

CITY OF SEA ISLE CITY
REQUEST FOR PROPOSALS

CONSTRUCTION OBSERVATION AND MANAGEMENT SERVICES

NOTICE IS HEREBY GIVEN, that the City of Sea Isle City is soliciting proposals through the competitive contracting process in accordance with **N.J.S.A. 40A:11-4.1, et seq.**, N.J.S.A. 52:34-9.1 et seq. and N.J.A.C. 17:19-1.1, 3.1 et seq. Sealed proposals will be received **WEDNESDAY, JULY 15, 2015 AT 2:00 PM**, at the City of Sea Isle City Public Works Building located at 3905 Central Avenue, Sea Isle City, NJ 08243.

Proposals are being requested for construction observation and construction management services for the Landis Avenue Streetscape Improvements project. This project is made possible by a grant through the US Department of Housing and Urban Development Community Development Block Grant Disaster Recovery Program administered by the New Jersey Economic Development Authority. Attention of respondents is particularly called to the NJEDA CDBG-DR Administrative Manual found at www.njeda.com/sandyconstruction and Labor Standards Compliance requirements and resources found at www.njeda.com/affirmativeaction.

The City of Sea Isle City encourages the following types of businesses to submit proposals: Small, Women, Minority, and Veteran-owned Business Enterprises (SWMVBE) and Section 3 businesses as defined by Section 3 of the Housing and Urban Development Act of 1968 and 24 CFR Part 135.

Requests for Proposals or any additional information may be obtained at the City website at <http://www.seaislecitynj.us/> or at the Purchasing Office, by contacting the Carmela Desiderio at 609-263-4461, ext. 1230, during regular business hours, 9:00 AM to 4:00 PM, Monday through Friday, excluding holidays, upon proper notice. Project design plans are available for viewing, by appointment only, during regular business hours and with 24 hours advanced notice to the Purchasing Office.

All proposal submittals must include one (1) original, four (4) hard copies, and one (1) copy saved to a CD, and must be delivered by **WEDNESDAY, JULY 15, 2015 AT 2:00 PM** to Cindy Griffith, Municipal Clerk, ATTN: Proposal for Landis Avenue Streetscape Construction Observation and Management, City of Sea Isle City, located at 3905 Central Avenue, Sea Isle City, NJ 08243.

All Request for Proposals Addenda will be issued on the City website. All interested respondents should check the website from now through the Request for Proposals opening. It is the sole responsibility of the respondent to be knowledgeable of all addenda related to the procurement. Respondents shall comply with the said requirements of the Request for Proposals.

Carmela Desiderio
Purchasing Agent
R.P.P.O. – Q.P.A.
City of Sea Isle City

CITY OF SEA ISLE CITY
REQUEST FOR PROPOSALS
CONSTRUCTION OBSERVATION AND MANAGEMENT SERVICES

Date Issued: Wednesday, June 17, 2015

Responses Due by EST on: Wednesday, July 15, 2015 at 2:00 PM

Municipality Consultant Selection Schedule

Issue Request for Proposals	June 17, 2015
Response Due Date	July 15, 2015 by 2:00 PM
Consultant Selection	August 25, 2015

I. INTRODUCTION

Financial assistance for this project is made possible by a grant from the New Jersey Economic Development Authority (NJEDA), Office of Recovery, Neighborhood Community Revitalization (NCR) Streetscape Revitalization Program. Funding for the program was provided by a grant from the United States Department of Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) Program.

Any awards made will be subject to the CDBG-DR program rules and regulations. Prospective consultants should familiarize themselves with the NJEDA CDBG-DR Administrative Manual found at www.njeda.com/sandyconstruction.

The City of Sea Isle City is seeking technical and cost proposals from duly licensed and qualified consultants for construction administration and inspection services for the Landis Avenue Streetscape Improvements project. The grant award and estimated total project cost is \$999,894, with approximately \$15,000 allocated for construction administration and \$50,000 for construction observation.

The Cape May County Affirmative Action goal for minority participation for this project is 5% and the goal for female participation is 6.9%. The final disbursement date for the grant funds is July 1, 2016. The deadline for the final invoice to be sent to NJEDA is May 9, 2016.

Please note that any State or Federal suspension, debarment, or disqualification action against a consultant or any member of the consultant's team will render them ineligible to participate in this program.

Proposals are considered public information, except as may be exempted from public disclosure by the Open Public Records Act. N.J.S.A. 47:1A-1 *et seq.*, and the common law.

Any proposal that relies on collaboration between consultants, who are not formally affiliated, must include a signed copy of the agreement between the authorized signatories of the parties to the proposal. Any subcontractors to be engaged by the entity preparing the proposal must be identified in the proposal.

Upon selection of the successful consultant(s), a lump sum contract will be used.

II. SCOPE OF SERVICES

A. The purpose of this Request For Proposals ("RFP") is to procure all Construction Observation and Construction Management Services for the City to be used in connection with the Project.

B. Landis Avenue Streetscape Improvements

The Landis Avenue Streetscape Improvements project extends along a three-block portion of Landis Avenue from 39th Street to 40th Street and from 41st Street to 43rd Street. Improvements will include installation of decorative pavers for sidewalks, crosswalks, decorative streets lights, bollards, benches, bike racks and landscaping.

C. Construction Observation and Management

The selected consultant must designate two separate individuals, a resident engineer and an inspector, to this project. The City is seeking proposals for the following tasks:

- 1) Set up and attend pre-construction conference to review, at the minimum, the project schedule, payment process, change orders, site visits, and construction close-out;
- 2) Issue the notice to proceed to the contractor, copying the City Administrator and Municipal Engineer;
- 3) Prepare and distribute minutes of pre-construction conference;
- 4) Interpret contract documents and respond to Request for Information (RFI) and maintain record of RFI;
- 5) Receive and respond to written claims and disputes related to contract documents in writing;
- 6) Authorize minor variations in work through field orders, provided there is no adjustment in contract price or time;
- 7) Prepare a monthly report on project activities, progress and any unresolved problems that are impeding the performance of the project;
- 8) Oversee and verify the contractor's submittal of the "SWMVBE Monthly Contract and Subcontract Activity Report" to NJEDA as an attachment to each requisition submitted to NJEDA requesting disbursement of CDBG-DR funds;
- 9) Oversee and verify the contractor's submittal of Section 3 activity reporting forms, and any other grant compliance reporting forms, as needed, to NJEDA and the City;
- 10) Attend any NJEDA Monitoring Visits;
- 11) Prepare payment certificates;
- 12) Prepare Change Order as required;
- 13) Construction Observation;
- 14) Quantity measurements for pay estimates;
- 15) Preparation of daily observation reports and submission to the Municipal Engineer;

16) Coordinate project with business owners, the City Administrator, Municipal Engineer, Police Department and contractor to ensure the project is implemented in a safe and proper manner;

17) Coordinate submission of reporting documents with the City Administrator and staff;

18) Prepare Punch List and project closeout;

19) Prepare Final Certificate of Acceptance.

D. The selected consultant shall oversee the implementation of all necessary Project improvements and manage the construction of the project.

E. The selected consultant shall comply with all requirements, including reporting, imposed by the Grant including Labor Standards, Affirmative Action, EEO, and Section 3 of the HUD Act, the requirements for which may be found at the New Jersey Economic Development website for the grant (www.njeda.com/sandyconstruction) and for affirmative action (www.njeda.com/affirmativeaction).

III. QUALIFICATIONS/BIDDING/AWARD

A. Qualified bidders will meet the following criteria:

1) Bidders must provide a list of their qualifications for the Consultant position and proof of their expertise and experience in construction observation and construction management.

2) Bidders must provide a description of specific familiarity with the services required by the City.

3) Bidders must provide a list of previous similar construction observation and construction management projects successfully completed by the Bidder, with particular emphasis on projects successfully completed within the State of New Jersey, including final project costs.

4) Bidders must provide a compensation proposal, which shall break costs down in the following manner:

a) Task 1 – Construction Observation – flat fee

b) Task 2 – Construction Management – flat fee

c) Task 3 – Other work as assigned – hourly rate schedule

B. All interested bidders must provide the following information:

1) The name of the bidder. If the bidder is a corporation or other business entity licensed by the State of New Jersey, the application shall include the names of all owners

or principals owning ten (10%) percent or more of voting and/or equity interest of the bidder and shall also designate a representative of such entity authorized to receive notices or other communications from the City.

2) Identification of the person who will be primarily responsible for the required services, with a description of such person's experience with projects and issues similar to those that will be undertaken by the City.

3) Identification of the persons who will serve as alternates to the person primarily responsible for providing the required services.

4) A description of the bidder's staffing.

5) Identification of the bidder's principal place of business and the business address of key staff that will be responsible for providing services under the contract.

6) A list of references including the names, addresses, and telephone numbers of persons who can verify the bidder's experience and record of success.

7) Satisfactory evidence of comprehensive general liability and professional liability insurance coverage satisfying the requirements of Section VI of these bid specifications.

8) New Jersey Business Registration Form.

9) Dun & Bradstreet Number (DUNS)

10) Any other information as required by the City and/or set forth in these specifications.

C. The Agreement shall be offered to the bidder that exemplifies through this proposal process the ability to best accomplish all of the Construction Observation and Construction Management Services required, but not limited to, including project staff education and experience, construction management of similar projects, and proposed fees for services. The City reserves the right to reject any and all proposals. All proposals are subject to award by the City through the adoption of a confirmatory resolution of the City Council. The City shall also have the right to request a demonstration and/or conduct interviews.

IV. SUBMISSION OF PROPOSALS

A. Any proposal must be submitted in a sealed envelope, clearly marked on the outside as "Proposal for Landis Avenue Streetscape Construction Observation and Management." Proposals must be received by the Municipal Clerk's Office, Cindy Griffith, Municipal Clerk, Sea Isle City City Hall, located at 3905 Central Avenue, Sea Isle City, NJ 08243, no later than **WEDNESDAY, JULY 15, 2015 AT 2:00 PM**, at which time they will be publicly opened, announced, and recorded. Proposals will not be considered unless they are received by the Municipal Clerk on or before the above date and time, regardless of when mailed. Bidders are therefore encouraged to submit proposals by hand delivery.

B. The awarded Agreement shall last for the duration of the Project, which is scheduled to begin in late September of 2015. Construction is scheduled to be completed in April 2016. The selected consultant will be involved in the final disbursement of grant funds and close-out, the deadline for which is July 1, 2016. The deadline for the final invoice to be sent to NJEDA is May 9, 2016. The Agreement shall not be assignable without prior written consent of the City. The City may terminate the Agreement at any time for "cause." "Cause" shall include, without limitation, breach by the Bidder of the provisions of any contract entered into by Bidder and the City, the Bidder's failure to perform all Construction Observation and Construction Management Services in the manner required under this RFP, or the Bidder's unsatisfactory performance of required services, subject to thirty (30) days' written notice and opportunity to cure. In the event the City terminates the Agreement for "cause," the City shall provide ten (10) days' prior written notice of termination, unless immediate termination is required in the City's discretion. In addition, the City may terminate the Agreement without cause by providing the Bidder thirty (30) days' prior written notice. Proposals must include all of the information requested herein. Failure to comply may result in a bidder's proposal being considered as non-responsive. Contents of the proposal of the successful bidder shall become part of any contract awarded as a result of the proposal.

