

REQUEST FOR PROPOSALS

FOR

AN INDEPENDENT FINANCIAL AUDIT OF THE

NASSAU COUNTY INTERIM FINANCE AUTHORITY

DUE DATE IS SEPTEMBER 27, 2019 BY 4:00 PM

NASSAU COUNTY INTERIM FINANCE AUTHORITY
1305 FRANKLIN AVENUE, SUITE 302
GARDEN CITY, NY 11530

Proposed RFP Timetable

- | | |
|--|--------------------|
| a. Release of Request for Proposals: | September 6, 2019 |
| b. Final date for Submission of Questions: | September 20, 2019 |
| c. Final date for Submission of Proposals: | September 27, 2019 |
| d. Oral Presentations (Selected Proposers Only, if required) | October 2-3, 2019 |
| e. Approximate date for Selection of Vendor | October 4, 2019 |

Dates indicated above are subject to change at the sole discretion of the Authority.

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I. Statement of Purpose

The Nassau County Interim Finance Authority (hereafter referred to as “the Authority” or “NIFA”) is soliciting proposals from accounting firms experienced in public finance and New York State public benefit corporation accounting to perform audits of the financial statements of the Authority, as required by Chapter 84 of the Laws of 2000. Additional audit services (defined herein) may also be required on an as needed basis. The required examination is to be performed primarily for the purpose of rendering an opinion by an independent firm of accountants to the Directors of the Authority on the consolidated financial statements of the Authority for each fiscal year during this engagement (Authority fiscal years 2019-2021), subject to two one-year renewals through 2023 upon mutually agreeable terms.

II. Background

The Authority is a corporate governmental agency and instrumentality of the State of New York, constituting a public benefit corporation. The Authority’s operations are supported entirely through sales tax revenues (“NIFA Revenues”) and investment earnings.

NIFA is a New York State authority empowered to monitor and oversee the finances of Nassau County, New York (the “County”) and within certain statutory limits to issue bonds and notes for various County purposes. The Authority will continue to be in existence until its oversight, control or other responsibilities and its liabilities (including the payment in full of Authority bonds and notes) have been met or discharged, but no later than January 31, 2036. The Authority is a component unit of the County for financial reporting purposes.

In its oversight capacity, the Authority imposed a control period on March 24, 2011 and is currently empowered to, among other things, approve County contracts, financial plans, and proposed borrowings by the County.

In its capacity to issue bonds and notes on behalf of the County, the Authority has funded cash flow, capital and working capital needs of the County since the Authority was created in 2000; however, NIFA does not have the statutory authority, except for refunding of bonds or notes previously issued by the Authority, to issue any additional bonds or notes.

Revenues to fund Authority operations and pay Authority debt service are provided by a portion of the sales tax revenues of the County on which the Authority has a first lien and, to a much smaller extent, by investment earnings. The Authority has no operating income or taxing power.

The Authority currently has five employees and its annual operating budget authorization is \$2.48 million for 2019. NIFA currently has \$535 million of outstanding bonds consisting of fixed, and hedged variable rate debt.

For more information concerning NIFA, including its financial activities and audited financial statements, see the NIFA website, www.nifa.state.ny.us.

III. Scope of Audit

The Scope of Work to be furnished by the selected vendor responding to this RFP is to provide the deliverables, perform the tasks, and meet the requirements listed below and discussed in detail in the following sections. The audits and related work under the contract resulting from this RFP must be conducted in accordance with Generally Accepted Auditing Standards (GAAS), as promulgated by the American Institute of Certified Public Accountants, with Generally Accepted Government Auditing Standards (GAGAS), as promulgated by the United States General Accounting Office in its publication, Government Auditing Standards, with standards issued by the Governmental Accounting Standards Board (GASB), Generally Accepted Accounting Principles (GAAP), and with other authoritative auditing guidance in effect. Opinions rendered shall indicate whether financial statements are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States. The scope of the audits must be planned to preclude the necessity for exceptions arising from scope limitations.

The audit must conform to the requirements of Part 201 and Chapter V of Title 2, “Accounting and Reporting for Public Authorities” of the official Compilation of Codes, Rules and Regulations of New York State.

