbursement Agreement (see Appendix A – Grant Disbursement Agreement).

III. SCOPE OF WORK

The Program will make grants available to Technical Assistance Providers for the general purpose to provide Technical Assistance:

A. Provision of Technical Assistance

1. Funds may be used to provide Technical Assistance ("TA") to M/WBEs and/or micro and small business, for-profit independent arts and cultural organizations, and non-profit applicants that had COVID-19 business interruption issues and capital access needs. This TA should be geared toward ensuring the success of these NYS businesses in applying for an array of federal and state COVID-19 financial assistance programs, including the soon to be released COVID-19

Pandemic Small Business Recovery Grant Program. In addition, funds may be used to provide TA to applicants to obtain NYS M/WBE Certification.

2. TA business development topics, such as accessing various federal and state COVID-19 financial assistance programs, addressing and devising resiliency, retention, and operational challenges and strategies, financial record keeping and financial statement preparation, tax and legal issues, marketing, business diversification, lack and use of technology, etc. TA may be provided by qualified staff or outside business development consultants.

For grant proceeds to be used toward Technical Assistance:

1. The applicant must take specific actions to ensure the participation of M/WBEs and/or micro and small business, for-profit independent arts and cultural organizations, and non-profits in the TA program; and
2. The TA must directly benefit and be relevant to these NYS businesses affected by COVID-19 pandemic.

Preference will be given to applications that emphasize the provision of one-on-one multi-lingual consultation and training workshops/seminars to the applicants, either remotely or in-person while adhering to social distancing guidelines.

IV. APPLICATION - TECHNICAL ASSISTANCE PROVIDERS

PART I: ORGANIZATION INFORMATION			
1	Legal Name of Organization		
2	Organization Address City / State / Zip		
3	Organization County		
4	DBA name if applicable		
5	Applicant Contact Name and Title		
6	Applicant Contact Address City / State / Zip		
7	Applicant Phone Number	Contact Email:	
8	Form of Business: <input type="checkbox"/> For-Profit <input type="checkbox"/> Chamber of Commerce <input type="checkbox"/> Not-For-Profit <input type="checkbox"/> Trade Association <input type="checkbox"/> Local Development Corporation <input type="checkbox"/> Other:		
9	Federal Tax ID Number:		
10	DUNS Number		
11	NYS Charity Registration #		
12	NYS Unemployment Insurance #		
13	NYS Grants Gateway https://grantsreform.ny.gov Refer to Item #46 to register	<input type="checkbox"/> YES	Last Date updated:
		<input type="checkbox"/> NO	If no, Please Explain
		<input type="checkbox"/> Not Applicable (Please explain)	
14	Project Counties Covered		
15	Project Location Assembly District #	Member Name	
16	Project Location Senate District #	Member Name	
17	Is the organization currently seeking any other New York State assistance for this project? <input type="checkbox"/> YES. <input type="checkbox"/> NO		
18	OTHER ESD FUNDING: List any other prior relevant New York State assistance applied for or received:		

PART II: ORGANIZATION INFORMATION – Please limit your narrative to small business assistance in New York State (for any item that requires additional space, please identify the number on the response).

<p>19</p>	<p>Mission and History: Provide an executive summary of the organization’s mission and history, including the number of years of providing technical and financial assistance to M/WBEs and/ or micro and small businesses and efforts to serve start-up firms and expanding businesses (including experience providing disaster relief financial services).</p>
<p>20</p>	<p>Describe the geographic service area(s) and target populations served. Please include any emphasis on startups, expanding businesses, credit risks, other businesses’ lack of credit or inability to secure capital in the traditional market. Please comment on the distribution of clients served across your geographic service area and the percentage of your clients that are located in distressed and/ or highly distressed communities. The types of financial and technical assistance products and services offered and how many clients receive these services each year and how the organization sees that growth in the coming year.</p>
<p>21</p>	<p>Marketing strategy and outreach coordination with other community-based organizations. Please be specific about how the organization works with other community-based organizations to assist NYS businesses impacted by the COVID-19 pandemic. Please include efforts to work with women and minority organizations, associations or chambers of commerce.</p>

PART III: PROJECT ACTIVITIES, RESULTS AND IMPLEMENTATION – Please describe in detail how this ESD grant funds will be used (for any item that requires additional space, please identify the number on the response).

22	<p>Describe the specific activities that will be undertaken and funded through the project. Explain in detail the nature of the technical assistance and systems in place to deliver these services, and the ways that it will assist NYS businesses affected by the COVID-19 pandemic in applying to the various federal and state COVID-19 financial assistance programs, including the soon to be released COVID-19 Pandemic Small Business Recovery Grant Program. Explain the overall technical assistance program as well as the specific ways in which ESD grant funds will be used and deployed expediently.</p>
23	<p>Describe the training workshops/seminars either remotely or in-person (while adhering to social distancing guidelines), specific actions and efforts that will be taken to ensure the participation of minorities and women, and to continue to engage participants through the financial assistance application process (tracking of business outcomes is required and must be reported monthly).</p>
24	<p>Identify the reasons that your organization requires grant assistance in order to undertake these activities.</p>
25	<p>Identify any other entities involved in the project (other organizations, units of local, state or federal government, etc.) and describe the nature of their involvement.</p>
26	<p>List the specific goals that the organization will achieve as a direct result of the requested grant funding and provide a timeline for the project (see Part V, Project Description – Tasks & Timeline).</p>

27	List the measurable outcomes and the economic impact to be achieved as a direct result of ESD grant funding. These goals should be realistic and achievable based on the applicant’s experience in providing Technical Assistance (the proposed goals should reflect only the funding being requested).
28	Indicate the number of businesses that your organization will provide and pre- and post-Technical Assistance.

PART IV: PROJECT BUDGET (for any item that requires additional space, please identify the number on the response).

USE OF FUNDS	TOTAL ESD FUNDING
Salaries	\$
Fringes	\$
Consultant Fees	\$
Technical Assistance Costs	\$
TOTAL	\$
<p>Use of Funds: Please identify staff with job title and description, consultants if known or types of consultancy services you plan to contract, and breakdown of all other technical assistance costs.</p>	

PART V: PROJECT DESCRIPTION - Tasks & Timeline (please list a description of proposed activities and anticipated dates of completion that reflect the direct result of grant funding).

TASKS	TIMELINE
PROJECT START DATE	5/19/2021
OUTREACH	
TECHNCIAL ASSISTANCE (TA)	
FOLLOW UP	
MONTHLY REPORTS	
PROJECT COMPLETION DATE	4/18/2022

PART VI: REQUIRED DISCLOSURES AND CERTIFICATIONS - The following sections are pre-requisites and certifications that must be in place for participation in the program.