V. GENERAL REQUIREMENTS

A. Prior to commencement of operations pursuant to any contract awarded hereunder, the successful bidder shall demonstrate compliance with all requirements imposed by these specifications, and shall obtain all necessary licenses, certificates, or other approvals required by any federal, state, or local governmental authority. The provisions of these specifications shall be incorporated within the Agreement.

B. The successful bidder will be required to observe and comply with all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and local governments, courts, departments, commissions, boards, and any other body exercising functions similar to those of any of the foregoing, which may be applicable to the successful bidder including, without limitation, the Americans with Disabilities Act of 1990, P.L. 101-336, 104 Stat. 327, as same may be amended, appearing generally at 42 U.S.C. §12101, et seq., and all regulations and guidelines promulgated pursuant thereto (the "ADA"), and all applicable New Jersey laws regarding affirmative action, prevailing wage and any other applicable New Jersey requirements, the total of which may be referred to collectively herein as the "Applicable Laws," except as provided herein.

VI. INSURANCE REQUIRED

A. Services shall not commence until the Contractor has obtained at its own expense, all of the insurance as required hereunder and such insurance has been approved by the City; nor shall the Contractor allow any subcontractor to commence work on any projects until all insurance required of the subcontractor has been obtained by the subcontractor and approved by the Contractor. Approval of insurance required of the Contractor will be granted only after submission of original certificates of insurance signed by authorized representatives of the insurers to the City, or at the City's request, certified copies of the insurance policies.

B. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation, non-renewal, or material reduction in coverage until sixty (60) days' prior written notice has been given to the City.

C. Acceptance and/or approval of any insurance by the City shall not be construed as relieving or excusing the Contractor or the Contractor's surety from any liability or obligation imposed upon either or both of them by the provisions of the Agreement generated from this solicitation.

D. The Contractor shall maintain comprehensive general liability and professional liability insurance, with limit coverage to afford protection in an amount not less than \$2,000,000.00 combined single limit or through an umbrella policy, each protecting the City as an additional insured against any and all claims for personal injury, death, or property damage occurring in or upon the City's property or any part thereof; and worker's compensation insurance as required by New Jersey law.

E. Insurance specified herein shall be primary, and any other insurance, self-insurance, coverage, or indemnity available to the City, and City's employees shall be excess of a noncontributory amount with insurance provided.

VII. EVALUATION OF BIDS

A. The City will evaluate qualifications submitted for Construction Observation and Construction Management Services on the basis of the following factors:

- 1) Experience and reputation in the field, with special attention to experience with municipalities that are geographically similar to the City.
- 2) Knowledge of the City and the subject matter to be addressed under the contract.
- 3) Availability to accommodate any required meetings of the City.
- 4) Compensation proposal.
- 5) Other factors demonstrated to be in the best interest of the City.

B. The City reserves the right to make multiple awards for similar services in connection with this RFP or not to award a contract for Construction Observation and Construction Management Services.

VIII. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

A. Respondents and the selected consultant should familiarize themselves with the NJEDA CDBG-DR Administrative Manual found at www.njeda.com/sandyconstruction . Additional information on Section 3 requirements can be found in Chapter V of the manual.

B. At this time, professional services contracts not exceeding \$100,000 are not covered by Section 3. Therefore, if the respondents proposed contract amount is under \$100,000, the three (3) documents related to Section 3 that must be returned with the proposal are: 1) a Section 3 Utilization Plan prepared according to the instructions below, 2) if no new hires are anticipated, a letter explaining why no new hires are needed, and 3) a completed Section 3 Utilization Plan form found on the last page of Appendix A, which provides a table to input your current employees, anticipate new hires, and proposed contract and subcontracts.

C. This CDBG-DR grant-funded project and the professional services contract are covered by Section 3 of the Housing and Urban Development (HUD) Act of 1968 (Section 3). Respondents and the selected consultant shall familiarize themselves with 24 CFR Part 135.

Section 3 and implementing regulations ensures that employment, training, contracts and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be directed to low-and very low-income residents, particularly those that reside in public housing, and businesses that substantially employ them.

D. Requirements of the respondents and selected consultant include:

- 1) Respondents must present a Section 3 Utilization Plan with their proposal;
- 2) Selected consultants and any subconsultants must, to the greatest extent feasible, meet the HUD Section 3 Goals;
- 3) Selected consultants and any subconsultants shall perform outreach in order to facilitate the hiring of Section 3 Residents and Section 3 Businesses.

E. The selected consultant any subconsultants must maintain documentation of their hiring practices related to Section 3 and any good faith actions to meet the Section 3 Goals, including outreach to facilitate Section 3 Hiring.

F. Section 3 Utilization Plan. All Respondents and Bidders must submit a Section 3 Utilization Plan with their bid.

- 1) All respondents must submit documentation addressing how they will meet Section 3 Goals via a Section 3 Utilization Plan;
- 2) Commitment to Section 3 utilization if the contract is covered by Section 3 will be a factor in the selection process;
- 3) Proposals submitted without a completed Section 3 Utilization Plan will be considered non-compliant and invalid;

The following content must be included in the Section 3 Utilization Plan:

- 1) Identification of the Project Area;

- 2) Identification of past experience with Section 3 and whether goals have been met;
- 3) Specific information about the contractor's current workforce (payroll reports, etc.);
- 4) Specific plans for hiring Section 3 eligible residents;
- 5) A firm commitment to include the HUD Section 3 Clause in all sub-contracts;
- 6) The number of subcontractors and employees necessary to complete the work;
- 7) An estimate of the number of new jobs necessary to complete the work;
- 8) An estimate on how many of new hires must meet Section 3 definitions in order to achieve the minimum numerical goals;
- 9) An estimate of the total dollar amount of construction and non-construction subcontracts to be awarded;
- 10) A calculation of the total dollar amount of construction and non-construction contracts to be awarded to Section 3 businesses in order to achieve the minimum numerical goals;
- 11) An outreach plan to make sure that qualified businesses and individuals have been notified of open positions; and
- 12) Number of annual technical trainings and internships that will be provided.

G. The selected consultant and any subconsultants shall conduct outreach to identify workforce development opportunities for Section 3 utilizing the following:

- 1) Housing authorities;
- 2) Nonprofit and social service agencies;
- 3) Employment agencies;
- 4) Unions and Trades;
- 5) Resident organizations; and
- 6) Other ethnic organizations.

Additional Section 3 Outreach Strategies may include:

- 1) Utilize the NJ One Stop Career Centers to recruit and attract Section 3 eligible applicants for posted positions;
- 2) Work with Labor Unions and Trades to post copies of the Section 3 clause notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice;
- 3) Partner with the NJ One Stop Career Centers to promote special advertisement of Section 3 job postings and opportunities;
- 4) Utilize the HUD Section 3 Business Registry to recruit and attract Section 3 eligible businesses for available opportunities;
- 5) Advertise job and subcontracting opportunities in local, community papers and job boards in impacted areas and LMI communities;
- 6) Request current listing of Section 3 eligible applicants and certified Section 3 businesses from housing authorities and other HUD CDBG-funded agencies;
- 7) Contact local community organizations (e.g. faith-based organizations, community centers, organizations that serve adult special needs population, etc.) and provide them with job postings for Section 3 eligible applicants;
- 8) Clearly indicate on all job applications and websites for job postings that the position is “A Section 3 eligible job opportunity.”;
- 9) Word-of-Mouth – ask others to refer qualified applicants to your firm.

H. Respondents must submit the following documents to comply with Section 3 of the HUD Act of 1968. If the respondent’s total proposed contract amount does not exceed \$100,000, the only Section 3-related documents that must be submitted are items 6, 7, 8, and 9. All Section 3-related documents are included in Appendix A of this Request for Proposals.

- 1) Exhibit 1 Section 3 Respondents Proposed Contracts
- 2) Exhibit 2 Section 3 Business Certification Form
- 3) Exhibit 3 Section 3 Respondents Estimated New Hires
- 4) Exhibit 6 Certification of Respondent Regarding Section 3 and Segregated Facilities
- 5) Exhibit 8 Section 3 Plan Format
- 6) Exhibit 9 Section 3 Plan Statement of Commitment

- 7) Section 3 Utilization Plan prepared according to the instructions above
- 8) If no new hires are anticipated, a letter explaining why none are needed
- 9) “Section 3 Utilization Plan” form found on the last page of Appendix A

I. The consultant shall submit a monthly report on Section 3 hiring.

J. Also included in this RFP are documents for the respondent’s reference for complying with Section 3 of the HUD Act of 1968. These documents do not need to be returned with the proposal. Rather, the Respondent should review the documents and use items 4, 5, and 6 to submit the Section 3 Plan. These include:

- 1) Exhibit 4 – Section 3 Bidders Employee and Trainee Data
- 2) Exhibit 5 – Section 3 Employee Household Income Certification Form 5
- 3) Exhibit 7 – Bidder Certification of Proposed SUBS Regarding Section 3 and Segregated Facilities (if applicable – please submit with proposal)
- 4) Appendix A Plan – Section 3 Clause
- 5) Appendix B Plan – Section 3 Contractors Business Utilization Report
- 6) Appendix C Plan – Section 3 New Hires Compliance

IX. CDBG-DR REQUIRED CONTRACT DOCUMENTS

A. In compliance with the NJEDA CDBG-DR Administrative Manual, the professional services contract that will be executed with the selected consultant will include the following documents: Exhibit 5-1 State of New Jersey Standards Terms and Conditions, Exhibit 5-3 CDBG Program General Conditions (as applicable), Exhibit 5-4 Voluntary Compliance Agreement and Conciliation Agreements, and Exhibit 5-5 CDBG Compliance Provisions for Professional Services Contracts. The documents are provided for general reference only and specific language is subject to change. Documents are included in Appendix B of this Request for Proposals.

APPENDIX A
SECTION 3 FORMS

Part III.

NOTORIZATION

Authorizing name and Signature (Corporate Seal)

Print Name

Sworn to and subscribed before this _____ day of _____, 20____ to certify with witness by my hand and seal of office.

NOTORIAL SEAL: Notary Public _____

Instructions

This form is to used to report accomplishments regarding employment and other economic opportunities provided to moderate, low-and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3

The NJEDA, in compliance with Section 3 regulations, will require contractors and subcontractors to direct their efforts towards contracts to Section 3 business concerns in the following order to priority:

Category 1: Business concern that is a certified Section 3 business and it is 51% or more owned by a resident of the service area or neighborhood where the work is being performed.

Category 2: Business concern that is certified Section 3 business and it is 51% or more owned by a resident of the State of New Jersey

Category 3: Business concern whose permanent workforce includes not less than 30% of Section 3 residents.

Category 4: HUD Youthbuild programs being carried out in the NJEDA in which Section 3 covered assistance is expended.

Contractors and subcontractors are expected to extend to the greatest extent feasible, efforts to achieve the numerical targets established by the NJEDA.

Contractors and subcontractors that can demonstrate how they will meet the requirements in this section will be given a contracting preference when selecting a contractor.

Evidence of Section 3 Certification

Any business seeking Section 3 preference in the awarding of contracts or purchase agreements must complete the Certification for Business Concerns Seeking Section 3 Preferences in Contracting and Demonstration of Capability form. The business seeking Section 3 preference must be able to provide adequate documentation as evidence of eligibility under the Section 3 Program.