A. Standard Annual Audit Services

The selected firm should be available to provide “Standard Annual Audit Services” to the Authority, as follows:

1. consultation with accounting staff regarding accounting issues;
2. annual audit of consolidated statements;
3. the preparation of a management letter;
4. an audit of the Authority’s Investment Guidelines compliance; and
5. report on the Authority’s internal control structure over financial reporting.

It will be necessary for the auditor to make itself available to the Authority for the Authority’s fiscal years ending December 31, 2019 through December 31, 2023. In addition to its independent audit and reporting, the Authority will be treated as a component unit of Nassau County for reporting purposes. Therefore, it will be necessary for the Authority’s auditors to provide preliminary numbers by the third week in February of each year subsequent to the end of the fiscal year being audited, and deliver the final audit by March 30 of each year subsequent to the end of the fiscal year being audited.

B. Additional Audit Services

The successful firm should also be prepared to make itself available for “Additional Audit Services,” as follows:

1. Provide all reports and other materials requested by the Authority electronically;

2. Print as many copies as the Authority requests of reports and other materials that are prepared pursuant to the audit engagement (approximately fifty copies);
3. Update financial statements and reports as necessary and make them and the auditors' opinion available for inclusion in NIFA official Statements (or any other similar offering documents) in connection with raising funds (e.g., bond or note offerings).

This list is not meant to be all inclusive as the needs of the Authority cannot be entirely anticipated as of this writing.

The contract will be reviewed at the conclusion of each year's audit to determine whether the selected firm will continue to provide services for the entire five-year period.

IV. Audit Methods and Programs

The nature and extent of the work to be carried out in the examination of the Authority will be agreed upon between the auditor and the Authority. It will include such tests of the accounting records and procedures as are deemed necessary, including but not limited to, the examination of supporting evidentiary material, the observation or written confirmation of selected assets, confirmation of certain liabilities and observation and discussion of operating practices. Appropriate techniques should be used to accomplish an effective and efficient audit.

V. Proposal Requirements

All submitted proposals will be reviewed for completeness. Failure to submit a complete proposal can result in disqualification, at the discretion of the Authority. The following information must be included with the proposal, in separate parts, as indicated:

A. Technical

- The names and resumes, including educational experience, of audit staff to be assigned to the examination and an indication of their experience and familiarity with State public authorities and municipalities and the accounting and auditing principles, practices, procedures and methods of New York State. Experience in capital markets would also be helpful because of the existence of hedged Variable Rate Debt. Of particular interest will be your experience with governmental agencies and authorities that are primarily financing entities. Please specify the name of the individual accountable for the project.
- Equal Employment Opportunity reports on the composition of the firm's workforce.
- At least three references. Include one each from a municipality, public authority and State entity with which individuals to be assigned to this audit have worked (and the name and contact number of the project manager within each entity).
- Identify and discuss fully, the nature of any conflict, actual or potential, your firm may have in connection with your firm's involvement with the Authority.

- List all material investigations or judgments against your firm or its principals for the past five years.
- A proposed schedule, work plan and allocation of hours for each of the five years of the audit period, including critical dates and time estimates and project management and supervision structure.
- A statement to the effect that the price quoted is an irrevocable offer for 120 days from the date of submission.

B. Cost

- Proposers must submit two separate cost proposals for Standard Annual Audit Services, which contains all pricing and staffing information relative to fulfilling the scope of services described in Section III. A of this RFP.
- **Proposal One:**
 - The proposal must state a flat fee for services. The proposal must also state the normal governmental rates charged by the firm and the discounted or preferred rate for each title/position expected to perform such services, as well as the estimated number of hours for each position used to calculate the fee.
- **Proposal Two:**
 - There are certain efficiencies if the same firm were to audit both Nassau County and the Authority, therefore, if your firm issued a proposal to audit Nassau County you should provide a flat fee estimate of the cost to audit the Authority reflecting these savings. The proposal must also state the normal governmental rates charged by the firm and the discounted or preferred rate for each title/position expected to perform such services, as well as the estimated number of hours for each position used to calculate the fee.
- Both proposals must indicate the cost, if any, to update and include the audited financial statements in any preliminary or final official statements that the Authority may issue in connection with its sale of bonds or notes.
- For Additional Audit Services, as contemplated in Section III. B of this RFP, proposers must submit a separate schedule of the hourly rates for each title/position expected to perform such services. The proposal must also state the normal governmental rates charged by the firm and the discounted or preferred rate to be charged to the Authority, for each title/position expected to perform such services, as well as the estimated number of hours for each position.
- Please indicate whether all of the rates cited in this section of the RFP are the lowest charged to your firm's municipal clients, and if not, explain why.