DISCLOSURE AND ACCOUNTABILITY CERTIFICATIONS (NOTE: If your answer in 'YES' in any of the questions below, please provide an explanation in an attachment)		
29	1. Is the Institution currently the subject of any litigation, or is any litigation threatened, which would have a material adverse effect on the Company's financial condition?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	2. Has the institution or any of its affiliates ever been involved in bankruptcy, a creditor's rights or receivership proceeding, or sought protection from creditors?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	3. Has the Institution ever settle a debt with a lending institution for less than the full amount outstanding?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	4. Has any senior manager or principal of the Institution ever been convicted or any felony or misdemeanor, other than minor traffic violations, or are any such charges pending?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	5. Has the Institution or any of its affiliates, been cited for a violation of federal, state, or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution or operating practices?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	6. Are there any outstanding judgments or liens pending against the Institution other than liens in the normal course of business?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	7. Is the Institution delinquent on any New York State, federal or local tax obligations?	<input type="checkbox"/> YES <input type="checkbox"/> NO
NON-DISCRIMINATION AND CONTRACTOR AND SUPPLIER DIVERSITY		
30	Non-Discrimination and Utilization of Minority and Women-Owned Business Enterprises – ("MWBE") and Service-Disabled Veteran-Owned Businesses ("SDVOB").	Check and initial to indicate agreement and acceptance for Non-Discrimination and Utilization of MWBEs and SDVOBs. <input type="checkbox"/> Initial to Confirm:
	The Applicant understands that any funding awarded as a result of this application will be subject to the provisions of Article 15-A and Article 17-B of the New York State Executive Law. The Grantee/Recipient agrees that it will comply with the provision of Article 15-A and Article 17-B of the New York State Executive Law and the rules and regulations promulgated thereunder, including, but not limited to, adopting to an Equal Employment Opportunity policy applicable to the project and exercising good faith efforts to achieve any goal for the utilization of MWBEs and SDVOBs.	
IRAN DIVESTMENT ACT		
31	Every proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the <u>Respondent on company letterhead</u> and affirmed as true under penalty of perjury:	
	<p>"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."</p>	

V. SELECTION CRITERIA

A. Proposal Scoring

ESD will balance individual application scores with priorities for geographic distribution across NYS. The evaluation criteria will include the following:

• Completeness of the application	15%
• Organizational capacity and stability	30%
• Applicants capacity to illustrate a strategic plan to address the stated need and describe how ESD’s assistance will help the grantee achieve this plan	30%
• Compliance of the application with the “Guidelines” section and other terms and conditions of this Request for Application	15%
• Diversity Practices	10%

B. Additional Considerations

- 1) By submitting an application, each applicant authorizes ESD to contact any and all other persons identified in its application or in any investigation conducted by or on behalf of ESD or the State and obtain the release of pertinent financial and other information, as well as to obtain verification of the information provided by each applicant.;
- 2) ESD will not be held liable for any costs incurred by any applicant for work performed in the preparation and production of an application, nor for any work performed prior to written authorization from ESD to proceed. All applications submitted will become the property of ESD; and

C. ESD Rights

ESD reserves the right to:

- 1) Reject any or all applications received;
- 2) Award grants in any amount;
- 3) Require the submission of modifications or additions to applications as a condition of further participation in the selection process; and
- 4) Amend this Request for Applications.

VI. QUESTIONS

- A. All questions, comments, requests for clarification or any other communication regarding this Request for Applications must be submitted via the designated email TAProgram@esd.ny.gov with the email subject line: Request for Applications for Technical Assistance Providers by no later than May 4,2021.
- B. In addition, any changes, additions or deletions to this Request for Applications will also be posted on the NYS Contract Reporter, along with the electronic version of this application. Respondents should note that any necessary clarification must be sought by the deadline for questions set forth in the “Request for Applications Schedule” section in this application.
- C. Applicants are urged to check NYS Contract Reporter frequently for notices of any clarification of or changes, additions, or deletions to this Request for Applications.

VII. SUBMISSION OF APPLICATIONS

- A. Applications must be submitted electronically via the designated email TAProgram@esd.ny.gov with the email subject line: Request for Applications for Technical Assistance Providers.
- B. Applications submitted in a manner other than as described in these instructions (e.g., facsimile, hard copies) will not be accepted.

VIII. GENERAL PROVISIONS

The issuance of the RFA and the submission of an application by a firm or the acceptance of such an application by ESD does not obligate ESD in any manner. ESD reserves the right to:

- A. Amend, modify or withdraw this RFA;
- B. Revise any requirement of RFA;
- C. Require supplemental statements or information from any responsible party;
- D. Accept or reject any or all responses hereto;
- E. Extend the deadline for submission of application hereto;
- F. Negotiate potential contract terms with any applicants to this RFA;
- G. Discussions with any applicant to this RFA to correct and/or clarify application which do not conform to the instructions contained herein;
- H. Cancel, or reissue in whole or in part, this RFA, if ESD determines in its sole discretion that it is its best interest to do so; and
- I. Extend the term of any agreement on terms consistent with this RFA.

ESD may exercise the foregoing rights at any time without notice and without liability to any applicant or any other party for its expenses incurred in preparation of applications hereto or otherwise. All costs associated with applying to this RFA will be at the sole cost and expense of the applying firm.

All information submitted in response to this RFA is subject to the Freedom of Information Law (FOIL), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, all applications may be discussing at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

IX. DEFINITIONS

For the purposes of this Application for Assistance the following words or terms shall mean as follows:

A. Micro Business

A micro business which is a resident in New York State, independently owned and operated, not dominant in its field and employs ten or less person.

B. Small Businesses

A small business shall be deemed to be one which is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred or less persons.

C. For-Profit Independent Arts and Cultural Organization

A for-profit independent arts and cultural organization is a small or medium sized private for-profit, independently operated live-performance venue, promoter, production company, or performance related business located in New York State negatively impacted by COVID-19 health and safety protocols, and having one hundred or less full-time employees, excluding seasonal employees. The qualifying organizations under this definition may include businesses engaged in a field including, but not limited to, architecture, dance, design, film, music, theater, opera, media, literature, museum activities, visual arts, folk arts and casting.

D. Minority Business Enterprise (“MBE”)

A business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) authorized to do business in the State of New York, is organized on a for-profit basis, and is independently owned and operated out of a fixed business location; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (vi) an enterprise that is a small business pursuant to subdivision twenty of this section.