This certification along with any supporting documentation for Section 3 preference for business concerns must be submitted prior to the submissions of bids for approval and throughout the life of project

For NJEDA use only			
Supporting documents received	Y N	Date Received _____	Approved ___ Rejected ___ (check one)
Reason for Rejection:			

EXHIBIT 3
SECTION 3 ~~BIDDERS~~ ESTIMATED NEW HIRES
RESPONDENTS
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery
P.O. Box 990 - Trenton, NJ 08625-0990
Forms available at: <http://www.njeda.com/affirmativeaction>

Job Category	Estimated Total Positions Needed for Project	No. of Positions Occupied by Permanent Employees	No. of Positions Not Occupied	No. of Positions to be Filled with Section 3 Residents
Office/ Supervisors				
Professionals				
Technicals				
Hsq Sales / Rental Mgmt				
Office / Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Helpers				
Apprentices				
Trainees				
Others				

Section 3 Business Concern

Individual residing within the non-metropolitan county in which the Section 3 covered project is located and whose income does not exceed 80% of the higher of the median income, adjusted by family size, for the county of residence of the non-metropolitan are of the state.

Company Name

Project Number

Project Name

Person Completing Form

Date

EXHIBIT 4
SECTION 3 EMPLOYEE AND TRAINEE DATA FORM 4
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery
P.O. Box 990 - Trenton, NJ 08625-0990

CDBG-DR ECONOMIC REVITALIZATION
LOW / MODERATE INCOME (LMI) AND RESIDENCY EMPLOYMENT OPPORTUNITY

This worksheet must be completed and returned to the General Contractor and/or the NJEDA.
Form available at: <http://www.njeda.com/affirmative action>

Eligibility for Preference

A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

Category Number (check box that applies, see below)	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
---	----------------------------	----------------------------	----------------------------	----------------------------

Certification for Resident Seeking Section 3 Preference in Training and Employment

I, _____ am a legal resident in the city of _____
county of _____ state of _____, and meet the income eligibility guidelines for a low, moderate,
or very-low income person.

My permanent address is: _____

Name of Public Housing Development (if applicable) _____ Household Annual Salary _____

Number of Individuals in Household _____ Date of Hire _____

I have attached the following documentation as evidence of my status:

- Check all that apply:
- | | |
|--|---|
| <input type="checkbox"/> Copy of lease | <input type="checkbox"/> Copy of receipt of public assistance |
| <input type="checkbox"/> Copy of evidence of participation
in a public assistance program | <input type="checkbox"/> Other evidence |
- Type of evidence
- Required: Copy of identification included (required)
(e.g. driver's license, birth certificate, etc.)

Signature of Resident

Date

Print Name

Under the NJEDA Section 3 Program, contractors and subcontractors are required to complete this form. Provide employment opportunities to Section 3 residents/participants in the priority order listed below:

Category 1 - Residents of the housing development or developments of which the contract shall be expended

Category 2 - Section 8 residents as well as all other county residents residing in the vicinity of the project who meet the income guidelines of Section 3 preference

Category 3 - Participants in HUD Youthbuild program being carried out in the project boundary area

Category 4 - Section 8 residents who meet income guidelines for Section 3 preference

For NJEDA use only	Supporting documents received _____	Date _____	Approved _____	Rejected _____
---------------------------	-------------------------------------	------------	----------------	----------------

Rejection Comments:

EXHIBIT 5
SECTION 3 EMPLOYEE HOUSEHOLD INCOME CERTIFICATION FORM 5
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery
P.O. Box 990 - Trenton, NJ 08625-0990

CDBG-DR ECONOMIC REVITALIZATION
LOW / MODERATE INCOME (LMI) AND RESIDENCY EMPLOYMENT OPPORTUNITY

This worksheet must be completed and returned to the General Contractor and/or the NJEDA.

Form available at: <http://www.njeda.com/affirmative action>

Eligibility for Preference

Any individual who is seeking to be certified as a Section 3 resident, and who is not a public housing resident, or not a federally assistant housing program, or not a recipient public housing assistance program shall attest to their total current gross annual household income, and provide the name and date of birth of each household member. All additional household income earned by household members, excluding children under 18, and/or provided through public or private assistance, child support, bank or investment earnings must be included, where indicated below.

I, _____ (Individual's Full Name) DO SOLEMLY SWEAR THAT THE INFORMATION PROVIDED BELOW IS TRUE.

***Number of family members who live in my household:** _____ . (See Section 3 Waiver blow)

My total current gross annual household income is: _____ .

The source(s) of my total annual household income is/are:

	Section 3 Employee	Spouse (if applicable)	Other Adult Members age 18 & over (if applicable)	Other Adult Members age 18 & over (if applicable)	Other Adult Members age 18 & over (if applicable)	Other Adult Members age 18 & over (if applicable)
Gross Earnings						
TANF						
Child Support						
Bank Income						
Other Income List						
1						
2						
3						
4						

Print Name:

Signature:

Date:

Section 3 Waiver

Clarifying Note on Section 3 Income Documentation Requirements

Section 3 economic activities waiver allows grantees to document the low/moderate national objective based on the income of an employee (rather than the employee's family)

Pursuant to the U.S. Housing Act of 1937 (42 U.S.C. 1437 a(b)(2)) and 24 CFR 135.5, the Secretary is authorized to establish income limits to consider an individual to be a Section 3 resident. This Notice authorizes grantees to determine that an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for jurisdiction.

For NJEDA Use Only		
Supporting Documents Received Date _____	Approved Date _____	Rejected Date _____
NJEDA Section 3 Coordinator Name (Print)	_____	
NJEDA Section 3 Coordinator Signature	_____	
Today's Date	_____	
Reason for Rejection:		

RESPONDENT EXHIBIT 6
CERTIFICATION OF ~~BIDDER~~ REGARDING SECTION 3 AND SEGREGATED FACILITIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery
P.O. Box 990 - Trenton, NJ 08625-0990
Forms available at: <http://www.njeda.com/affirmativeaction>

Name of Prime ~~Contractor~~ respondent

Project name and Number

The undersigned hereby certifies that:

1. Section 3 provisions are included in the Contract
2. A written Section 3 plan was prepared and **submitted as part of the ~~bid~~ proceedings** (if ~~bid~~ ^{proposal} equals or exceeds \$100,000)
3. No segregated facilities will be maintained

Company Name

Signature

Date

Directions:

This certification is to be completed by the ~~contractor~~ ^{RESPONDENT} and submitted with the ~~bid~~ ^{proposal} document. Subparagraph c) does not preclude ~~contractors~~ ^{respondents} from providing separate lavatories or changing facilities for men and women.

EXHIBIT 7
BIDDERS CERTIFICATION OF PROPOSED SUBCONTRACTOR REGARDING
SECTION 3 AND SEGREGATED FACILITIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery
P.O. Box 990 - Trenton, NJ 08625-0990

Forms available at: <http://www.njeda.com/affirmativeaction>

Name of Prime Contractor

Project Name and Number

The undersigned hereby certifies that:

1. Section 3 provisions are included in the Contract
2. A written Section 3 plan was prepared and **submitted as part of the bid proceedings** (if bid equals or exceeds \$100,000)
3. No segregated facilities will be maintained

Company Name

Name and Title of Singer (Print or Type):

Signature

Date

Directions:

This certification is to be completed by the contractor and submitted with the bid document. Subparagraph c) does not preclude contractors from providing separate lavatories or changing facilities for men and women.

RESPONDENTS

BIDDERS SECTION 3 PLAN FORMAT TEMPLATE

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery
P.O. Box 990 - Trenton, NJ 08625-0990

Forms available at: <http://www.njeda.com/affirmativeaction>

If award is received, _____ (name of contractor) agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the County of _____.

1. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area, and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
2. To attempt to recruit from within the city the necessary number of lower income residents through local advertising media, signs placed at the proposed site for the project area, and community organizations, and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
3. To maintain a list of lower income area residents who have applied either on their own or on referral from any source, and employ such persons, if otherwise eligible and if a vacancy exists.
4. To insert the Section 3 Clause Contract Provisions in all subcontracts over \$100,00, to obtain all forms from said subcontractors, and to obtain all documentation for completion of prior to final payment. (Loans, grants, contracts, and subsidies for less than \$100,000 will be exempt).
5. To contact unions, subcontractors, and trade associations to secure their cooperation for this program
6. To ensure that all appropriate project area business concerns are notified of pending sub contractual opportunities.
7. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative steps have been taken.
8. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.
9. To list information related to proposed subcontracts to be awarded to Section 3 businesses.
10. To list all projected workforce needs for all phases of this project by occupation, trade, skill level and number of positions.

As officers and representatives of _____, (Name of Bidder) we, the undersigned, have read and fully agree this Affirmative Action Plan, and become a party to the full implementation of this program.

Signature

Title of Singer (Print or Type): _____ Date _____

Signature

Title of Singer (Print or Type): _____ Date _____

EXHIBIT 9
SECTION 3 PLAN STATEMENT OF COMMITMENT
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery
P.O. Box 990 - Trenton, NJ 08625- 0990
Forms available at: <http://www.njeda.com>

By signature below, I am hereby acknowledging to the NJEDA that I have been duly provided with information regarding the NJEDA's Section 3 Program, which explains the obligations and requirements of any construction project, which is funded in part or whole by HUD sourced funds. I certify that I am fully empowered to enter into this Statement of Section 3 Utilization Commitment on behalf of this business and I am certifying that the information contained within this Section 3 Plan is accurate and correct and that I understand that the NJEDA may impose penalties and sanctions for the submission of any false and inaccurate statements within this document.

COMPANY AUTHORIZED REPRESENTATIVE

PHONE

SIGNATURE OF AUTHORIZED REPRESENTATIVE

TITLE

COMPANY SECTION 3 COORDINATOR
(Leave blank if the same as authorized representative)

EMAIL ADDRESS

COMPANY NAME

COMPANY COMPLETE ADDRESS

COMPANY WEBSITE (if applicable)

APPENDIX A
SECTION 3 CLAUSE

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.*
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*

APPENDIX B
SECTION 3 CONTRACTORS BUSINESS UTILIZATION FORM 11

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
 Office of Recovery
 P.O. Box 990 - Trenton, NJ 086250-0990
 Forms available at; <http://www.njeda.com/affirmativeaction>

Project No. _____ Prime Contractor _____ Address _____ Contract Amount _____ Federal ID No. _____

Name of Subcontractor	Section 3 Business *	Address and Phone Number	Trade, Service, or Supply	Contract Amount	Award Date	Competitive or Negotiated Bid	Fed ID No.

* Check if a Section 3 Business Concern

Section 3 Business Concern

A business concern, which is located in or owned in substantial part (at least 51%) by persons residing in the same non-metropolitan county as the project.