Out-of-pocket expenses should not be separately categorized, and will only be reimbursed in accordance with the Authority's standard schedule for these costs. Such expenses will be reviewed for reasonableness on a continuing basis.

VI. Administrative Information and Conditions

All proposals submitted must include a cover letter signed by a member of the proposing firm duly authorized to execute contracts on behalf of the firm. All responses to this Request for Proposals (RFP) should be in writing and addressed to:

Carl Dreyer,
Treasurer
Nassau County Interim Finance Authority
170 Old Country Road, Suite 205
Mineola, NY 11501

(hereinafter, the "RFP Contact").

This RFP is a solicitation and not an offer of contract.

Addenda to this RFP may be issued prior to the proposal submission date and will be posted on NIFA's website at www.nifa.state.ny.us. Addenda will be furnished by email to prospective proposers only if they have specifically informed the RFP Contact, in writing, of their interest in receiving addenda. Prospective proposers who have not informed the RFP Contact of their interest are responsible for checking NIFA's website frequently for addenda.

1. Inquiries

All questions about the RFP should be submitted via email to the RFP Contact: Carl.Dreyer@nifa.ny.gov by 4:00 P.M. on September 30, 2019. Any other contact with NIFA regarding this RFP is prohibited. Violation of this requirement may be grounds for eliminating a proposal from consideration. See also Section VIII of this RFP and Appendix IV.

Answers to all substantive questions will be furnished by email to prospective proposers who have specifically informed the RFP Contact, via email on or before September 23, 2019, of their interest in receiving same.

2. Submissions of Proposals

Interested auditing firms should submit their proposal in a sealed package. All proposals must be received at NIFA's office no later than 4:00 P.M. on September 30, 2019. Removing the requirement of three copies.

3. Vendor Selection

Proposals will be evaluated by the Authority. An award will be made by the Authority's Directors as quickly as possible, but shall not be a binding agreement until definitive documentation has been signed by both parties.

4. Evaluation Criteria

Each proposal will be evaluated for its overall content, quality, and cost, based upon- but not limited to- the following criteria:

- experience and qualifications of the proposing firm and the staff (including managerial) to be assigned to the project;
- soundness, practicality and thoroughness of the proposed approach to the project, including work schedules, task sequences and allocation of staff, including evidence of satisfactory, timely performance on similar projects;
- cost proposed (please make cost proposal a separate section and make sure it is for the five-year period);
- logical project organization and management;
- overall quality of the proposal;
- demonstrated understanding of the Authority's needs and operations;
- references; and
- interviews, if conducted.

5. Notification of Award and Contract

All proposers will be notified in writing of the contract award, if any. The successful proposer will be advised by the Authority, which will furnish the contract.

VII. Other Conditions and Limitations

It is the intention of the Authority to fully execute the mandate of Article 15-A of the executive Law and Executive Order 21 issued on August 4, 1983 so as to provide minority and women-owned business enterprises with an equal opportunity to participate in State contracts.

The contractor, by submitting a proposal, acknowledges an understanding of this policy and pledges to cooperate with the State in implementing this policy, and further pledges to exert his or her best efforts in soliciting and obtaining the participation of minority and women-owned trade persons and subcontractors and suppliers on this contract.

Proposers may be requested to clarify the contents of their proposal. Other than to provide such information as may be requested by the Authority, no proposer will be allowed to alter its proposal or add any new information after the proposal due date.

The Authority will not be responsible for expenses incurred in connection with the preparation of submission of any proposal.

Proposers must fully execute the MacBride Fair Employment Principles, the Certification Pursuant to State Finance Law Section 139, and Non-Collusive Bidding Certification statements at the end of this RFP upon submission of the proposal. In addition, Proposers are urged to review and consider “The Selected Standard Clauses for NIFA Contracts” at the end of this RFP as these will only be modified under the most compelling of circumstances.