E. Minority Group Member

A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial

groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

F. Women-owned Business Enterprise (“WBE”)

A business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and (iv) authorized to do business in the State of New York, is organized on a for-profit basis, and is independently owned and operated out of a fixed business location; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (vi) an enterprise that is a small business pursuant to subdivision twenty of this section.

G. M/WBE Certification

The official determination by the New York State Division of Minority and Women’s Business Development of a business enterprise as a bona fide minority and/or woman-owned business enterprise.

For more information on M/WBE certification, please see our website at: www.esd.ny.gov/mwbe.html or call (1-800-782-8369) for more information.

H. Technical Assistance

Business technical assistance is provided to an entrepreneur to address ongoing or specific challenges or needs arising from COVID-19, such as application to an array of federal and state disaster programs that includes SBA disaster loans, Paycheck Protection Program, development of a business plan or the resolution of a production, supply chain, operation, resiliency, or marketing problem. When a business is in formation, monitoring will help define specific and/or ongoing needs early. This assistance often is on a one-to-one basis (physically or virtually) in a consulting format.

Technical assistance may also be provided to assist clients in obtaining State M\WBE Certification.

I. New York Prequalification

The Grants Gateway was established to improve the way grants are administered by the State of New York. Beginning July 31, 2013, all not-for-profit organizations receiving funds from New York State agencies and authorities must be prequalified in Grants Gateway prior to the

execution of a contract or a contract amendment. For additional information, please refer to GrantsReform@Budget.ny.gov.

X. SUBMISSION REQUIREMENTS

A. PROCUREMENT FORMS AND REQUIREMENTS

1) Vendor Responsibility Questionnaire

All Respondents to this RFA must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFA, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFA.

To assist in the determination of responsibility, ESD requires that all respondents to this RFA register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep 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. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your application.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company’s trade industry. Per the website, respondents are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

2) New York State Prequalification System for Grants Contract Vendors

As part of Governor Cuomo’s initiative to better serve the people of the State of New York, a web-based grants management system, Grants Gateway, was launched in spring 2013. The

Grants Gateway was established to improve the way grants are administered by the State of New York. Beginning July 31, 2013, all not-for-profit organizations receiving funds from New York State agencies and authorities must be prequalified in Grants Gateway prior to the execution of a contract or a contract amendment.

Based on the above information, you are required to complete the steps outlined below to receive an executed contract or contract amendment. If you are not the appropriate contact for this communication, please forward to the person in your organization responsible for the management of grant funding. Send any questions to Greta Carter-Williams, ESD's program representative, at gcwilliams@esd.ny.gov or email GrantsReform@Budget.ny.gov with Prequalification in the subject line.

Register with the Grants Gateway

- a. The Registration Form is available for download at www.grantsreform.ny.gov. The Registration Form can be accessed by clicking the link at the top of the page in yellow labeled "Click HERE to access the Portal or browse for more information below".
- b. Include your State Financial System ("SFS") Vendor ID on the Form; if you are a new vendor and do not have an SFS Vendor ID, include a Substitute for W-9 with your signed, notarized registration (also available from the Grants Reform Web site).
- c. All registrations must include an Organization Chart in order to be processed.
- d. Mail the completed Registration Form, Organization Chart that shows the Head of your Organization, and Substitute W-9 (if new vendor) to:
Division of Budget - Grants Reform
Agency Building 1 - 5th Floor
Empire State Plaza, Albany, NY 12224
- e. When you receive your login information via email, log in and change your password. This password will allow access to the Grants Reform Web site.
- f. Associate your organization with a State agency (ESD) by clicking on Organization(s) and then selecting Organization Information; complete all required fields.
- g. Complete the Document Vault by uploading requested documents and answering all questions.
- h. Upon completion of the Document Vault, submit it for review and prequalification. If you believe your organization has submitted its Prequalification application and has submitted any requested documents omitted from your registration, please contact ESD's program representative or the Grants Reform Team by emailing GrantsReform@Budget.ny.gov with Prequalification in the subject line.

3) 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 (“MWBE”) and the employment of minority group members and women in the performance of ESD contracts.

BUSINESS PARTICIPATION OPPORTUNITIES FOR MWBEs

For contracts resulting from this solicitation, ESD may establish a goal for MWBE participation based on the scope of work and project description identified in the RFA response. Such contracts may set forth additional requirements that will encourage business participation opportunities for MWBEs. A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFA, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFA 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 evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFA, such finding constitutes a breach of contract and ESD may withhold payment 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 application, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals 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 respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at OCSD@esd.ny.gov.

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

- A. An MWBE Utilization Plan with their bid or application. Any modifications or changes to an accepted 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 for review and approval.

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

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, 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 respondent and direct the respondent 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 application.

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

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent 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 it must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to 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 application in response to this solicitation, the respondent agrees with all of the terms and conditions in [SCHEDULE B – PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSIENSS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract 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 respondent, 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 respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or application.

If awarded a Contract, respondent shall submit a Workforce Utilization Report 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.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

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: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3:

<https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.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.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLE VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

- A.** For purposes of this solicitation, ESD will establish a goal based on the scope of work and project description identified in the RFA response. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B.** Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A.** In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B.** The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause loss of eligibility to submit future bids and/or withholding of payment. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C.** ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D.** If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven 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/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or application.

- E. ESD may disqualify a Bidder's bid or application as being non-responsive under the following circumstances:
 - a) If a Bidder fails to submit an SDVOB 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.

- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.

- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for a waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply if the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOB identified within the SDVOB 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.

- D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- 1) Copies of solicitations to SDVOBs and any responses thereto.
- 2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- 3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- 4) 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 SDVOBs.
- 5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

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

APPENDIX A – Draft Grant Disbursement Agreement

This GRANT DISBURSEMENT AGREEMENT (“Agreement”) includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

**NEW YORK STATE
URBAN DEVELOPMENT
CORPORATION d/b/a
EMPIRE STATE DEVELOPMENT
("ESD"):**

633 Third Avenue
New York, NY 10017
Contact: Martha Otero
Phone: 212-803-3227
E-mail: martha.otero@esd.ny.gov

THE GRANTEE:

«Orgn_Name_Client»
«Street_Address_Client»
«CitySTZip_Client»
Contact: «Contact_Name_Client», «Contact_Title_Client»
Phone: «Phone_Client»
Fax: «Fax_Client»
E-mail: «Client_email»
Federal Taxpayer ID#: «Federal_Tax_ID»

THE PROJECT:

«Orgn_Name_Client»

PROJECT NUMBER:

«Project_Number»

GRANT AMOUNT:

\$100,000

FUNDING SOURCE:

2021-2022 New York State Budget Aid to Localities COVID-19
Pandemic Small Business Recovery Grant Program

ESD APPROVAL DATE:

March 17, 2021

PROJECT EXPIRATION DATE:

April 18, 2022

CONTRACT EXPIRATION DATE:

October 18, 2022

TERMS AND CONDITIONS

1. The Project

- (a) The project will occur as described in Exhibit A and the ESD Directors' materials attached. The Grantee will perform the tasks on the schedule and as described in Exhibit A to this Agreement.
- (b) The Grantee will submit to ESD the report(s) as required in Exhibit B.
- (c) The Grantee will provide the consultant/contractor/vendor disclosure required by Exhibit C.