Total Dollar Amount Awarded to Section 3 Businesses

\$ _____

Part II. Contracts Awarded		Part III. Summary
1. Construction Contracts:		<p>Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all boxes that</p> <p><input type="checkbox"/> Attempted to recruit low-income residents through : local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.</p> <p><input type="checkbox"/> Participated in a HUD program or other program which promotes the training or employment of Section 3 residents</p> <p><input type="checkbox"/> Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.</p> <p><input type="checkbox"/> Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.</p> <p><input type="checkbox"/> Other, described below</p>
A. Total dollar amount of all contracts		
B. Total dollar amount of contracts awarded to Section 3 businesses		
C. Percentage of total dollar amount that was awarded to Section 3 businesses		
D. Total number of Section 3 business receiving contracts		
2. Non-Construction Contracts:		
A. Total dollar amount all non-construction contracts awarded on the project/activity		
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses		
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		
D. Total number of Section 3 businesses receiving non-construction contracts		

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

(NAME)

(SIGNATURE)

DATE

(PHONE NUMBER)

(E-MAIL ADDRESS)

Section 3 Utilization Plan

Company Name _____

Goals	
<ul style="list-style-type: none"> • Thirty percent (30%) of the aggregate number of new hires are Section 3 residents; • Ten percent (10%) of the total dollar amount of the contract is awarded to Section 3 business concerns • Three percent (3%) of the total dollar amount of all covered non-construction contracts are awarded to Section 3 business concerns 	
Total Current Employees	
Total Anticipated New Hires	
Total Anticipated New Hires that are Section 3 Residents	
Percentage of Section 3 New Hires	%
Total Dollar Amount of Contract	\$
Total Dollar Amount of construction Sub-contracts to be awarded	\$
Total Dollar Amount of construction Sub-contracts to be Awarded Section 3 Business Concerns	\$
Total Dollar Amount of Non-construction Subs-contracts to be Awarded	\$
Total Dollar Amount of Non-construction Sub-contracts to be Awarded to Section 3 Business Concerns	\$
Percentage of Contracts Going to Section 3 Business Concerns	\$
	%
Number of Technical Trainings to be Provided Annually	

(Note: These amounts may change due to increases and decrease in contract value.

All Changes should be reflected on monthly reports)

Please Answer the questions below:

- 1 How Man e-mail blast or notifications will be send regarding Section 3 outreach?
- 2 How frequently will the blast or any other notifications be sent?
- 3 What organizations will you reach out to/

NOTE The use of "good faith effort" is in regards to the NJEDA's Affirmative Action program. Please use "greatest extent feasible" for outreach as indicated in the DCA Policy memo Number 2.10.22, effective June 2013.

APPENDIX B

HUD CDBG-DR REQUIRED CONTRACT ADDENDA

State of New Jersey Standard Terms and Conditions

1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**- Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.
2. **STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS** - The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- 2.1 **BUSINESS REGISTRATION** – Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

- 2.2 **ANTI-DISCRIMINATION** - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.
- 2.3 **PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.
- 2.4 **AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.
- 2.5 **MACBRIDE PRINCIPLES** – The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- 2.6 **PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:
 - a. make or solicit a contribution in violation of the statute;
 - b. knowingly conceal or misrepresent a contribution given or received;
 - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;

State of New Jersey

Standard Terms and Conditions

- d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
- e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
- h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7 POLITICAL CONTRIBUTION DISCLOSURE – The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE - Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set

State of New Jersey Standard Terms and Conditions

off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

- 2.10 COMPLIANCE - LAWS** - The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.
- 2.11 COMPLIANCE - STATE LAWS** - It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- 3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**
- 3.1 COMPLIANCE - CODES** – The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.
- 3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.
- 3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS** - N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:
- a) The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
 - b) The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
 - c) The contractor or subcontractor where applicable, 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 agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

State of New Jersey Standard Terms and Conditions

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows;

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- 3.4 **BUILDING SERVICE** – Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.
- 3.5 **THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.
- 3.6 **SERVICE PERFORMANCE WITHIN U.S.** – Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b)(1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

- 3.7 **BUY AMERICAN** – Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

4. **INDEMNIFICATION AND INSURANCE**

- 4.1 **INDEMNIFICATION** - The contractor's liability to the State and its employees in third party suits shall be as follows:
- (a) Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.
 - (b) The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.
 - (c) In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

State of New Jersey Standard Terms and Conditions

- 4.2 INSURANCE** - The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the State. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at:

ccau.certificate@treas.state.nj.us

The insurance to be provided by the contractor shall be as follows:

- a. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - \$1,000,000 BODILY INJURY, EACH OCCURRENCE
 - \$1,000,000 DISEASE EACH EMPLOYEE
 - \$1,000,000 DISEASE AGGREGATE LIMIT
- d. This \$1 million amount may have been raised by the RFP when deemed necessary by the Director.
- e. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17, et.seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

5. TERMS GOVERNING ALL CONTRACTS

- 5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR** – The contractor's status shall be that of any independent contractor and not as an employee of the State.
- 5.2 CONTRACT AMOUNT** - The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.
- 5.3 CONTRACT TERM AND EXTENSION OPTION** - If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least thirty (30) days prior to the expiration date of the existing contract. The contractor shall have fifteen (15) calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.
- 5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK** – The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the

State of New Jersey

Standard Terms and Conditions

Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- (a) If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.
- (b) If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW – Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- (a) If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.
- (b) If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.6 SUSPENSION OF WORK - The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- a. For Convenience
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than thirty (30) days written notice to the contractor.
- b. For Cause
 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17: 12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.
 2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.
- c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

State of New Jersey Standard Terms and Conditions

5.8 SUBCONTRACTING OR ASSIGNMENT –

- a. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.
- b. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE - Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS - If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR - The contractor hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location.
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS -

- a. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract.
- b. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice.
- c. Items delivered must be strictly in accordance with the contract.
- d. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

State of New Jersey Standard Terms and Conditions

- 5.13 APPLICABLE LAW AND JURISDICTION** - This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.
- 5.14. CONTRACT AMENDMENT** – Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.
- 5.15 MAINTENANCE OF RECORDS** - The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the State, including the Comptroller, for audit and review.
- 5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)** - The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It shall advise the Attorney General of New Jersey:
 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

- 6.1 PRICE FLUCTUATION DURING CONTRACT** - Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

- 6.2 TAX CHARGES** - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS -

- a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by

State of New Jersey Standard Terms and Conditions

- the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price.
- b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized.
 - c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls.
 - d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

6.4 OPTIONAL PAYMENT METHOD: P-CARD - The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT - The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS – The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

EXHIBIT 5-3

This list of recommended contract clauses are not required items but are generally accepted for use as “good practice”. They are herewith provided for your use and benefit.

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM GENERAL CONDITIONS

- | | |
|--|--|
| 1. Definitions | 24. Lands and Right-of-Way |
| 2. Additional Instructions and Detail Drawings | 25. Guarantee |
| 3. Schedules, Reports and Records | 26. Remedies |
| 4. Drawings and Specifications | 27. Taxes |
| 5. Shop Drawings | 28. Provisions Required by Law Deemed Inserted |
| 6. Materials, Services, and Facilities | 29. Protection of Lives and Health |
| 7. Inspection and Testing of Materials | 30. Interest of Member of Congress |
| 8. Substitutions | 31. Other Prohibited Interests |
| 9. Patents | 32. Suspension of Work |
| 10. Surveys, Permits, and Regulations | |
| 11. Protection of Work, Property, Persons | |
| 12. Supervision by Contractor | |
| 13. Changes in Work | |
| 14. Changes in Contract Price | |
| 15. Time for Completion and Liquidated Damages | |
| 16. Correction of Work | |
| 17. Subsurface Conditions | |
| 18. Suspension of Work, Termination and Delay | |
| 19. Payments to Contractor | |
| 20. Acceptance of Final Payments as Release | |
| 21. Assignments | |
| 22. Separate Contracts | |
| 23. Architect/Engineer's Authority | |

1. DEFINITIONS

The following terms as used in this contract are respectively defined as follows:

- a. "Contractor": A person, firm, or corporation with whom the contract is made by the Owner.
- b. "Subcontractor": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with the contractor.
- c. "Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor.
- d. "Written Notice": Any work to any party of the Agreement relative to any part of this in writing and considered delivered and the service thereof completed, when posted by certified or

registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative on the work.

2. **ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

The Contractor may be furnished additional instructions and detail drawings, by the A/E, as necessary to carry out the work required by the contract documents.

The additional drawings and instructions thus supplied will become a part of the contract drawings. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

3. **SCHEDULE, REPORTS AND RECORDS**

The Contractor shall submit to the owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the contract documents for the work to be performed.

Prior to the first partial payment estimate the Contractor shall submit construction progress schedules showing the order in which the Contractor proposes to carry on the work, including dates at which the various parts of the work will be started, estimated date of completion of each part and as applicable.

The dates at which special drawings will be required and respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

The Contractor shall also submit a schedule of payments that the Contractor anticipates will be earned during the course of the work.

4. **DRAWINGS AND SPECIFICATIONS**

The intent of the drawings and specifications is that the Contractor shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the work in accordance with the contract documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the owner.

In case of conflict between the drawings and specification, the specification shall govern. Figure dimensions on drawings shall govern over general drawings.

Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the A/E in writing, who shall promptly correct such inconsistencies or ambiguities in writing.

Work done by the Contractor after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

5. **SHOP DRAWINGS**

The Contractor shall provide shop drawings as may be necessary for the prosecution of the work as required by the contract documents. The A/E shall promptly review all shop drawings. The A/E's approval of any shop drawing shall not release the Contractor from responsibility for deviations from the contract documents. The approval of any shop drawing which substantially deviates from the requirement of the contract documents shall be evidenced by a change order.

When submitted for the A/E's review, shop drawings shall bear the Contractor's certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the contract documents.

Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the A/E. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the A/E.

6. MATERIALS, SERVICES AND FACILITIES

It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.

Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

Material, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the A/E.

Materials, supplies or equipment to be incorporated into the work shall not be purchased by the Contractor or by any Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller when a Payment Bond is not required the contract documents.

7. INSPECTION AND TESTING OF MATERIALS

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the contract documents

The Owner shall provide all inspection and testing services not required by the contract documents.

The Contractor shall provide at the Contractor's expense the testing and inspection services required by the contract documents.

If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to specifically be inspected, tested or approved by someone other than the Contractors, the Contractor will give the A/E timely notice of readiness. The Contractor will then furnish the A/E the required certificates of inspection, testing approval.

Inspections, tests or approvals by the A/E or others shall not relieve the Contractor from the obligations to perform the work in accordance with the requirements of the contract documents.

The A/E and the A/E's representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records or personnel, invoices of materials

and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing thereof.

If any work is covered contrary to the written instruction of the A/E it must, if requested by the A/E, be uncovered for the A/E's observation and replaced at the Contractor's expense.

If the A/E considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, at the A/E's request, will uncover, expose or otherwise make available for observation, inspection or testing as the A/E may require, that portion of the work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, if, however, such work is not found defective, the contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate change order shall be issued.

Authorized representatives and agents of the Department of Housing and Urban Development (HUD) and/or the New Jersey Economic Development Authority (NJEDA) shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

8. SUBSTITUTIONS

Whenever a material, article, or piece of equipment is identified on the drawings and specifications by referenced to brand name or catalog numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of material, article or piece of equipment of equal substance and function for those referred to in the contract documents by referenced to brand name or catalog number, if, in the opinion of the A/E, such material, article or piece of equipment is of equal substance function to that specified, the A/E may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by change order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the contract price or contract time.