Only those proposers who furnish complete information will be considered for evaluation. No partial proposals will be considered. The Authority reserves the right to accept or reject any or all proposals, and request some or all respondents to provide oral presentation of their proposals.

VIII. Disclosure of Proposal Contents/State Finance Law.

Information submitted to NIFA, including the information contained in proposals submitted in response to this RFP, may be subject to disclosure under the New York Freedom of Information Law ("FOIL") and other laws. If a vendor is submitting information that it believes is protected from disclosure under FOIL or similar laws, it should clearly identify, at the time of submission, the information at issue and the basis for non-disclosure. If NIFA receives a request for disclosure of the identified information and NIFA determines that the identified information is required by FOIL or any other law to be disclosed, NIFA will use reasonable efforts to notify the vendor prior to disclosing the information in order to enable the vendor to take such action as the vendor deems appropriate. Copies of executed contracts are not exempt from disclosure under FOIL and similar laws.

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements (1) govern permissible communications between potential respondents and NIFA or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP.

Compliance with the Procurement Requirements requires that (x) all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact person listed below; (y) the completion by respondents of the Certification at Appendix IV as part of their proposal; and (z) periodic updating of such forms during the term of any contract resulting from this RFP.

The Procurement Requirements also require NIFA staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and

willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. For the purpose of compliance with State Finance Law Sections 139-j, contact with Carl Dreyer at NIFA are considered permissible.

APPENDIX I

**NON-COLLUSIVE BIDDING CERTIFICATION
REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 201__ as the act and deed of said corporation or partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING FOR THE PARTNERS OR PRINCIPALS THAT WOULD PARTICIPATE ON THIS ENGAGEMENT:

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES

LEGAL RESIDENCE

President

Secretary

Treasurer

President

Secretary

Treasurer

Identifying Data:

Potential Contractor: _____

Street Address: _____

City, Town, etc. _____

Telephone: _____ Title: _____

If applicable, Responsible Corporate Officer Name

Title

Signature

Joint or combined bids by companies or firms must be certified on behalf of each participant:

Legal name of person, firm or corporation

By _____
(Name)

Title

Street Address

City and State

Legal name of person, firm or corporation

By _____
(Name)

Title

Street Address

City and State

APPENDIX II

NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either:

(answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes ____ or, No ____ if yes;

(2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes ____ or, No ____

Signature

APPENDIX III

SELECTED STANDARD CLAUSES FOR NIFA CONTRACTS
(Subject to more stringent conditions that may be outlined in the RFP)

ARTICLE I

RELATION OF CONSULTANT TO NIFA

1.1 **SUPERVISION BY NIFA.** The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of NIFA provided that neither NIFA's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act pursuant to this Agreement.

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

1.3 **APPROVAL OF SUBCONSULTANTS.** The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of NIFA. The Consultant shall inform NIFA in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.

1.4 **CONSULTANT AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this Agreement, the Consultant's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of NIFA. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as, or claim to be acting in the capacity of an employee, or agent of NIFA.

1.5 **CONFLICT-OF-INTEREST.** The Consultant represents that:

(a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of NIFA, or any of its subsidiaries shall be admitted to any share or part hereof or to any benefit to arise here from.

(c) No officer, employee, agent or director of NIFA, or any of its subsidiaries shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of NIFA, or any of its subsidiaries have any interest, direct or indirect, in this Agreement or the proceedings thereof.

ARTICLE II

DOCUMENTS AND RECORDS

2.1 MAINTENANCE OF RECORDS. The Consultant shall, until three years after completion of its services hereunder or termination of this Agreement by NIFA, maintain and shall require each Subconsultant to maintain (a) complete and correct records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement and (b) complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultant) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder. Consultant shall make such books and records available to NIFA or its authorized representatives for review and audit at all such reasonable times as NIFA shall from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.

2.2 OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS. All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Consultant under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of NIFA, and NIFA shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specification and other documents without payment of any additional royalty, charge or other compensation to Consultant. Upon request of NIFA during any stage of the work, Consultant shall deliver all such material to NIFA.

The Consultant agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of NIFA, except that Consultant may retain copies of such reports and other documents for general reference use.