2. Project Budget and Use of Funds

The Grantee will perform the project in accordance with the overall project budget, which includes the Grant funds, set forth in Exhibit D to this Agreement. The Grant will be applied only to eligible expenses, which are separately identified.

3. Conditions Precedent to Disbursement of the Grant

No grant funds shall be disbursed unless the Grantee is in compliance with the terms and conditions of this Agreement, including, but not limited to, Exhibit F (Disbursement Terms) and the following conditions have been satisfied (and as to 3 (c) below continues to be satisfied prior to each disbursement):

- (a) If the Grant amount exceeds \$100,000, ESD has received an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit E.
- (b) Any necessary approval has been issued by the Director of Budget of the state of New York, and the Grant funds have been received by ESD.
- (c) There have been no materially adverse changes in the financial condition of the Grantee since the date of submission of its application to ESD.

4. Disbursement

Subject to the terms and conditions contained in this Agreement, ESD shall disburse the Grant to the Grantee as follows:

- (a) ESD shall reimburse the Grantee, in the manner as set forth in Exhibit F, the amount of eligible expenses actually incurred by the Grantee, upon presentation to ESD of a Payment Requisition Form, together with such supporting documentation as ESD may require, in the form attached to this Agreement as Exhibit G and its attachments.
- (b) The last ten percent (10%) of the Grant shall not be disbursed by ESD until all of the tasks and reports required under this Agreement have been completed to ESD's satisfaction.
- (c) In no event will ESD make any payment which would cause ESD's aggregate disbursements to exceed the Grant amount.
- (d) The Grant, or a portion thereof, may be subject to recapture as provided in Exhibit F.

5. Non-Discrimination and Contractor & Supplier Diversity

The Grantee will comply with ESD's Non-Discrimination and Contractor & Supplier Diversity_policies set forth in Exhibit H to this Agreement.

6. No Liability of ESD

ESD shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to indemnify and hold harmless ESD, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees ") from and against any and all such liability other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

7. Responsibility Provisions

- (a) The Grantee shall at all times during the Agreement term remain responsible. The Grantee agrees, if requested by the President and Chief Executive Officer of ESD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- (b) The President and Chief Executive Officer of ESD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Grantee. In the event of such suspension, the Grantee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Grantee must comply with the terms of the suspension order. Activities under this Agreement may resume at such time as the President and Chief Executive Officer of ESD or his or her designee issues a written notice authorizing a resumption of performance under this Agreement.
- (c) Upon written notice to the Grantee, and a reasonable opportunity to be heard with appropriate ESD officials or staff, this Agreement may be terminated by the President and Chief Executive Officer of ESD or his or her designee at the Grantee's expense where the Grantee is determined by the President and Chief Executive Officer of ESD or his or her designee to be non-responsible. In such event, the President and Chief Executive Officer of ESD or his or her designee may complete the requirements of this Agreement in any manner he or she deem advisable and pursue available legal or equitable remedies for breach.

8. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

- (a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) It is duly organized, validly existing and in good standing under the laws of the State of its organization, has full power and authority to own its assets and to conduct the activities in which

it is now engaged or proposed to be engaged and is duly qualified and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its existence in good standing in each such jurisdiction.

- (d) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESD.
- (e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders. The Grant shall be used solely for Eligible Expenses in accordance with the terms and conditions of this Agreement.
- (f) The information contained in the application submitted by the Grantee in connection with the project and the Grant, as such application may have been amended or supplemented (the "Application"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Application, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that ESD has relied on the statements and representations made by the Grantee in the Application in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Application or otherwise in connection with the Grant and that the information contained in the Application continues on the date hereof to be materially correct and complete.
- (g) The relationship of the Grantee (including, for purposes of this paragraph, its officers, employees, agents and representatives) to ESD arising out of this Agreement shall be that of an independent contractor. The Grantee covenants and agrees that it will conduct itself in a manner consistent with such status, that it will neither hold itself out as, nor claim to be, an officer, employee, agent or representative of ESD or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of ESD or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.
- (h) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to anyone to procure the Grant or to influence any official act or the judgment of any person in the performance of any of the terms of this Agreement.
- (i) The Grant shall be used solely for eligible expenses in accordance with the terms and conditions of this Agreement.
- (j) It is solely responsible and has sufficient funding for all Project costs in excess of the Grant.

- (k) No materials, if any, purchased with the Grant will be used for any purpose other than the Project.
- (l) The Grantee shall report in writing to ESD any grants, commitments or funds received by the Grantee from any source, governmental or non-governmental, in connection with the carrying out of the Project, other than the grant of funds received under this Agreement. No part of the Grant will be applied to any expenses paid or payable from any other funding source.
- (m) The Grant shall not be used in any manner for any of the following purposes:
 - (i) Political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
 - (ii) Religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;
 - (iii) Payments to any firm, company, association, corporation or organization in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest-bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and
 - (iv) Payment to any member of Grantee's Board of Directors or other governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.
- (n) Any report or other product of the Grant, after approval of such product by ESD, shall contain the following acknowledgment:

"Funding provided by a grant from Empire State Development"
- (o) ESD may make reasonable use of any report or other product of the Grant upon notice to the Grantee.
- (p) Grantee is in compliance and shall continue to comply with Section 7 of this Agreement.

9. Default and Remedies

- (a) Each of the following shall constitute a default by the Grantee under this Agreement:
 - (i) Failure to perform or observe any obligation or covenant of the Grantee contained herein to the reasonable satisfaction of ESD and within the time frames established therefore under this Agreement.