9. PATENTS

The Contractor shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the owner harmless from loss on account thereof, except that the Owner shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified, however, if the Contractor has reason to believe that design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the A/E.

10. SURVEYS, PERMITS, AND REGULATIONS

The Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work as shown in the contract documents. From the information provided by the Owner, unless otherwise specified in the contract documents, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.

The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

Permits and licenses of temporary nature necessary for the prosecution of the work shall be secured and paid for by the contractors unless otherwise stated in the supplemental general conditions. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the owner, unless otherwise specified. The

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance therewith, the Contractor shall promptly notify the A/E in writing, and any necessary changes shall be adjusted as provided in Section 13 changes in the work.

11. PROTECTION OF WORK, PROPERTY, PERSONS

The Contractor will be responsible for initiating, maintain and supervising all safety precautions and programs in connection with the work. The Contractor will take all necessary precautions for the safety or, and will provide the necessary protection to prevent damage, injury or loss to all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walk pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA) and any State Safety and Health agency requirements.

The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protections. The Contractor will notify owners of adjacent utilities when prosecution of the work may affect them. The Contractor will remedy all damage, injury or loss to any property caused directly or indirectly, in whole or part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone whose acts any of them be liable, except damage or loss attributable to the fault of the contract documents or to the acts or omissions of the owner, of the A/E or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, the Contractor, without special instructions or authorization from the A/E or owner, shall act to prevent threatened damage, injury or loss. The Contractor will give the A/E prompt written notice of any significant changes in the work or deviations from the contract documents caused thereby and a change order shall thereupon be issued covering the changes and deviations involved.

12. SUPERVISION BY CONTRACTOR

The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor or the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be a binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

13. CHANGES IN WORK

The Owner may at any time, as need arises, order changes within the scope of the work without invalidating the agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order. Change order shall be used to adjust quantities of installed units which are different than those shown in the bid schedule because of final measurements. Final measurements shall not be considered changes in the work. Final measurements will determine compensation to the Contractor based on unit price shown in bid schedule.

The A/E, also, may at any time, by issuing a field order, make changes in the details of the work. The Contractor shall proceed with the performance of any changes in the work so ordered by the A/E unless the Contractor believes that such field order entitles the Contractor to a change in contract price or time or both, in which event the Contractor shall give the A/E written notice thereof within seven (7) days after the receipt of the ordered change. Thereafter the Contractor shall document the basis for the change in contract price or time within thirty (30) days. The Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the owner.

14. CHANGES IN CONTRACT PRICE

The contract price may be changed only by a change order. The value of any work covered by a change order or any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below.

a. Unit prices previously approved

b. An agreed lump sum

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

The date of beginning and the time for completion of the work are essential conditions of the contract documents and the work embraced shall be commenced on a date specified in the "Notice to Proceed"

The Contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

If the Contractor shall fail to complete the work within the contract time or extension of time granted by the Owner, then the Contractor will pay to the Owner the amount for liquidated damages as specified in the bid each calendar day that the Contractor shall be in default after the time stipulated in the contract documents.

The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following and the contractor has promptly given written notice of such delay to the Owner or A/E.

To any preference, priority or allocation order duly issued by the Owner.

To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the owner, fires, floods, epidemics, quarantine

restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; and to any delays of Subcontractors occasioned by any of the causes specified in this article.

16. CORRECTION OF WORK

The Contractor shall promptly remove from the premises all work rejected by the A/E for failure to comply with the contract documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and reexecute the work in accordance with the contract documents and without expense to the owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within ten (10) days after receipt of written notice, the Owner may remove such work and store the materials at the expense of the Contractor.

17. SUBSURFACE CONDITIONS

The Contractor, before bidding the project, has the responsibility to become familiar with the site of the project and the conditions under which work will have to be performed during the construction period.

Excavating for foundations of surface structure: buildings, bridges, tanks, towers, retaining walls and other types of surface structures.

The Contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the owner by written notice of subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents.

Or unknown physical conditions at the site of unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for the contract documents.

The Owner shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the work, an equitable adjustment shall be made and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereinafter shall not be allowed unless the required written notice has been given; provided that the Owner may, if the Owner determines the facts so justify consider and adjust any such claims asserted before the date of the final payment.

Excavating for below-surface structures: water mains, sewers, power and telephone cables and other types of below surface structures.

No extra compensation will be paid for rock excavation or varying geologic features encountered on the project, unless so shown as a bid item in the Bid Schedule for bid.

If man-made hazards are encountered by the Contractor, excluding utilities, which are not visible from the surface, such as buried concrete foundations, buried garbage dumps that cannot be by-passed and requires additional work, then the procedure set forth in (e) will be followed.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

The Owner may suspend the work or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the Contractor, by written notice to the Contractor and the A/E which shall fix the date on which work shall be resumed. The Contractor will resume that work on the

date do fixed. The Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to any suspension.

If the Contractor is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or repeatedly fails to make promptly payments to Subcontractors or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the work or disregards the authority of the A/E, or otherwise violates any provision of the contract documents, then the owner may, without prejudice to any other right or remedy and after giving the Contractor and its surety a minimum of ten (10) days from delivery of a written notice, terminate the services of the Contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and finish the work by whatever method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the owner. Such costs incurred by the Owner will be determined by the A/E and incorporated in a change order.

Where the Contractor's services have been so terminated by the owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the owner due the Contractor will not release the Contractor from compliance with the contract documents.

After ten (10) days from delivery of written notice the Contractor and the A/E, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.

If, through no act or fault of the Contractor, the work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the A/E fails to act on any request for payment within thirty (30) days after its is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the A/E or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of written notice to the Owner and the A/E terminate the contract and recover from the Owner payment for all work executed and all expenses sustained. In addition and in lieu of terminating the contract, if the A/E has failed to act on a request for payment or if the owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) days written notice to the owner and the A/E stop the work until paid all amount then due, in which event and upon resumption of the work, change orders shall be issued for adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of the work.

If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the owner or A/E to act within the time specified in the contract documents, or if no time is specified, within a reasonable time, an adjustment in the contract price or an extension of the contract time, or both, shall be made in change order to compensate the Contractor for the costs and delays necessarily caused by the failure of the owner or A/E.

The Owner, without terminating the service of the Contractor or written notice to the Surety, through the A/E may withhold – without prejudice to the rights of the Owner under the terms of the agreement – or on account of subsequently discovered evidence, nullify the whole or part of any approved partial payment estimate to such extent as may be necessary to protect the owner from loss on account of: defective work not remedied, claims filed or reasonable evidence indicating probable filing of claims, failure of Contractor to make payments properly to Subcontractors or for material or labor, a reasonable doubt that the work can be completed for the balance then unpaid damages to another Contractor and performance of work in violation of the terms of the contract documents.

19. PAYMENTS TO CONTRACTOR

At least ten (10) days before each progress payment falls due (but not more often than once a month), the Contractor will submit to the A/E a partial payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the A/E may reasonable require. The A/E will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing approval of payment, and present the partial payment estimate to the Owner, or return the partial payment estimate to the Contractor indicating in writing the reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Owner will, within ten (10) days of presentation of an approved partial payment estimate pay the Contractor a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate until completion and acceptance of the work. The 10% retainage may be reduced by change order if completion and acceptance of the work is delayed due to valid circumstances and the work is usable for its intended purpose by the owner. If reduction in the retainage is approved the remaining retainage shall be an amount sufficient to complete the work.

The request for payment may also include an allowance for the cost of major materials and equipment which are suitable stored either at or near the site. Payment does not relieve the Contractor of his responsibility for the safe keeping of this material and equipment.

Prior to completion and acceptance of the work, the owner, with approval of the A/E and with the concurrence of the Contractor, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.

The Owner shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of the owner.

Upon completion and acceptance of the work, the A/E shall issue a certificate attached to the final payment request that the work has been accepted under the conditions of the contract documents. The entire balance found to be due to the Contractors, including the retained percentages, but except such sums as may be lawfully retained by the Owner, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the work. The A/E's certificate of acceptance will be on the document "Consultant's Certification for Acceptance and Final Payment".

The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demand of Subcontractors, laborers, workmen, mechanics, material, men and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the work. The Contractor shall, at the Owner's request furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged,

or waived. If the Contractor fails to do so the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonable sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, the Contractor's Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the contract documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

If the Owner fails to make payment thirty (30) days after approval by the A/E, in addition to other remedies available to the Contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

20. ACCEPTANCE OF FINAL PAYMENTS AS RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. Any payment, however final or otherwise, shall not release the Contractor or its sureties from any obligations under the contract documents or the Performance and Payment Bonds.

21. ASSIGNMENTS

Neither the Contractor nor the Owner shall sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the other party.

22. SEPARATE CONTRACT

The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate the work with theirs. If the proper execution or results of any part of the Contractor's work depends upon the work of any other Contractor, the Contractor shall inspect and promptly report to the A/E any defects in such work that render it unsuitable for such proper execution and results.

The Owner may perform additional work related to the project or the Owner may let other contracts containing provisions similar to these. The Contractor will afford the other Contractors who are parties to such contracts (or the Owner, if the Owner is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate the work with theirs.

If the performance of additional work by other Contractors or the Owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any such addition work. If the Contractor believes that the performance of such additional work by the Owner or others involves it in additional expense or entitles it to any extension of the contract time the Contractor may make a claim thereof as provided in Section 14 and 15.

23. ARCHITECT/ENGINEER'S AUTHORITY

The A/E shall act as the Owner's representative during the construction period, shall decide questions which may arise as the quality and acceptability of materials furnished and work performed, and shall interpret the intent of the contract documents in a fair and unbiased manner. The A/E will make visits to the site and determine if the work is proceeding in accordance with the contract documents.

The Contractor will be held strictly to the intent of the contract documents in regard to the quality of materials, workmanship, and execution of the work. Inspections may be at the factory or fabrication plant of the source of the material supply.

The A/E will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.

The A/E shall promptly make decisions relative to interpretation of the contract documents. The A/E shall be responsible for obtaining an acknowledgement of the "Consultant's Certification for Acceptance and Final Payment" from the Owner before the certifications may take effect.

24. LANDS AND RIGHT-OF-WAY

Prior to issuance of Notice to Proceed, the Owner shall obtain all lands and rights-of-way necessary for the carrying out and completion of work to be performed pursuant to the contract documents, unless otherwise mutually agreed.

The Owner shall provide to the Contractor information which delineates and describes the lands owned and right-of-way acquired.

The Contractor shall provide at its own expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

25. GUARANTEE

The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of completion and acceptance of the work. The Contractor warrants and guarantees for one (1) year from the date of completion and acceptance of the work that the completed work is free from all defects due to faculty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any other damages that were caused by defects in the work. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. In emergency where, in the judgment of the Owner, delay would cause serious loss or damage, repairs and replacement of defects in the work and damage caused by defects may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof. The Performance Bond shall remain in full force and effect through the guarantee period.

26. REMEDIES

Except as may be otherwise found in the contract documents, all claims, disputes, counter-claims, and other matters in question between the Owner and Contractor arising out of or related to this agreement or the breach thereof, will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the state in which the Owner is located.

27. TAXES

The Contractor will pay all sales, consumer, use and other similar taxes required by the laws of the place where the work is performed.

28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

29. PROTECTION OF LIVES AND HEALTH

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971. Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary. OSHA requirements must be followed.

30. INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

31. OTHER PROHIBITED INTERESTS

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory, or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

32. SUSPENSION OF WORK

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason or any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

EXHIBIT 5-4
Voluntary Compliance Agreement

**VOLUNTARY COMPLIANCE AGREEMENT
AND CONCILIATION AGREEMENT**

BETWEEN

**THE UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**



AND

**LATINO ACTION NETWORK,
NEW JERSEY STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
AND
FAIR SHARE HOUSING CENTER
("COMPLAINANTS")**

AND

**THE STATE OF NEW JERSEY;
AND
THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
("RESPONDENTS")**

**CASE NUMBERS:
Title VI No.: 02-13-0048-6
TITLE VIII No. 02-13-0303-8

CASE FILED: APRIL 3, 2013**

VOLUNTARY COMPLIANCE AGREEMENT AND CONCILIATION AGREEMENT

I. PARTIES

Complainants

Latino Action Network
c/o Frank Argote-Freyre, President
P.O. Box 943
Freehold, NJ 07728

NJ State Conference of the NAACP
c/o Richard Smith, President
4326 Harbor Beach Boulevard, # 775
Brigantine, New Jersey 08203

Fair Share Housing Center, Inc.
c/o Peter J. O'Connor, Executive Director
510 Park Blvd.
Cherry Hill, NJ 08002

Representatives:
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Blvd.
Cherry Hill, NJ 08002

Michael Allen, Esq.
Relman Dane and Colfax, PLLC
1225 19th St NW # 600
Washington, DC 20036

Respondent

State of New Jersey, Department of Community Affairs
c/o Richard Constable, Commissioner
101 S. Broad Street
PO Box 800
Trenton, NJ 08625-0800

Representative: Sanjay P. Ibrahim, Esq.
Parker Ibrahim & Berg

Subject Property

All property assisted by the award of Community Development Block Grant - Disaster Recovery funding under the Disaster Relief Appropriations Act of 2013 (Public Law 113-2) to fund recovery activities related to Superstorm Sandy.

II. INTRODUCTION

On April 3, 2013, Complainants Latino Action Network (“LAN”), and Fair Share Housing Center (“FSHC”) filed a complaint with the U.S. Department of Housing and Urban Development (the “Department” or “HUD”), Office of Fair Housing and Equal Opportunity (“FHEO”), alleging that the State of New Jersey (“State”) engaged in discriminatory housing practices with respect to the provision of services under Title VI of the Civil Rights Act of 1964 (“Title VI”), Title VIII of the Civil Rights Act of 1968, as amended (the federal Fair Housing Act) (the “Act”); Section 109 of Title I of the Housing and Community Development Act of 1974 (“Section 109”) and failed to affirmatively further fair housing.

On April 23, 2013, the complaint was amended to add the New Jersey State Conference of the National Association for the Advancement of Colored People (“NAACP”) as a Complainant and the New Jersey Department of Community Affairs (“DCA”) as a Respondent. The State and DCA are collectively referred to as ‘Respondents’ or “Recipients.” Collectively, the Complainants and Respondents are referred to herein as the “Parties.”

The Recipients agree to enter into this Agreement in order to ensure compliance with their responsibilities under Title VI, Section 109 and the Act, and to affirmatively further fair housing.

The Parties understand that the Respondents deny any violation of law, and that this Agreement does not constitute an admission by the Respondents or evidence of a determination by the Department of any violation of Title VI, Section 109, the Act, or the obligation to affirmatively further fair housing.

The Parties agree that nothing contained in this Agreement shall be construed to be a finding or determination by the Department that the Recipients or any of their agents or employees intentionally engaged in unlawful practices. The Parties agree that nothing contained in this document shall be construed as an admission of liability by the Respondents or any of their agents or employees with respect to the Complainants’ allegations.

The Department and the Respondents, having agreed to settle and resolve voluntarily all disputed issues hereby agree and consent to the terms of this Agreement.

III. DEFINITIONS

Action Plan: The DCA Community Development Block Grant Disaster Recovery Action Plan approved by HUD on April 29, 2013, and any subsequent amendment thereto.

Agreement: This Conciliation Agreement.

Complainants: Collectively, Latino Action Network, Fair Share Housing Center and the New Jersey Conference of the NAACP.

Complaint: The housing discrimination complaint filed by Complainants LAN and FSHC on April 3, 2013 and joined by NAACP on April 15, 2013.

DCA: The New Jersey Department of Community Affairs

DCA's Sandy Website: The URL located at <http://www.state.nj.us/dca/divisions/sandyrecovery/>, as well as the links provided from that webpage and any subsequent URL providing public information about Sandy Recovery programs..

Department or HUD: The United States Department of Housing and Urban Development

Federal Financial Assistance: This includes (1) grants, loans, and advances of federal funds, (2) the grant or donation of federal property and interests in property, (3) the detail of federal personnel, (4) the sale and lease of, and the permission to use federal property or any interest in such property without consideration or at nominal consideration, or at a consideration which is reduced for the purpose of assisting the Recipient, or in recognition of the public interest to be served by such sale or lease to the Recipient, and (5) any federal agreement, arrangement, or other contract which has one of its purposes the provision of assistance. The term "Federal financial assistance" does not include a contract of insurance or guaranty. 24 C.F.R. § 1.2(e).

FHEO: HUD's Office of Fair Housing and Equal Opportunity

Housing Recovery Centers or HRCs: The Housing Recovery Centers operated by DCA to provide information and assistance for applicants regarding CDBG-DR funded programs.

HMFA: The New Jersey Housing and Mortgage Finance Agency

Limited English Proficient (LEP) Persons: Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or

Low- and Moderate-Income (LMI) Persons: Persons with an income as defined by 42 U.S.C. § 5302 (a) (20) (A), meaning, respectively, income that does not exceed 50% of area median income, and above 50% of area median income and that does not exceed 80% of area median income.

Language Assistance Plan (LAP): A written implementation plan that addresses identified needs of the LEP persons they serve. Recipients should have a process for continuously monitoring and updating the Plan.

Party: The Complainants and Recipients.

Recipient(s): The state of New Jersey and the New Jersey Department of Community Affairs, collectively.

Sandy, or Superstorm Sandy: The storm that made landfall in New Jersey on or about October 29, 2012.

Nine Most Impacted Counties: In the State of New Jersey the county jurisdictions of Atlantic, Bergen, Cape May, Essex, Hudson Middlesex, Monmouth, Ocean and Union.

State: The State of New Jersey and each department, agency or other subpart in the New Jersey State government, whether or not directly responsible for CDBG-DR funded activities related to Sandy recovery.

Subrecipient: For purposes of this agreement, the New Jersey Redevelopment Authority, the Housing and Mortgage Finance Agency, the New Jersey Economic Development Authority, and the Department of Environmental Protection. Nothing in this Agreement changes applicable regulatory or judicial interpretations of what constitutes a subrecipient.

Tranche: The anticipated sequential allocation of Sandy CDBG-DR funding referenced in the HUD Notice as 'Round[s]', 78 Fed. Reg. 14329 & 30, and in the Action Plan as 'tranche[s]', p. iii.

Vital Document: Any document that is critical for ensuring meaningful access to the Recipient's major activities and programs by beneficiaries generally and LEP persons specifically.

IV. GENERAL PROVISIONS

- A. The term of this Agreement shall be until six months after the closeout by HUD of the grant(s) to New Jersey of all funds pursuant to Pub. L. 113-2. The effective date is the date on which the Agreement is signed by the representative of the Office of Fair Housing and Equal Opportunity on behalf of HUD.
- B. This Agreement is binding upon all of the officers, trustees, directors, agents, employees, heirs, successors and assigns of the Recipients, when acting in their official capacities on behalf of the State or DCA and the Subrecipients.

- C. This Agreement does not in any way limit or restricts the Department's authority to investigate any complaints against the Recipient pursuant to Title VI, Section 109, the Fair Housing Act, or any other statutory or regulatory authority within the Department's jurisdiction. This Agreement resolves all of the Department's outstanding concerns under these authorities to date.
- D. No amendment to, modification of, or waiver of any provision of this Agreement shall be effective unless all of the following conditions are met: (a) all signatories to the Agreement are notified in advance of the proposed amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by an authorized representative of the Recipients and the FHEO Director for Region II, or his designee. Any such amendment, modification, or waiver shall be effective only in the specific instance and for the specific purpose for which given.
- E. The Agreement does not increase or diminish the ability of any person or class of persons to exercise their rights under Title VI, Section 109, the Fair Housing Act, or any other federal, state, or local civil rights statute or authority. This Agreement does not create any private right of action for any person or class of persons not a party to this Agreement.
- F. The Recipients acknowledge that they have an affirmative duty not to discriminate under the Act and that it is unlawful to retaliate against any person or entity because that person or entity has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. The State will administer all Action Plan programs in a manner that provides fair housing choice to people of all backgrounds without discrimination.
- G. The State will ensure that all construction, reconstruction and rehabilitation of damaged, assisted housing will be conducted in a manner that affirmatively furthers fair housing and is compliant with the Fair Housing Act and the Americans with Disabilities Act.
- H. All of the provisions of this Agreement are applicable to actions taken by Recipients following the effective date of the Agreement, without regard to when the CDBG-DR funding was allocated, unless otherwise specified.
- I. Within thirty (30) days of the effective date of this Agreement, Recipients shall inform all contractors, employees and the principals of Subrecipients, responsible for compliance with this Agreement, including any officers and board members, of the terms of this Agreement and shall provide each such person with a copy of this Agreement.
- J. This Agreement will be a public document upon its effective date. A copy of this Agreement shall be made available to any person for his/her review.