ARTICLE III

TERMINATION

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

ARTICLE IV

PROVISIONS REQUIRED BY LAW

4.1 CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS. The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all material applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

4.2 CONSULTANT TO OBTAIN PERMITS, ETC. Except as otherwise instructed in writing by NIFA, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by NIFA or the Consultant in connection with this Agreement.

4.3 NON-DISCRIMINATION.

The Consultant during the performance of this Agreement specifically agrees that the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

4.4 NO ASSIGNMENT WITHOUT CONSENT. The Consultant agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of NIFA;

(b) If the prohibition of Section 4.4(a) be violated, NIFA may revoke and annul this Agreement and NIFA shall be relieved from any and all liability and obligations hereunder to the Consultant and to the person, company, partnership or corporation to

whom such assignment, transfer or other disposal shall have been made and the Consultant and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

ARTICLE V

OTHER STANDARD PROVISIONS

5.1 GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

5.2 ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

5.3 CONFIDENTIALITY. Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and NIFA and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from NIFA, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as NIFA may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

5.4 INDEMNIFICATION. Notwithstanding anything to the contrary contained herein, Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or Sub consultants, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to this Agreement. Consultant agrees to defend, indemnify and hold the indemnities (the State of New York and NIFA) harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage to property, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or its Sub consultants, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the indemnities by reason of claims against Consultant or its Sub consultants, or their employees, agents, servants, independent contractors and subcontracts for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the indemnities for reasonable attorneys' fees incurred in connection with the above. Consultant shall be solely responsible for the safety and protection of all its Sub consultants, or the employees, agents,

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servants, independent contractors, or subcontractors of Consultant or its Sub consultants, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Sub consultants, or their respective agents, employees, servants, independent contractors or subcontractors.

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

5.5 **MISCELLANEOUS.** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any part of the Agreement.

APPENDIX IV

Certification Pursuant to State Finance Law §139

This form shall be completed and submitted with your proposal. Failure to complete and submit this form may result in a determination of non-responsiveness and disqualification of the proposal.

I. Affirmation relating to procedures governing permissible contacts:

(Proposer must check applicable box)

Proposer: affirms does not affirm

that it understands and has to date and agrees hereinafter to comply with the Authority's procedures relative to permissible contacts for this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b).

II. Disclosure of Findings of Non-Responsibility and Prior Contract Terminations or Withholdings under the 2005 Procurement Lobbying Law:

1. Has any "governmental entity," as defined by State Finance Law §139-j and §139-k, made a finding in the last four years that the firm was not responsible?

No Yes

2. If yes, was the basis for any such finding(s) the intentional provision of false or incomplete information required by State Finance Law § 139-j and §139-k, and/or the failure to comply with the requirements of State Finance Law §139-j (3) relating to permissible contacts?

No Yes

If yes, please provide details regarding each finding of non-responsibility below. (Attach additional pages, if necessary)

Governmental Entity: _____

Date of Finding: _____

Basis of Finding: _____

3. Has any "governmental entity" as defined in State Finance Law §139-j and §139-k terminated or withheld a procurement contract with the firm due to the intentional provision of false or incomplete information required by such Laws and/or the failure to comply with the requirements of State Finance Law §139-k(3) relating to permissible contacts?

No Yes

If yes, please provide details below. (Attach additional pages, if necessary)

Governmental Entity:

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Date of Termination or Withholding of Contract:

Basis of Termination or Withholding of Contract:

The undersigned acknowledges and states that all information provided to the Authority with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

Signature of Authorized Officer

Date

Title

Address

SCHEDULE A

STANDARD CLAUSES FOR NIFA CONTRACTS

For the purposes of this Schedule A, the Nassau County Interim Finance Authority is hereinafter referred to as "NIFA."

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than NIFA, whether a contractor, consultant, licensor, licensee, lessor, lessee or other party):

SUPERVISION BY NIFA. The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of NIFA provided that neither NIFA's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act pursuant to this Agreement.

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

APPROVAL OF SUBCONSULTANTS. The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of NIFA. The Consultant shall inform NIFA in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.

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

CONFLICT-OF-INTEREST. The Consultant represents that:

(a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of NIFA, or any of its subsidiaries shall be admitted to any share or part hereof or to any benefit to arise here from.