- (ii) Failure to comply with any request for information reasonably made by ESD to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by ESD in connection with the Grant.
 - (iii) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant.
 - (iv) A default beyond any applicable grace period by the Grantee, or any entity which Grantee directly or indirectly controls, is controlled by, or is under common control with, under any other agreement with ESD.
 - (v) Failure by the Grantee, for any period of time, to comply with Section 7 of this Agreement.
- (b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESD shall have the right to terminate this Agreement, provided however, that if the default is pursuant to paragraph 9(a)(i) or 9(a)(ii), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice of default from ESD, or if the default pursuant to paragraph 9(a)(i) or 9(a)(ii) cannot be reasonably cured within such ten day period, Grantee commences to cure such default within the ten day cure period and cures the default within ninety (90) days thereafter, provided further that ESD shall not be obligated to make any disbursements during any such cure period. Defaults occurring under the terms and provisions of paragraph 9(a)(iii), 9(a)(iv) and 9(a)(v) are not subject to the cure provisions provided herein.
- (c) Upon such termination of this Agreement, ESD shall withhold any Grant proceeds not yet disbursed and may require repayment of Grant proceeds already disbursed. If ESD determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESD may require repayment of those funds and may refer the matter to the appropriate authorities for prosecution. ESD shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Term

The term of this Agreement shall commence on the date hereof and expire on the Expiration Date, as set forth on the first page of this Agreement.

11. Books and Records; Project Audit

- (a) The Grantee will maintain accurate books and records concerning the Project for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to ESD, its agents, officers and employees during Grantee's business hours upon reasonable request.
- (b) ESD shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

12. Survival of Provisions

It is agreed that: (a) the provisions of Sections 4(d), 6, 8(g), (j) and (p) and 9, 11, 12, 13, 14, 15, 16, 17, 20 and 21 (except insofar as any of the aforesaid Sections have been waived in accordance with the terms of Exhibit I to this Agreement) shall survive the expiration or early termination of this Agreement; and (b) such expiration or early termination shall not serve to limit, alter or modify any of the Grantee's obligations or responsibilities under the aforesaid Sections, and/or ESD's rights under such Sections, referenced in subsection (a) of this Section 12 of this Agreement. It is further agreed, moreover, that notwithstanding the expiration or early termination of this Agreement, ESD shall nevertheless retain the right to pursue, through and until the expiration of any applicable period of limitations established under the statutory or common law of the State of New York, any claim or claims arising from any Section of this Agreement, including but not limited to the above referenced Sections 4(d), 6, 8(g),(j) and (p) and 9, 11, 12, 13, 14, 15, 16, 17, 20 and 21 of this Agreement, and the expiration or early termination of this Agreement shall not constitute a defense to any such timely filed claim or cause of action that is asserted on ESD's behalf.

13. Notices

- (a) All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:
- (i) via certified or registered United States mail, return receipt requested;
 - (ii) by facsimile transmission;
 - (iii) by personal delivery;
 - (iv) by expedited delivery service; or
 - (iv) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Empire State Development

Name: Martha Otero
Title: Acting VP, Entrepreneur Development & Operations
Address: 633 Third Avenue, 33rd Floor
New York, NY 10017
Telephone Number: 212-803-3227
Facsimile Number: 212-803-3235
E-Mail Address: martha.otero@esd.ny.gov

With a copy to:

Title: General Counsel
Address: 633 Third Avenue, 37th Floor, New York, NY 10017
Telephone Number: 212-803-3790
Facsimile Number: 212-803-3775

«Orgn Name Client»

Name: «Contact_Name_Client»
Title: «Contact_Title_Client»
Address: «Street_Address_Client»

«CitySTZip_Client»
Telephone Number: «Phone_Client»
Facsimile Number: «Fax_Client»
E-Mail Address: «Client_email»

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

14. No Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

15. No Waiver

No waiver of any ESD's rights arising under this Agreement, or any other source, can occur unless such waiver shall be in writing and signed by ESD and such written document manifests a clear and unequivocal intent by ESD to waive its contractual or other legal rights. The term "waiver" as used herein is a term of art as used in the legal profession. ESD may not be estopped from asserting any of its legal rights, including but not limited to its rights under this agreement, unless ESD has signed a written document that clearly and unequivocally states that the other party may detrimentally rely upon the terms of such written document. Absent such written document, there shall be no estoppel against ESD, and the other parties' alleged detrimental reliance shall be deemed to be unreasonable. The term "estoppel" is used herein is a term of art as used in the legal profession.

16. Modification

This Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

17. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein. In the event of a conflict between the Directors' materials attached hereto as Exhibit A-1 and any other term or condition of this Agreement, then the term or condition of this Agreement shall govern.

18. Confidentiality of Information

Information contained in reports made to ESD or otherwise obtained by ESD relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "Confidential" by the Grantee, will be kept confidential by ESD, to the extent such information is determined by ESD to be exempt from public disclosure under the Freedom of Information Law and not otherwise required by law to be disclosed. Notwithstanding the foregoing, ESD will not be liable for any information disclosed, in ESD's sole discretion, pursuant to the Freedom of Information Law or other applicable law, or which ESD is required to disclose pursuant to legal process.

19. Special Provisions

The Grantee shall comply with the special provisions, if any, set forth in Exhibit I.

20. Litigation Costs

The Grantee shall pay, in any action or proceeding that is commenced to enforce and/or involves the enforcement of the terms and conditions of this Agreement, all of ESD's costs including, without limitation, ESD's attorneys' fees. The Grantee shall also pay any and all of ESD's collection costs including, without limitation, its attorneys' fees.

21. Waiver

The Grantee knowingly and expressly waives the right to a trial by jury and the right to interpose any counterclaims in any action brought by ESD under the terms of this Agreement.