- K. For the purposes of this Agreement, “days” refers to calendar days. If the reporting day falls on a weekend or a federal holiday, the report will be due the first business day after the weekend or holiday.
- L. This Agreement does not supersede, or in any manner change the rights, obligations and responsibilities of the Parties under any and all court orders, or settlements of other controversies involving compliance with federal or state civil rights statutes.
- M. This Agreement does not affect any requirements for the Recipient to comply with all requirements of the Act, Title VI or Section 109 not addressed in this Agreement.
- N. The Recipients shall designate appropriate personnel to coordinate compliance with this Agreement and communicate with the Department about the Agreement upon request at a mutually convenient time.
- O. The Parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.
- P. The Parties further agree that if the Department, Complainants or Respondents discover any typographical errors after the execution of this Agreement, the Department is authorized to correct such errors without the consent of the Parties.
- Q. The Department shall accept as true and official execution of this Agreement, a scanned or faxed copy of the executed signature page(s) contained in Section X. of this Agreement.
- R. Complainants’ signatory hereby acknowledges legal and binding authority to hereby execute this agreement on behalf of all named Complainants in this matter.
- S. Respondents’ signatory hereby acknowledges legal and binding authority to hereby execute this agreement on behalf of all named Respondents in this matter.
- T. For purposes of this Agreement, the required reports and documentation of compliance must be submitted simultaneously to:

Jay Golden, Regional II Director
Office of Fair Housing and Equal Opportunity
U. S. Department of Housing and Urban Development
26 Federal Plaza, Room 3532
New York, NY 10278
Jay.Golden@hud.gov

Wanda S. Nieves, Newark FHEO Center Director
Office of Fair Housing and Equal Opportunity
U. S. Department of Housing and Urban Development
One Newark Center, 13th Floor
Newark, NJ 07102
Wanda.S.Nieves@hud.gov

IV. RELIEF IN THE PUBLIC INTEREST

A. Fund for Restoration of Multi-Family Housing (FRM)

1. Recipients will allocate an additional \$215,000,000.00 for the Fund for Restoration of Multi-Family Housing in addition to the \$379,520,000.00 previously allocated to FRM.
2. Recipients, recognizing the significant need to support the replacement and development of multifamily housing to serve renters displaced by Superstorm Sandy, may reallocate additional funds that are not utilized or needed in any other program from CDBG-DR funding to FRM, subject to approvals required by HUD, from other programs in the approved Action Plan, in any future amendment to the Action Plan relating to the use of CDBG-DR funds, but will not reallocate funds from other programs that have been identified as serving the needs of renters, namely those programs identified as "Renter Housing and Rental Programs" in Exhibit B-1 to the March 25, 2014 Action Plan.
3. Recipients shall allocate FRM funds for all three rounds by county in accordance with percentages that are generally proportionate to the amount of damage experienced in each of the nine impacted counties. This calculation shall include funds that have already been allocated and funds to be allocated. The State agrees to set aside the following minimum percentages of the total amount allocated for FRM from all CDBG-DR funds, including but not limited to all funds allocated in the first and second tranche CDBG_DR Action Plan and any funds allocated from future federal funds and/or unexpended funds allocated from other programs pursuant to this agreement: Monmouth and Ocean Counties, 52 percent, Atlantic County, 20 percent. The State shall also give preference to the most impacted communities within each county using a prioritization list such as that proposed by NJ HMFA in May 2014 or a substantially similar list based on the degree of major and severe damage to renters.
4. Recipients shall set aside at least 60 percent of the total amount allocated for FRM from all CDBG-DR funds for developments outside Targeted Urban Municipalities (TUMs), which shall be defined for this Agreement pursuant to the definition in the rule adopted by the New Jersey Housing and Mortgage Finance Agency at 45 N.J.R. 1511(a), and the remainder shall be allocated to developments inside TUMs.

5. Of the total FRM funds a minimum of 60 percent of the total amount allocated for FRM from all CDBG-DR funds both outside TUMs and overall shall be dedicated to units that are open to families with children without preference or restriction other than described in this Agreement and affirmatively marketed to those people and groups “least likely to apply” as required by the New Jersey Qualified Allocation Plan as adopted at 45 N.J.R. 1511(a). State Uniform Housing Affordability Control, N.J.A.C. 5:80, requirements on bedroom distribution shall control.
6. The set-aside process for most impacted counties, TUMs, and families with children described above shall be implemented as follows. The State shall provide an initial application period of at least seventy-five (75) days after the effective date of guidelines adopted by NJ HMFA incorporating this set-aside process, which application process shall only require the documents referenced in Section 1 of the FRM Document Checklist proposed by NJ HMFA in May 2014, excluding the Resolution of Need, which to the degree required by state statute may be required by the time of final commitment of funds. The State shall then provide a list of the initial applications received including a listing by county, TUM/non-TUM, and families with children/other. Final applications, including the documents referenced in Section 2 of the FRM Document Checklist (exclusive of, Treatment Works Approval, CAFRA approvals, and Pinelands approvals which shall be closing requirements and not application criteria), shall be due no earlier than October 30, 2014. In the event there are not enough eligible applications from the most underserved counties and/or outside of TUMs and/or serving families with children to result in these allocations as of the October 30, 2014 deadline, Recipients agree to reserve sufficient funds required to meet those targets in subsequent rounds. In scheduling any future rounds, HMFA shall report to the public the allocation of funding designated to each underserved county, inside/outside of TUMs, and serving families with children in order to meet the funding targets. HMFA will schedule any subsequent rounds giving applicants sufficient time to prepare development plans. If, after two subsequent funding rounds, the targets have not been met, the HMFA may allocate the funds as required to generally meet the needs of low and moderate income households.
7. Recipients shall require that at least 50 percent of the units of each bedroom size in each FRM development approved by HMFA after the effective date of this Agreement shall be affordable to households at or below 50 percent of Area Median Income, including that at least 10 percent of units of each bedroom size shall be affordable to households at or below 30 percent of Area Median Income. Up to 15 percent of housing funded in TUMs may be made available to households between 60%-120% of area median income, thus providing income diversification.
8. Unless a specific action is required by federal statute or regulation, municipal support or funding for a development shall not be a point factor in any funding decisions for FRM funding provided that to the degree a resolution of need is required by state statute, Recipients may require such resolution by the time of final commitment of funds.
9. Recipients will require the greater of 15-year affordability or the length of affordability and/or extended use period required by any non-FRM source of

funding used in the project by deed restriction on all new affordable rental housing approved by the HMFA Board for funding via the Section 4.2.1, Fund for Restoration of Multi-Family Housing after the effective date of this Agreement. Nothing in this Agreement shall be interpreted to require that the deed restriction provided to enforce the length of affordability shall require monitoring by the CDBG-DR program for any period longer than required by federal statute or regulation; monitoring pursuant to other established federal and/or state programs shall be acceptable.

10. To minimize relocation and enable return of residents to their pre-storm communities, Recipients will require, as a contractual condition of all loans or grants for developers and operators of rental housing assisted under the Action Plan, including both FRM and any other rental housing funds for which a final commitment of funds is made after the effective date of this agreement, that such units will be made available for the first 90 days to LMI applicants who were displaced by and/or experienced major or severe damage from Superstorm Sandy based on either FEMA registration or alternative proof of damage, impact or displacement, as to be further set forth in a policy to be adopted by the HMFA.
 11. Unless required by federal statute or regulation, no household occupying, or which hereafter occupies, an affordable unit approved by HMFA for funding through FRM after the effective date of this Agreement shall be evicted solely because the household income rises above the initial income eligibility ceiling.
 12. Within sixty (60) days of the effective date of this agreement, the New Jersey Housing and Mortgage Finance Agency shall adopt modifications to its FRM Program Guidelines consistent with this Agreement.
- B. Fund for Restoration of Multifamily Housing (FRM) – Public and Assisted Housing and Sandy Special Needs Housing Fund (SSNHF)
1. The \$30,000,000 in FRM-Public Housing funds in the first and second tranche Action Plans and the \$60,000,000 in SSNHF funds referenced in this agreement shall be considered as separate from the FRM funds and not subject to the requirements outlined above in section IV(A) of this Agreement; all other FRM funds shall be subject to the requirements outlined above in section IV(A).
 2. No later than 45 days after the effective date of this Agreement, Recipients will consult with all Public Housing Authorities (PHAs) in the State, and assisted housing owners and operators to detail the damage to these homes by Superstorm Sandy, and prepare, submit to HUD and post on the DCA's Sandy Website, a detailed description of the type and degree of damage from Sandy to PHA-owned and operated and assisted housing, by development and building, including a comprehensive cost estimate for remaining repairs, and describe the remaining unmet needs to recover from Superstorm Sandy so that reasonable mitigation measures can be undertaken. As

part of this analysis, the State shall indicate which public or assisted housing still have units damaged by Sandy that remain uninhabitable as of the time of the analysis, and prioritize funding to address unmet needs to rehabilitate or reconstruct those units without loss of number of units or number of bedrooms per unit in the municipality in which those units existed before Sandy.

3. No returning resident duly qualified for public or assisted housing prior to Sandy will be subject to any recertification requirement except continuing household income qualification if required by other applicable federal regulations and assignment to unit with the number of bedrooms if required by the applicable regulations. No household will be denied the right to return hereunder because of a change in household members if the head of household or a majority of members of the pre-Sandy household apply to return but may be required to occupy a unit with the number of bedrooms required by the applicable regulations.
4. Notwithstanding any agreement in any other matter, Recipients shall allocate at least an additional \$10,000,000 for SSNHF which shall result in total SSNHF funding from CDBG-DR funds of no less than \$60,000,000.
5. DCA will apply for a waiver necessary to allow CDBG-DR funds to be layered with other federal funding sources such as HOME to produce supportive housing and/or other affordable rental housing.

C. Tenant Based Rental Assistance

1. CDBG-DR tenant-based rental assistance is restricted to three months unless specified by a waiver authorized by HUD. A waiver request is pending with HUD to allow the assistance for a maximum of 24 months. Provided HUD approves any and all necessary waivers, Recipients will continue to develop a Tenant-Based Rental Assistance Program and apply to HUD for any waivers necessary to implement the program.
2. Recipients shall allocate at least an additional \$15,000,000 for tenant-based rental assistance. Such funds shall supplement, and not supplant, the \$17,000,000 proposed by the State to be reallocated from the Landlord Incentive Program to tenant-based rental assistance.
3. These funds shall be allocated as follows:
 - a. There will be a preference for households at or below 30% of area median income;

application, and an explanation of the determination, the right to appeal a final decision to the Office of Administrative Law, and the information customarily required in a New Jersey court filing pursuant to N.J. Rules of Court 4:4-2 regarding the ability to find an attorney through the Lawyer Referral Service or Legal Services of New Jersey, which information shall be provided consistent with the LEP requirements in this Agreement.

2. For any applicant deemed to be eligible in the above-described review, the applicant shall be placed in the order of priority that the applicant would have been in had the application initially been accepted, and funded according to that priority. Recipients shall ensure sufficient funds remain in the RREM program to effectuate this priority.
3. Within thirty (30) days of the completion of the review required pursuant to this subsection, DCA shall provide to FHEO an updated version of the information required to be provided with respect to the RREM program pursuant to this Agreement and an analysis of the application approval rate for RREM by race, ethnicity and income. DCA shall as part of that report provide an assessment of any further adjustments necessary to reduce or eliminate disparities.
4. DCA shall develop and implement a system through which all RREM applicants can receive the most current information on their application's status by telephone, consistent with the LEP requirements in this Agreement.

E. LMI Homeowners Rebuilding Program

1. DCA shall administer a new program serving homeowners who were not served by the prior RREM program, limited to the LMI populations, particularly those who are LEP, of the nine impacted counties. DCA has committed \$40 million for this program; a minimum of \$10 million of the funds committed to this program shall be initially reserved for owners of manufactured housing whose homes were damaged, subject to HUD's approval if necessary. DCA agrees to make available to the public, including on DCA's Sandy Website, the eligibility criteria for the program, including the manufactured housing component, at or before the time that the program opens to applicants.
2. Funding for the new program not needed for the manufactured housing plan described above shall be distributed to homeowners not previously served by RREM with major or severe damage. The application process shall be in all aspects implemented in concert with the housing counseling and outreach and LEP requirements in this Agreement, and shall be open to the nine previously identified most impacted counties. DCA will accept alternative proof of substantial damage for applicants who are unable to or cannot get a substantial damage letter in this program, using

the same provisions provided for RREM in the LEP section of this agreement.

3. Any funds remaining from implementation of this program or from other allocations to the RREM program may be reallocated to the FRM program and DCA may provide that such reallocation will happen as part of its CDBG-DR third tranche action plan so that no further approvals will be needed for such reallocation to take place.