(c) No officer, employee, agent or director of NIFA, or any of its subsidiaries shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of NIFA, or any of its subsidiaries have any interest, direct or indirect, in this Agreement or the proceedings thereof.

CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS. The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all material applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

NO ASSIGNMENT WITHOUT CONSENT. The Consultant agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of NIFA;

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

ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

CONFIDENTIALITY. Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and NIFA and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from NIFA, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as NIFA may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

INDEMNIFICATION. Notwithstanding anything to the contrary contained herein, Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or Sub consultants, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to this Agreement. Consultant agrees to defend, indemnify and hold the indemnities (the State of New York and NIFA) harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage to property, if and to the extent the

same results from any act, omission, negligence, fault or default of Consultant or its Sub consultants, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the indemnities by reason of claims against Consultant or its Sub consultants, or their employees, agents, servants, independent contractors and subcontracts for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the indemnities for reasonable attorneys' fees incurred in connection with the above. Consultant shall be solely responsible for the safety and protection of all its Sub consultants, or the employees, agents, servants, independent contractors, or subcontractors of Consultant or its Sub consultants, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Sub consultants, or their respective agents, employees, servants, independent contractors or subcontractors.

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

WORKER'S COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this Agreement shall be void and of no force and effect unless Contractor provides and maintains coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

NON-DISCRIMINATION REQUIREMENTS. Contractor shall comply with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements,

including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law and shall comply with all requirements set forth in Article 8 or Article 9 of the Labor Law whichever Article applies. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 2878 of the Public Authorities Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NIFA a non-collusive bidding certification on Contractor's behalf.

INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, Contractor agrees, as a material condition of the contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

SET-OFF RIGHTS. NIFA shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, NIFA's option to withhold for the purposes of set-off any moneys due to Contractor under this contract up to any amounts due and owing to NIFA with regard to this contract, any other contract with NIFA, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to NIFA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. NIFA shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by NIFA, its representatives, or the State Comptroller.

RECORDS. Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for six (6) years following the expiration or earlier termination of the contract. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. NIFA shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) Contractor shall timely inform NIFA in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently

identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

DISCLOSURE OF NIFA RECORDS OR INFORMATION. If any third party requests that Contractor disclose NIFA records or information, as defined in subdivision 4 of section 86 of the Public Officers Law, Contractor shall notify NIFA of such request and NIFA shall determine, in accordance with Chapter 39 of the Laws of 2010, whether such NIFA records or information may be disclosed.

CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Schedule A, the terms of this Schedule A shall control.

GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Section 2880 of the Public Authorities Law and the guidelines adopted by NIFA thereto.

SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of Contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of Contractor to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder

certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the New York Laws of 1992), Contractor hereby stipulates that Contractor either (i) has no business operations in Northern Ireland, or (ii) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Article 165 of, the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

OMNIBUS PROCUREMENT ACT OF 1992 (as amended or supplemented). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St – 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl St – 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractor certifies that:

- (a) Contractor has made commercially reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and woman-owned business enterprises, on this Project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; and
- (c) Contractor agrees to make commercially reasonable efforts to provide notification to New York State residents of employment opportunities on this Project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the State upon request.

- (d) Contractor acknowledges that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

RECIPROCITY AND SANCTIONS PROVISIONS. Contractor is hereby notified that if its principal place of business is located in a state that penalizes New York State vendors, and if the goods or services it offers are substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 amendments (Chapter 684, Laws of 1994) require that Contractor be denied contracts which it would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

OPTIONAL TERMINATION BY THE AUTHORITY. NIFA reserves the right to terminate this contract in the event it is found that the certification filed by Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, NIFA may exercise its termination right by providing written notification to Contractor in accordance with the written notification terms of the contract.

CONTINGENT FEES. Contractor hereby certifies and agrees that (a) Contractor has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any NIFA contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and (b) Contractor will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by NIFA.

COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor’s agents, officers, employees or subcontractors.

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

General Provisions (See also the Attachments to this Schedule A, which are incorporated into this Schedule A)

The Nassau County Interim Finance Authority (“NIFA”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and

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Regulations (“NYCRR”) 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.

The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NIFA, to fully comply and cooperate with NIFA in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’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”) and other applicable federal, state, and local laws.

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 assessment of liquidated damages pursuant to Section VII of this Schedule A and such other remedies are available to NIFA pursuant to the Contract and applicable law.