In witness whereof, the parties have executed this Agreement by their duly authorized representatives as of the latest date written below:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT

(Signature) Pravina Raghavan, Executive Vice President, Division of Small Business & Technology Development

(Date)

GRANTEE: «Orgn_Name_Client»

(Signature)

(Printed name and title)

Date: _____

ESD GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	Project Description
EXHIBIT A-1	Directors' Materials
EXHIBIT B	Report
EXHIBIT C	Consultant/Contractor/Vendor/Disclosure Statement
EXHIBIT D	Project Budget
EXHIBIT E	Opinion of Counsel
EXHIBIT F	Disbursement Terms
EXHIBIT G	Payment Requisition Form
EXHIBIT G-1	Payment Requisition Cover Letter
EXHIBIT G-2	Project Cost Documentation
EXHIBIT G-2A	Project Cost Summary for ESD-Eligible Expenses
EXHIBIT H	Non-Discrimination and Contractor & Supplier Diversity – Requirements and Procedures
EXHIBIT H-1	M/WBE Participation / Equal Opportunity Policy Statement
EXHIBIT I	Special Provisions

EXHIBIT A: Project Description

«Orgn_Name_Client»
Project «Project_Number»

TASKS and TIMELINE

ask #	Task Description	Anticipated Time Schedule
1.	Provide technical assistance in the form of one-on-one counseling and training to at least 300 businesses throughout the State.	May 19, 2021 – April 18, 2022
2.	Develop at least 12 webinars and workshops training on federal and state COVID-19 financial assistance programs and topics addressing and devising resiliency, retention, and operational challenges and strategies, financial record keeping and financial statement preparation, marketing, business diversification.	May 19, 2021 – April 18, 2022
4.	Assist with completing and packaging at least 175 funding applications.	May 19, 2021 – April 18, 2022
5.	Submit Monthly Statistical Reports (due 10 days after month ends).	May 19, 2021 – April 18, 2022
6.	Submit Quarterly Narrative Reports (due 30 days after quarter ends).	May 19, 2021 – April 18, 2022
7.	Submit Final Report	July 18, 2022
8.	Project Completion Date	April 18, 2022

EXHIBIT A-1: Directors' Materials

EXHIBIT B: Report

«Orgn_Name_Client»
Project «Project_Number»

Interim reports for this project are required to be submitted:

1. Monthly Interim Statistical Progress Report.
2. Aggregate Quarterly Narrative Report.

All projects must submit a Final Report. This Final Report, which outlines the project's goals, implementation, results and challenges, is subject to review and comment by ESD. The last disbursement of Grant funds, pursuant to Exhibit F of this Agreement, will not be made until the Final Report is approved by ESD.

If applicable, the draft final work product must be submitted for ESD review per Exhibit A. The work product does not take the place of the Final Report.

Date of report: _	Type of report: (<i>circle one</i>)	Interim (#___)	Final
Amount of Grant:	Total Program Cost:	\$_____	
Project start date: _____	Project completion date:	_____	

Attach additional pages to answer the following questions:

- I. Describe the goals of the project.
- II. Describe the steps implemented to achieve those goals (to date).
- III. Describe specific results of the Project (to date).
- IV. Evaluate the Project's overall effectiveness (to date).
- V. Describe any challenges or unexpected events that arose in implementing the Project.
- VI. We would appreciate feedback regarding this ESD program. Please comment on any interactions you had with ESD before applying for funds, on the application and project approval process, on the payment reimbursement process, or on any other interactions with ESD related to the project. You may submit the answer with your report or under separate cover to: Grace Padmore, ESD, Loans & Grants Department Administrator,
633 Third Avenue, New York, NY 10017

EXHIBIT C: Consultant/Contractor/Vendor Disclosure Statement

«Orgn_Name_Client»
Project «Project_Number»

Grantee must complete this form for each consultant, contractor or vendor it uses whose fee amounts to at least 10% of the total grant or \$500, whichever is less.
Grantee must attach a contract for any consultant(s) and contractor(s) used.

I, _____, am the _____ of _____ (the "Grantee"), an entity that is duly organized and validly existing under the laws of the State of New York.

I attest that (Consultant/Contractor/Vendor) _____ was chosen as a consultant/contractor/vendor on Project # _____ by the Grantee to (Describe Services) _____

No member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest in the consultant/contractor/vendor as defined by Section 8(m)(iii) of this agreement.

I attest that (Consultant/Contractor/Vendor) _____ was chosen for its services/products through a process of (Describe method of selection, including efforts to involve Minority and/or Women-owned Business Enterprises, as defined in Exhibit H, and a description of any relationship between the grantee and the Consultant/Contractor/Vendor.) _____

Signature: _____ Print Name: _____

Title: _____ Date: _____

EXHIBIT D: Project Budget

«Orgn_Name_Client»
Project «Project_Number»

USES	Empire State Development
Salaries	\$
Fringe Benefits	
Consultants Fees	
Technical Assistance Costs (May include printing, copying, recruitment & program promotion, postage, telecommunications costs)	
Total Project Costs:	\$ -

ESTIMATED SALARY SCHEDULE

If information in grantee's request for reimbursement of wages differs substantially from the below schedule, Grantee must submit a written letter requesting to modify the salary schedule before funds can be disbursed. If an employee receives Benefits (such as pension, 401(k) employer contributions, employer portion of health benefits, employer FICA) greater than 33% of their Gross pay specific details must be disclosed to ESD in writing.

Full-Time Employees

A: Employee Name	B: Title	C: Gross Pay (Per Pay Period including Fringe Benefits)	D: Frequency (Weekly, Bi- weekly, Monthly)	Total Pay (column C*column D)
See Attached Sheet				
Total				

Part-Time Employees

A:Employee Name	B:Title	C:Hourly Wage	Frequency	Total
See Attached Sheet				
Total				

ESD TRAVEL EXPENSE REIMBURSEMENT POLICY

REIMBURSEMENT FOR APPROVED TRAVEL MAY NOT EXCEED THE FOLLOWING LEVELS:

- | | |
|---|---|
| A. Personal Car Mileage | Internal Revenue Service standard mileage allowance rate in effect when the expense is incurred*; actual for trips, site visits, meetings, and to/from airport. |
| B. Personal Car-Overtime | Actual - \$50.00 limit when working overtime (including mileage rate, tolls, parking) |
| C. Car Rental (compact category) | Actual, not to include Collision Damage Waiver insurance |
| D. Airline (coach category) & other Public Transportation | Actual |
| E. Taxi Fares | Actual - \$50.00 limit when working overtime |

*See <http://www.osc.state.ny.us/agencies/travel/travel.htm> for a schedule of standard mileage reimbursement allowance rates.

EXHIBIT E: Opinion of Counsel [Required where grant exceeds \$100,000]

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development
633 Third Avenue
New York, New York 10017

Attention: Ms. Martha Otero

Re: Project «Project_Number»

Ladies and Gentlemen:

We have acted as special counsel to the «Orgn_Name_Client»(the “Grantee”), in connection with the execution and delivery of the Grant Disbursement Agreement dated _____ (the “Agreement”) between New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and the Grantee.

This opinion letter is being furnished to you at our client’s request pursuant to Section 3(a) of the Agreement. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

In rendering the opinions set forth herein, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate for the purposes of this opinion letter, including (a) the Agreement, (b) the certificate of incorporation of the Grantee and (c) the by-laws of the Grantee. We have also examined and relied upon such other matters of law, documents, certificates of public officials and representations of officers and other representatives of the Grantee as we have deemed relevant, appropriate or necessary to the rendering of our opinions.

