

SCHEDULE A
HUD / LMDC COMPLIANCE REQUIREMENTS

I. GENERAL CONDITIONS

A. General Compliance

Subcontractor agrees to comply with the requirements of the HUD regulations concerning CDBG, 24 CFR Part 570, as modified by the waivers and alternative requirements applicable to LMDC and its subcontractors that are published at 67 FR 12042 and 67 FR 36017. Subcontractor also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing (a) the funds provided under this Agreement and (b) the Program. Subcontractor further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Hold Harmless

Subcontractor shall hold harmless, defend and indemnify LMDC, the New York State Urban Development Corporation d/b/a Empire State Development, and the State of New York and their directors, officers, employees, and agents from and against any and all claims, actions, suits, charges, losses, liabilities, awards, judgments, settlements, costs, expenses, investigations, claims, and demands (including, but not limited to, reasonable attorney's fees and other costs of defense or investigation) arising out of or relating to Subcontractor's performance of, or failure to perform, the services or subject matter called for in this Agreement, or any subcontractor's performance of or failure to perform its agreement with Subcontractor, and upon demand shall reimburse any indemnified person for any such matters, including reasonable expenses incurred in the investigation or defense of any of the foregoing.

C. Workers' Compensation

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

D. Insurance and Bonding

Subcontractor shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from LMDC.

Subcontractor shall comply with the bonding and insurance requirements of 24 CFR §§ Part 84.31 and 84.48, including but not limited to the following insurance to the extent stated:

1. Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars (\$2,000,000) aggregate and One Million Dollars (\$1,000,000) per occurrence. Such insurance is to be written on an occurrence basis. The Lower Manhattan Development Corporation, New York State Urban Development Corporation d/b/a Empire State Development, and the State of New York shall be named as additional insureds.

2. Automobile Liability and Property Damage Insurance, if applicable, in an amount not less than \$1,000,000 combined single limit for both bodily injury and property damage.

3. Workers' Compensation coverage for employer liability and disability benefits as required by the State of New York.

4. Excess Liability Insurance as applicable. The Lower Manhattan Development Corporation, New York State Urban Development Corporation d/b/a Empire State Development, and the State of New York shall be named as additional insureds.

5. Certificates of Insurance for all of the aforementioned coverages shall be provided to LMDC prior to the commencement of work under this Agreement. Updated certificates of insurance shall also be provided to LMDC throughout the term of this contract as necessary.

E. Grantor and Grantee Recognition

Subcontractor shall insure recognition of the role of HUD and of LMDC in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled, where practicable, as to the role of HUD and of the LMDC. In addition, Subcontractor will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. See Exhibit A-3 for general guidance in recognizing HUD as Grantor and LMDC as Grantee.

F. Suspension or Termination

LMDC may terminate this Agreement for convenience at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by Subcontractor under this Agreement shall, at the option of LMDC, become the property of LMDC, and Subcontractor shall be reimbursed

for eligible expenses incurred prior to such termination in accordance with the provisions of this Agreement including timely submission of required substantiating documentation.

LMDC may suspend or terminate this Agreement, in whole or in part, if Subcontractor materially fails to comply with any term of this Agreement, including the rules, regulations or provisions referred to herein; and LMDC may declare Subcontractor ineligible for any further participation in LMDC's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe Subcontractor is in noncompliance with any applicable rules or regulations, LMDC may withhold up to fifteen (15) percent of said contract funds until such time as Subcontractor is found to be in compliance by LMDC, or is otherwise adjudicated to be in compliance.

II. ADMINISTRATIVE REQUIREMENTS

A. Documentation and Record-Keeping

1. Retention

Subcontractor shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the completion or termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment or for a reasonable period of time as requested by LMDC. Notwithstanding the above, if there is a litigation, claim, audit, negotiation or other action that involves any of the records cited and that has started before the expiration of the four-year period, such records must be retained until completion of the action and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

Subcontractor shall index the records that must be maintained and retained in this subparagraph B. At the end of the four-year period following the completion or termination of all activities funded under this Agreement, or on earlier request by LMDC, Subcontractor shall produce to LMDC the index and all records maintained in accordance with this subparagraph B.