Contract Goals

For purposes of this Contract, NIFA hereby establishes an overall goal of 30 percent for MWBE participation, distributed between New York State-certified minority-owned business enterprise (“MBE”) participation and New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

The Contractor 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 broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:

Evidence of outreach to MWBEs;

Any responses by MWBEs to the Contractor's outreach;
Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by NIFA with MWBEs; and,
Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

In performing the Contract, the Contractor shall:

Ensure that each contractor and subcontractor performing work on the Contract 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.

The Contractor shall submit an EEO policy statement to NIFA within seventy-two (72) hours after the date of the notice by NIFA to award the Contract to the Contractor.

If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, NIFA may require the Contractor or subcontractor to adopt a model statement (see Equal Employment Opportunity Policy Statement).

The Contractor's EEO policy statement shall include the following language:

The Contractor 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.

The Contractor 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.

The Contractor 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 Contractor's obligations herein.

The Contractor 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.

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Workforce Employment Utilization Report (forms as required by this section are attached to this schedule)

The Contractor shall submit a Workforce Utilization Report (Attachment D), and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by NIFA on a quarterly basis during the term of the Contract.

Separate forms shall be completed by the Contractor and any subcontractors.

The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its 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.

IV. MWBE Utilization Plan

The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan (Attachment E), or shall submit an MWBE Utilization Plan at such time as shall be required by NIFA, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to NIFA, either prior to, or at the time of, the execution of the contract.

The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.

The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NIFA shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by NIFA. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NIFA shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

If NIFA, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, NIFA may issue a notice of deficiency to the Contractor. The Contractor 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

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report (Attachment D) through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to NIFA by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

Where NIFA determines that the Contractor is not in compliance with the requirements of this Schedule A and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to NIFA liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between:

All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals;
and

All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NIFA, the Contractor shall pay such liquidated damages to NIFA within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

Attachment A (For Bid Proposals)

Certification Pursuant to State Finance Law §139

This form shall be completed and submitted with your bid proposal. Failure to complete and submit this form may result in a determination of non-responsiveness and disqualification of the proposal.

I. Affirmation relating to procedures governing permissible contacts:

(Proposer must check applicable box)

Proposer: affirms does not affirm

that it understands and has to date and agrees hereinafter to comply with the Authority's procedures relative to permissible contacts for this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b).

II. Disclosure of Findings of Non-Responsibility and Prior Contract Terminations or Withholdings under the 2005 Procurement Lobbying Law:

1. Has any "governmental entity," as defined by State Finance Law §139-j and §139-k, made a finding in the last four years that the firm was not responsible?

No Yes

2. If yes, was the basis for any such finding(s) the intentional provision of false or incomplete information required by State Finance Law § 139-j and §139-k, and/or the failure to comply with the requirements of State Finance Law §139-j (3) relating to permissible contacts?

No Yes

If yes, please provide details regarding each finding of non-responsibility below. (Attach additional pages, if necessary)

Governmental Entity: _____

Date of Finding: _____

Basis of Finding: _____

3. Has any "governmental entity" as defined in State Finance Law §139-j and §139-k terminated or withheld a procurement contract with the firm due to the intentional provision of false or incomplete information required by such Laws and/or the failure to comply with the requirements of State Finance Law §139-k(3) relating to permissible contacts?

No Yes

If yes, please provide details below. (Attach additional pages, if necessary)

Governmental Entity:

Date of Termination or Withholding of Contract:

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Basis of Termination or Withholding of Contract:

The undersigned acknowledges and states that all information provided to the Authority with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

Signature of Authorized Officer

Date

Title

Address

Attachment B

NON-DISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, the Contractor agrees as follows:

1. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, sexual orientation, or color discriminate against anyone who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the contract on account of gender, race, creed, sexual orientation, or color.
3. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor shall not discriminate by reason of gender, race, creed, sexual orientation, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
7. Nassau County Interim Finance Authority may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause.

Contractor Signature

Date

Attachment C

EEO and MWBE Required Forms



Division of Minority
and Women's
Business Development


Your MWBE Utilization and Reporting Responsibilities

Under Article 15-A

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your incentive proposal or contract documents.