In rendering the opinions expressed below, we have assumed the legal capacity of all natural persons signing documents and that the signatures of persons signing all documents in connection with which this opinion letter is rendered are genuine, all documents submitted to us as originals or duplicate originals are authentic and all documents submitted to us as copies, whether certified or not, conform to authentic original documents. Additionally, we have assumed and relied upon the accuracy and completeness of all certificates and other statements, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties, confirmations, schedules and exhibits contained in the Agreement, with respect to the factual matters set forth therein.

As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon written statements and representations of officers and other representatives of the Grantee and of certain public officials. We have also assumed and relied upon the accuracy and completeness of all certificates and other statements, representations, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties and exhibits contained in the Agreement with respect to the factual matters set forth therein.

Based upon the foregoing and subject to the assumptions, qualifications and other matters set forth herein, we are of the opinion that:

1. The Grantee is validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder.

2. The Agreement has been duly authorized, executed and delivered by the Grantee and (assuming its due authorization, execution and delivery by ESD) is binding on and enforceable against the Grantee in accordance with its terms, subject to applicable bankruptcy, insolvency reorganization, arrangement, liquidation, moratorium, fraudulent conveyance or transfer and other similar laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and except as rights under the Agreement to indemnity and contribution may be limited by federal or state laws.

We are admitted to practice in the State of New York and we express no opinion as to any matters governed by any laws other than the laws of the State of New York. The opinions expressed herein that are based on the laws of the State of New York are limited to the laws generally applicable in transactions of the type covered by the Agreement.

This opinion letter is for the benefit solely of ESD and not for the benefit of any other person. We are opining herein only as of the date hereof and we undertake no, and disclaim any, obligation to advise you of any changes in any matter set forth herein, regardless of whether changes in such matters come to our attention after the date hereof. No attorney-client relationship exists or has existed with ESD by reason of our preparation, execution and delivery of this opinion letter. By providing this opinion letter and permitting reliance hereon by you, we are not acting as your counsel and have not assumed any responsibility to advise you with respect to the adequacy of this opinion letter for your purposes. This opinion letter may not be relied upon by any other person or for any other purpose or used, quoted or otherwise referred to for any other purpose.

Very truly yours,

EXHIBIT F: Disbursement Terms

«Orgn_Name_Client»
Project «Project_Number»

Expenses must be incurred on or after May 19, 2021 to be considered eligible project costs.

Subject to the terms and conditions contained in this Agreement, ESD shall disburse the Grant to the Grantee as follows:

First 50%

Upon the execution of this Agreement by the Grantee and its delivery to ESD, and the satisfaction of the conditions set forth in Section 3 of the Agreement, ESD shall disburse to the Grantee a sum equal to fifty percent (50%) of the Total Grant Amount.

Next 40%

All disbursements after the initial advance shall be for Eligible Expenses (as set forth and in accordance with the budget in Exhibit D and in compliance with Exhibit A-1) incurred by the Grantee. Requisitions for payment after the initial requisition must include supporting documentation* in the form attached to this Agreement as Exhibit G and its attachments. In addition, the second requisition must include supporting documentation* for the initial advance. ESD shall reimburse the Grantee, not more frequently than quarterly, for Eligible Expenses actually incurred by the Grantee, in compliance with this Agreement and upon presentation to ESD of a Payment Requisition Form together with such supporting documentation* as ESD may require, in the form attached to this Agreement as Exhibit G and its attachments. The amount reimbursed by ESD in this manner will not exceed forty percent (40%) of the Grant.

Last 10%

As stated in Section 4, paragraph (b) of this Agreement, the final ten percent (10%) of the Grant shall not be disbursed by ESD until all of the tasks and reports required have been completed to ESD's satisfaction.

Expenses must be incurred between May 19, 2021 and April 18, 2022 to be considered eligible project costs.

*Supporting documentation must include copies of invoices as well as proof of payment (e.g. cancelled checks (both sides), bank statements, paid credit card statements, or other proof of payment).

Grantee must submit all documentation for the final disbursement of the Grant by no later than October 18, 2022.

ESD reserves the right to require additional documentation to support payment requisitions.

Wire Transfer Information:

If ESD assistance is \$10,000 or greater, please provide:

*A letter from a financial officer of the organization certifying to the accuracy of the following information:

Bank Name: _____

ABA #: _____

Acct. Name: _____

Acct. #: _____

EXHIBIT G: Payment Requisition Form

«Orgn_Name_Client»
Project «Project_Number»

Payment Request # ____ for \$ _____ for work completed between ____ and ____ for Task(s) # _____.

Note to Grantee: **Do not re-type this form.** Fill in only the version included in the executed GDA. ESD funds may be applied by Grantee in payment or reimbursement of the following costs:

THIS REQUEST

USES	A: ESD SHARE	B: ESD APPROVED REVISIONS	C: THIS REQUEST	D: TOTAL REQUESTED TO DATE	E: A-C-D BALANCE
Salaries					0
Fringes					0
Consultant Fees					0
Technical Assistance Costs					0
					0
					0
TOTAL	\$0				0
(10 % Retainage)	0				

FUNDING STATUS

1	Total Project Cost per Exhibit D	
2	Total Eligible Expenses Incurred to Date (including this request)	
3	Balance to be Expended (Line 1 minus Line 2)	

CERTIFICATION

I hereby warrant and represent to Empire State Development ("ESD") that:

- 1) To the best of my knowledge, information and belief, the expenditures for which Research Foundation for the State of New York on behalf of NYS SBDC Network is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and Research Foundation for the State of New York on behalf of NYS SBDC Network, are Eligible Expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source.
- 2) I have the authority to submit this invoice on behalf of the Research Foundation for the State of New York on behalf of NYS SBDC Network. The tasks have been completed in the manner outlined in the Agreement.
- 3) I hereby attach the following documents for ESD approval, in support of this requisition:
 - ___ Exhibit B: Interim / Quarterly Report -or-
 - ___ Exhibit B: Final report indicating project completion date and what was accomplished with grant funds
 - ___ Exhibit C: Consultant/Contractor/Vendor Disclosure Statement including contracts as applicable
 - ___ Exhibit G-2: Project Cost Documentation (– [Invoices/receipts for Eligible Expense goods/services with Back-up Summary])
- 4) There have been no materially adverse changes in the financial condition of the Grantee, except as disclosed in writing to ESD, from the date of submission of the Application to the date hereof.