2. Personal Data

Subcontractor shall maintain personal data demonstrating eligibility for individual services provided. Such data shall include, but not be limited to, name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to LMDC monitors or their designees for review upon request.

3. Disclosure

Subcontractor understands that personal information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of LMDC's or Subcontractor's responsibilities with respect to services provided under this Agreement, is prohibited by the Privacy Act, 5 U.S.C. § 552a, unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent or guardian.

4. Property Records

Subcontractor shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR § 570.503(b)(7), where applicable.

5. Close-Outs

Subcontractor obligation to LMDC shall not end until all close-out requirements are completed and the Close-Out Agreement has been signed and delivered and become effective. Activities during this close-out period shall include, but are not limited to making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to LMDC), and determining the custodianship of records.

6. Audits and Inspections

All Subcontractor records with respect to any matters covered by this Agreement shall be made available to LMDC, HUD, their respective auditors, and their designees or the Federal Government, at any time during normal business hours, as often as LMDC or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Subcontractor shall provide office support services necessary to ensure timely production of records, including but not limited to (i) availability of office space, telephones, computers, telephone, and data lines, (ii) personnel to provide such services and (iii) access to records in electronic format. Any deficiencies noted in audit reports must be fully cleared by Subcontractor within 30 days after receipt by Subcontractor. Failure of Subcontractor to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subcontractor hereby agrees to have an annual agency audit, commonly referred to as a Single Audit, conducted in accordance with current LMDC policy concerning Subcontractor audits and OMB Circular A-133.

III. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

Subcontractor agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), as amended, and implementing regulations at 49 CFR Part 24 and 24 CFR § 570.606(b); (b) the requirements of 24 CFR § 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements of 24 CFR § 570.606(d) governing optional relocation policies. Subcontractor shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. Subcontractor also agrees to comply with applicable LMDC ordinances, resolutions and policies concerning the displacement of persons from their residences.

IV. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

Subcontractor agrees to comply with all applicable civil rights laws, rules, and ordinances of the City of New York and the State of New York and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12106 and 12086.

2. Nondiscrimination

Subcontractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. Subcontractor will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and 24 CFR §§ 670.601 and 670.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subcontractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that LMDC and the United States are beneficiaries of and entitled to enforce such covenants. Subcontractor, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

Subcontractor agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), which prohibits discrimination against the handicapped in any Federally assisted program. The LMDC shall provide Subcontractor with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Compliance with E.O. 11246

Subcontractor agrees that it shall be committed to carry out, pursuant to LMDC's specifications, an Affirmative Action Program to provide equal opportunity in employment in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

2. M/WBE

Subcontractor will use its best efforts to afford small and minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and woman-owned business enterprise" ("M/WBE") means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, 'minority group members' are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. To qualify as an M/WBE, business enterprises must be a Certified Minority/ Women Business as determined and listed by the State of New York.

Subcontractor may rely on its own certification program if it is submitted to LMDC and such designation is approved in writing by LMDC in advance.

Subcontractor shall provide written or electronic notification to LMDC no later than five days prior to posting notification of procurement for goods, services, and or construction related activities contemplated by this Agreement. This notification shall include type of procurement and information on how to obtain bid documents. Subcontractor shall provide written or electronic notification to LMDC no later than five days after award of contract for goods, services, or construction related activities contemplated by this Agreement. This notification shall include name of contractor, contact name and phone number for contractor, type of services, and contract size. LMDC may publish notification of procurement and award of contract on website of LMDC and in regular mailings to small businesses, minority and women owned organizations, government agencies, and interested individuals. LMDC may facilitate meetings between contractors and the above groups for contracts awarded over \$1 million using HUD CDBG funds granted to the Subcontractor by LMDC. Contractors shall be required to attend these meetings.

Subcontractor shall comply with and cause each of its subcontractors hired in connection with this agreement to comply with the provisions of Schedule C, attached to and made a part of this Agreement, relating to non-discrimination. Subcontractor shall make best efforts to comply with the provisions of Schedule C relating to affirmative action.