The New York State Contract System ("NYSCS") is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process. Once you log onto the website, click on the **Help & Support >>** link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals

on all features of the NYSCS. You may also click on the  icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the Knowledge Base through the Forum link, and submit feedback to help improve future enhancements to the system.

Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.

A Division of Empire State Development

Attachment C
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

EEO

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

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

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) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor 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

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.

(e) This organization will include the provisions of sections (a) through (d) 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 to this _____ day of _____, 2 _____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____ 30% Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women's Business Enterprise Participation

_____ (Authorized Representative)

Title: _____

Date: _____

Is this a final report? Check One

**Attachment D
Contractor M/WBE Quarterly Report
of**

NYS AGENCY Contract No. _____ Project No. _____

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project.

The payments as shown made are in compliance with contract documents for the above referenced project.

Contractors Name and Address		Federal ID#		Goals/\$ Amt. MBE ____%=_____ WBE ____%=_____		Contract Type _____				
		Project Completion Date		Work Location		Reporting Period: ___ 1 st Quarter (4/1-6/30) ___ 3 rd Quarter (10/1-12/31) ___ 2 nd Quarter (7/1-9/30) ___ 4 th Quarter (1/1-3/31)				
M/WBE Subcontractor/Vendor	Product Code*	Work Status This Report	Total Subcontractor Contract Amount		Payments this Quarter		Previous Payments		Total Payment Made to Date	
			MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Name: FED ID#		___ Active ___ Inactive ___ Complete								
Name: FED ID#		___ Active ___ Inactive ___ Complete								
Name: FED ID#		___ Active ___ Inactive ___ Complete								
Name: FED ID#		___ Active ___ Inactive ___ Complete								
Total										

*See Reverse Side for Product Codes

Date _____ Name _____ Title _____ Signature _____

PRODUCT KEY CODE

A	=	Agriculture/ Landscaping (e.g., all forms of landscaping services)
B	=	Mining (e.g., geological investigations)
C	=	Construction
C15	=	Building Construction – General Contractors
C16	=	Heavy Construction (e.g., highway, pipe laying)
C17	=	Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)
D	=	Manufacturing
E	=	Transportation, Communication and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	=	Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)
G52	=	Construction Materials (e.g., lumber, paint, law supplies)
H	=	Financial, Insurance and Real Estate Services
I	=	Services
I73	=	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)
I81	=	Legal Services
I82	=	Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	=	Social Services (Counselors, vocational training, child care)
I87	=	Engineering, architectural, accounting, research, management and related services

Attachment E - M/WBE UTILIZATION PLAN

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

Offeror's Name:

Federal Identification No.:

Address:

Solicitation No.:

City, State, Zip Code:

Project No.:

Telephone No.:

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

Region/Location of Work:

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/Supplies/Services and intended performance dates of each component of the contract.
A.	NYS ESD CERTIFIED MBE WBE			
B.	NYS ESD CERTIFIED MBE WBE			

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).

<p>PREPARED BY (Signature): DATE: NAME AND TITLE OF PREPARER (Print or Type): SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	TELEPHONE NO.:	EMAIL ADDRESS:
	FOR M/WBE USE ONLY	
	REVIEWED BY:	DATE:
<p>UTILIZATION PLAN APPROVED: YES NO Date: _____ Contract No.: _____ Project No. (if applicable): _____ Contract Award Date: _____ Estimated Date of Completion: _____ Amount Obligated Under the Contract: _____ Description of Work: _____ NOTICE OF DEFICIENCY ISSUED: YES NO Date: _____ NOTICE OF ACCEPTANCE ISSUED: YES NO Date: _____ IX.</p>		

Collection and Submission of Workforce Utilization Reports

Workforce utilization reports are to be collected from each contractor and subcontractor performing work on state contracts. Contractors and subcontractors performing work on construction contracts with a total value in excess of \$100,000 are to submit workforce utilization reports to agencies and authorities on a monthly basis. Contractors and subcontractors performing work on commodities and services contracts with a total value in excess of \$25,000 are to submit workforce utilization reports to agencies and authorities on a quarterly basis. Agencies and authorities are to submit to the Division of Minority and Women's Business Development (the "Division") all workforce utilization reports collected in any quarter within fifteen (15) days of the end of that quarter as described below.