- 5) The Grantee has acted responsibly from the date of submission of the Application to the date hereof in full compliance with the terms and conditions of Section 7 of the Agreement.
- 6) Representations, Warranties and Covenants made in Section 8 of the Agreement are still true, complete and accurate, unless waived in Exhibit I of the Agreement.

Signature: _____ Date: _____

Print Name: _____ Title: _____

EXHIBIT G-1: Payment Requisition Cover Letter Form

****ON GRANTEE'S LETTERHEAD****

Date

Ms. Martha Otero
Empire State Development
633 Third Avenue
New York, New York 10017

RE: «Orgn_Name_Client», Project «Project_Number»

Dear Ms. Otero:

Enclosed please find our request for payment/reimbursement. The package includes the following:

1. Completed Exhibit B: Interim/Quarterly/Final Report
2. Final Work Product, if applicable
3. Completed Exhibit C: Consultant/Contractor/Vendor Disclosure Statement including contracts as applicable
4. Completed Exhibit G: Payment Requisition Form
5. Project Cost Documentation – Completed Exhibit G-2 – Payment Requisition Back-up Summary, including supporting documentation and invoices

If any further information is needed, please give me a call at () _____.

Signature

Print Name: _____

Title: _____

Enclosures

EXHIBIT G-2: Payment Requisition Back-up Summary

«Orgn_Name_Client»
Project «Project_Number»

Submit copies of back-up, including invoices and proof of payment.

Expenses must be incurred after this GDA's execution date to be considered eligible project costs.

Budget Category: Salaries

INVOICE	REFERENCE # (ALSO NOTE ON INVOICE)	REQUESTED ESD AMOUNT	COMMENT
TOTAL Request in Category:			(Transfer to Exhibit G)

Budget Category: Fringes

INVOICE	REFERENCE # (ALSO NOTE ON INVOICE)	REQUESTED ESD AMOUNT	COMMENT
TOTAL Request in Category:			(Transfer to Exhibit G)

Budget Category: Consultant Fees

INVOICE	REFERENCE # (ALSO NOTE ON INVOICE)	REQUESTED ESD AMOUNT	COMMENT
TOTAL Request in Category:			(Transfer to Exhibit G)

Budget Category: Technical Assistance Costs

INVOICE	REFERENCE # (ALSO NOTE ON INVOICE)	REQUESTED ESD AMOUNT	COMMENT
TOTAL Request in Category:			(Transfer to Exhibit G)

Exhibit G-2(A): Project Cost Summary for ESD-Eligible Expenses*

«Orgn_Name_Client»
Project «Project_Number»

Item # *	Check #	\$ Amount	Invoice date	Vendor Name	Description of Item or Service
TOTAL:					

PREPARED BY: _____ DATE: _____

*** Eligible Expenses – list only the costs to be reimbursed by ESD. Clearly indicate item numbers on any supporting documentation such as cancelled checks, bank statements and invoices. Use additional copies of form as necessary.**

**EXHIBIT H: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO
STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

I. General Provisions

- A. Empire State Development (ESD) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Recipient of the subject Grant Disbursement Agreement (the “Recipient” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with the ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Recipient’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this Contract, the ESD hereby establishes an overall goal of __ for Minority and Women-Owned Business Enterprises (“MWBE”) participation, __ for Minority-Owned Business Enterprises (“MBE”) participation and __ for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Recipient should reference the directory of New York State Certified MWBEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Recipient is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to

**EXHIBIT H: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO
STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Recipient shall be liable to the ESD for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Recipient agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Recipient shall comply with the following provisions of Article 15-A:
 - 1. Recipient and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The Recipient shall submit an EEO policy statement to the ESD with the executed Contract.
 - 3. If Recipient or subcontractor does not have an existing EEO policy statement, the ESD may provide the Recipient or subcontractor a model statement (see EXHIBIT G-1: M/WBE Participation/Equal Employment Opportunity Policy Statement).
 - 4. The Recipient's EEO policy statement shall include the following language:
 - a. The Recipient 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 EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Recipient shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Recipient shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Recipient's obligations herein.

EXHIBIT H: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

- d. The Recipient will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, 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 Contract.

C. Staffing Plan

To ensure compliance with this Section, the Recipient shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Recipients shall complete the Staffing plan form and submit it as part of the executed Contract.

D. Work Force Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Recipient is responsible for updating and providing notice to the ESD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Recipient and any subcontractor performing work on the Contract.
3. In limited instances, Recipient may not be able to separate out the workforce utilized in the performance of the Contract from Recipient's and/or sub's total workforce. When a separation can be made, Recipient shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Recipient's and/or subcontractor's total workforce, Recipient shall submit the Workforce Report and indicate that the information provided is Recipient's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Recipient shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Recipient and subcontractors shall 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.

**EXHIBIT H: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO
STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

IV. MWBE Utilization Plan

- A. The Recipient represents and warrants that Recipient has submitted an MWBE Utilization Plan (EXHIBIT H-4) either prior to, or at the time of, the execution of the Contract.
- B. Recipient agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Exhibit.
- C. Recipient further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Recipient non-responsiveness.

V. Waivers

- A. For Waiver Requests Recipient should use the Waiver Request Form.
- B. If the Recipient, after making good faith efforts, is unable to comply with MWBE goals, the Recipient may submit a Request for Waiver form documenting good faith efforts by the Recipient to meet such goals. If the documentation included with the waiver request is complete, the ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Recipient is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the ESD may issue a notice of deficiency to the Recipient. The Recipient must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Recipient is required to submit a Quarterly MWBE Contractor Compliance and Payment Report (EXHIBIT H-6) to the ESD by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

**EXHIBIT H: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO
STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

VII. Liquidated Damages/Recapture - MWBE Participation

- A. Where ESD determines that Recipient is not in compliance with the requirements of the Contract and Recipient refuses to comply with such requirements, or if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals, Recipient shall be obligated to pay to the ESD liquidated damages or be subject to recapture of grant proceeds (“Recapture”).

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

- C. In the event a determination has been made which requires the payment of liquidated damages (and such identified sums have not been withheld by the ESD) or Recapture, Recipient shall pay such liquidated damages or Recapture to the ESD within sixty (60) days after they are assessed by the ESD unless prior to the expiration of such sixtieth day, the Recipient has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages or Recapture shall be payable if Director renders a decision in favor of the ESD.

**EXHIBIT H-1: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

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

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.

EXHIBIT I: Special Provisions

In the event of any conflict between Exhibit A-1 of this Agreement and any other provisions of this Agreement, the terms of such other provisions shall govern.