3. Access to Records

Subcontractor shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by LMDC, HUD or its agent, or other authorized Federal officials for purposes of a compliance review, audit or investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Subcontractor, advising the labor union or worker's representative of Subcontractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. EEO/AA Statement

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

6. Subcontract Provisions

Subcontractor will include the provisions of Sections IV.A (Civil Rights) and IV.B (Affirmative Action) in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its subcontractors.

C. Employment Restrictions

1. Prohibited Activity

Subcontractor is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

Subcontractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subcontractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to LMDC for review upon request.

Subcontractor agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by HUD pertaining to such contracts and with applicable requirements of the regulations of the United States Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Subcontractor of its obligation, if any, to require payment of the higher wage. In all such contracts subject to such regulations, Subcontractor shall cause or require to be inserted in full provisions meeting the requirements of this paragraph.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon LMDC, Subcontractor and any of Subcontractor's subcontractors hired in connection with this Agreement. Failure to fulfill these requirements shall subject LMDC, Subcontractor and any of Subcontractor's subcontractors hired in connection with this Agreement, their successors and assigns, to those sanctions specified by this Agreement. Subcontractor certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

Subcontractor further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701).

Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.

Subcontractor further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low- income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project

is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

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

b. Notifications. Subcontractor agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts. Subcontractor will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Subcontractor will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

d. Reporting. Subcontractor shall submit quarterly reports to LMDC, substantially in the form attached hereto as Exhibit A-7, regarding its efforts to satisfy the obligations contained in subclauses 3(a)-(c) above.

4. September 11, 2001 Recovery

a. Compliance. Subcontractor will make efforts to employ on this Program individuals affected by September 11, 2001, specifically, but not limited to, individuals who (a) lost wages from their work below Houston Street due to September 11, 2001, or (b) lived below Houston Street on September 11, 2001 or currently reside there.

b. Reporting. Subcontractor shall submit quarterly reports to LMDC substantially in the form attached hereto as Exhibit A-8, regarding its efforts to satisfy the obligations as set forth in this subsection 4.

D. Conduct

1. Hatch Act

Subcontractor agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

2. Conflict of Interest

Subcontractor agrees to abide by the provisions of 24 CFR § 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

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

3. Lobbying

Subcontractor hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the certification language of this subparagraph 5 be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subcontractors shall certify and disclose accordingly:

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. Intellectual Property; Copyrights and Patents

Subcontractor hereby grants to LMDC and HUD, with respect to any work funded in whole or part under this Agreement (the "Work"), a worldwide, royalty-free, non-exclusive, and irrevocable license to (a) any copyrightable Work including, but not limited to, the right to reproduce, publish, make derivative works from, or otherwise use and to authorize others to use, the Work for governmental purposes, and (b) any patents based in whole or in part on the Work, including, but not limited to, the right to practice the inventions described in such patents and to license others to do so for governmental purposes.

5. Religious Organization

Subcontractor agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR §570.200(j).

V. ENVIRONMENTAL CONDITIONS

A. Air and Water

Subcontractor agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C. § 7401, *et seq.*, as amended, including section 114 relating to inspection, monitoring, entry, reports, and information and all regulations and guidelines issued thereunder;
2. Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*, as amended, including section 308 relating to inspection, monitoring, entry,

reports, and information and all regulations and guidelines issued thereunder;

3. Environmental Protection Agency (“EPA”) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001), Subcontractor shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

Subcontractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR § 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement be conducted.

D. Historic Preservation

Subcontractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

E. Environmental Performance Commitments

Subcontractor agrees to implement the Lower Manhattan environmental performance commitments set forth in Exhibit A-9, attached hereto. Subcontractor will identify the specific measures implemented and may include additional commitments and specific measures as part of the project-specific governmental entities coordination plan, construction environment plan, design documents, and contracts. Environmental Performance Commitments are reported in Exhibit A-5 (Monthly Progress Report).