F. Housing Counseling and Outreach

1. Recipients shall implement outreach and housing counseling services to LMI homeowners and renters as follows:

- a. DCA has identified organizations and community partners who will conduct additional robust outreach for the FRM and LMI Homeowners Rebuilding programs in the nine most impacted counties. DCA will fund those outreach efforts with funds totaling \$2 million beginning in July 2014. As part of these efforts, DCA shall provide outreach to LEP communities in each of the nine impacted counties by contracting or subcontracting with community-based organizations with experience working with racial or ethnic minority communities and low and moderate income people in that county in areas most heavily impacted by Sandy, including LEP communities, and the majority of the outreach funding shall be provided to organizations with such experience.

- b. DCA will convene, within 10 days from the date of execution of this agreement, a meeting of a working group to discuss community outreach planning. The Complainant organizations will be invited to this meeting.

- c. DCA will provide housing counseling services through its existing network of HUD-certified housing counseling agencies and, if needed, may issue a separate RFP for such services in the nine previously identified most impacted counties. A proposal may include one or more counties. These housing counseling agencies will provide comprehensive counseling services for both homeowners and renters in order to identify all available homeowner and renter programs and other available resources and to assist with both the application and processing once approved, all in one-stop locations in all nine previously identified most impacted counties. Housing counseling shall be provided in facilities located in lower-income communities impacted by Superstorm Sandy. The counseling shall include financial literacy training, fair housing counseling including mobility counseling and fair housing rights, and any assistance needed to residents of public and assisted housing that are required to be relocated. Counseling agencies shall be required to demonstrate

their ability to collect and report agency and client-level data including client intake, file maintenance, financial and credit analysis, outreach, client notification, and reporting pursuant to 24 CFR 214.103 (f), and meet any additional requirements to interface with state and federal reporting on CDBG-DR funds including but not limited to collecting and reporting the information required pursuant to the Recordkeeping and Reporting provisions of this Agreement.

d. LEP services: All outreach and housing counseling services provided pursuant to this section shall be performed in accordance with the State's LAP. The specific references to LEP communities above shall not be construed as limitations on the full compliance of all such services with the LAP.

e. Recipients agree to provide a minimum of \$2 million per year for housing counseling services until and including the year when the HUD closeout for the CDBG-DR funding occurs, with the final year to be prorated depending on when the closeout occurs and if CDBG-DR funds are available.

G. Access to All CDBG-DR Funded Programs for LMI and LEP Persons who are Potentially Eligible for the Programs

1. Pursuant to the non-discrimination requirements of Title VI at 24 C.F.R. § 1.4, the Recipients are required to take reasonable steps to provide meaningful access to federally funded programs for LEP persons. To comply with their Title VI LEP obligations, the Recipients agree to take the following actions.

a. Completion of Four Factor Analysis. Within 60 days of execution of this Agreement, DCA shall provide a complete Four-Factor Analysis for the nine most affected counties as referenced in the HUD LEP Guidance and shall submit a copy to FHEO. This shall include determining the following:

i. Number or proportion of LEP persons eligible to be served or likely to be encountered by the program, supported by census data or other relevant data, including language for LEP populations of 5% or 1,000 persons in each of the nine most affected counties, considering all languages in the following chart:

Major Foreign Languages Spoken in Nine Most Affected Counties

Sandy-Affected County	Top Non-English Languages Spoken	Estimated LEP Population
Atlantic County	Spanish Vietnamese Chinese	15,800 2,000 2,000
Bergen County	Spanish Korean Polish	41,300 26,200 8,300
Cape May County	Spanish	2,300
Essex County	Spanish Portuguese French Creole	59,600 15,300 8,500
Hudson County	Spanish Arabic Tagalog	105,400 5,000 4,700
Middlesex County	Spanish Chinese Gujarati	53,800 11,700 10,500
Monmouth County	Spanish Portuguese Chinese	21,300 4,000 3,900
Ocean County	Spanish Italian Polish	13,400 1,400 1,000
Union County	Spanish Portuguese French Creole	70,400 9,100 5,000
Total	11 LEP Populations	

- ii. Frequency with which LEP persons come into contact with each program funded by CDBG-DR;
 - iii. Nature and importance of the program, action or service; and
 - iv. The resources available to execute the program and the costs of providing LEP services.
- b. Posting of Four-Factor Analysis. Within ninety (90) days of execution of this Agreement, DCA shall post a complete Four-Factor Analysis completed in accordance with Paragraph 1 above, on DCA’s website under the “Sandy Recovery Division” link.
- c. New CDBG-DR LAP. Within ninety (90) days of execution of this Agreement, DCA shall develop a revised LAP for

Complainants. The outreach to community-based groups that work with LEP, LMI and minority communities described in this section shall be coordinated with and in addition to the outreach efforts required by Section IV. F. of this agreement.

3. **Develop a Training Plan.** Within sixty (60) days from the execution of this Agreement, DCA will develop and provide to HUD a Training Plan that describes training, responsible entities and time frames for completion of training for DCA staff members with public contact, as well as employees or contractors funded from CDBG-DR funds, in LEP Guidance and the LAP, including provisions for training of staff who are responsible for monitoring Subrecipients.
4. **Designate a LAP Coordinator.** Within sixty (60) days from the execution of this Agreement, DCA will hire or identify a LAP coordinator who shall be identified in the body of the LAP, including such person's name, email address, phone number and address, and provide public notice on DCA's Sandy Website of contact information for the LAP Coordinator in appropriate languages;
5. **Develop a Language Bank.** Within sixty (60) days from the execution of this Agreement, DCA shall identify staff and contractors who are fluent in various languages, their contact names, telephone numbers and/or email addresses, and their hours of availability. If a Language Bank list already exists, DCA shall submit it to HUD within 10 days of execution of this Agreement. DCA shall use this list to support the provision of translation services in locations that have contact with the public.
6. **Provide a List of Vital Documents to be Translated.** Within twenty (20) days of HUD's approval of the LAP, DCA shall provide a list of vital documents that will be translated and the timetable for translations, for each Sandy-related program, including:
 - a. **Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) Program**
 - b. **Landlord Incentive Program**
 - c. **Landlord Rental Repair Program**
 - d. **Special Needs Housing Program**
 - e. **Large Multifamily Program**
 - f. **Neighborhood Enhancement Program**

provide written notice, including guidance and technical assistance, to all of the Subrecipients in DCA's CDBG-DR program regarding their obligations to provide appropriate LEP services ensuring access to federally funded programs in compliance with Title VI. DCA shall provide a copy of this written notice to HUD at least ten (10) days prior to disseminating the notice to Subrecipients. This notice shall:

- i. Inform Subrecipients that they must take reasonable steps to provide meaningful access to eligible LEP persons to comply with Title VI requirements and provide a link to the HUD LEP Guidance and other technical assistance resources.
 - ii. Recommend that Subrecipients follow the HUD LEP Guidance and conduct a Four-Factor Analysis to determine the need for LEP services in their program;
 - iii. Recommend that Subrecipients complete a LAP, if necessary, based on the Four-Factor Analysis; and
 - iv. Require Subrecipients to maintain records regarding their efforts to comply with Title VI LEP obligations, including documents related to the Four-Factor Analysis, the LAP, and LEP services provided to eligible persons. Such records shall be available for monitoring reviews of Subrecipients conducted pursuant to 24 C.F.R. § 570.492. See 24 C.F.R. § 570.490(b).
 - v. Recipients affirm that all LEP services or actions contained in the LAP will apply to any program administered by DCA or Subrecipients servicing individuals that are funded by CDBG-DR funds, including for renters applying for assistance, etc.
 - vi. Monitoring of Subrecipients. DCA shall monitor Subrecipients for compliance with Title VI LEP obligations when it conducts regular compliance monitoring of Subrecipients as required by HUD regulations. See 24 C.F.R. § 570.492. DCA shall maintain appropriate monitoring records to facilitate HUD reviews. See 24 C.F.R. § 570.490; 24 C.F.R. § 570.493.
10. Database Update. Within forty five (45) days of execution of this Agreement, DCA shall ensure that its database systems are updated to include a field that can be populated for "LEP/language assistance" and the language needed (if any) for data collected about applicants

for assistance or other participants including small business owners. In this way, it can begin to collect needed data about the LEP population it serves and the specific language needs of its participants and applicants.

11. **Waitlist Review.** Within sixty (60) days of execution of this Agreement, DCA shall send a letter to each individual who has been accepted or wait-listed for the RREM program in English and Spanish and including a reference to a toll free telephone number which provides information in all of the major languages identified above to determine if any such individuals require LEP assistance; if so, DCA shall ensure that the individual's file identifies such individual as "LEP" and the type of language assistance needed. DCA shall also include such a letter as part of informing all applicants who were initially rejected of the results of the review of their applications. When contacting each individual who has been accepted, wait-listed, or had their application's denial reviewed, DCA shall also inform the individual that free language assistance is available for persons who need such assistance, and the information is being collected in order to better assist them. The initial written communication shall be sent in both English and Spanish. The Department shall be provided with the results of this effort within ninety (90) days of the execution of this Agreement.
12. **Robust LEP Outreach.** Within sixty (60) days of execution of this Agreement and after completion of the actions described above, DCA shall initiate its LEP outreach plan consistent with that contained in its LAP and in partnership with the outreach and counseling organizations selected pursuant to Section VI H. This outreach shall, in addition to providing information on all available CDBG-DR programs for both renters and homeowners, inform the LEP community that DCA will open a new LMI Homeowners Rebuilding program. The information provided shall include an indication that bilingual staff and interpretation services are available on DCA's Sandy Website, by phone or in person at any site serving the public, without charge.
13. **State and DCA Sandy-Related Press Releases, etc.** Within forty five (45) days of the execution of this Agreement, the State and DCA shall ensure that all official press releases and other written announcements that are issued pertaining to Sandy-related activity that is funded by CDBG-DR monies and issued by DCA or other State agency, be posted and provided in English and Spanish.
14. **DCA Website.** Within one hundred twenty (120) days of the execution of this Agreement, DCA shall ensure that DCA's Sandy Website is properly modified to reflect that all provisions are

compliant and shall consult with FHEO staff to address each individual concern to FHEO's satisfaction.

15. **Access to LEP Population for Units Produced with Federal Funding.** For every unit of housing that is initially rented or made available for sale on or after the effective date of this Agreement and which receives or has received CDBG-DR funds, the availability of the unit shall be listed, with basic characteristics such as bedroom size, location, and rent on a single statewide web site fully compliant with the LAP prior to the rental or sale of that unit with information on how to rent or purchase that unit and a statement that such unit is subject to the provisions of the Fair Housing Act and has a priority for occupancy by people impacted by Superstorm Sandy.
16. **Proof of Substantial Damage.** DCA shall accept alternative evidence of substantial damage as approved by HUD in Substantial Amendment No. #8 to the State's Action Plan. For RREM, if necessary to meet LMI targets, DCA shall provide funding in accordance with the level of damage to LMI households with damage of less than 50 percent of home value.
17. **LAP Appeal Process.** The LAP will be amended to include an appeals process for application denials, and the availability of either a Hearing Office who speaks the language of the LEP individual, or the provision of translation services in that LEP individual's language. The public and advocacy groups will be notified that language assistance is available for appeals if an LEP individual is rejected from applying for any disaster recovery program. Further, this information must be posted in all Housing Recovery Centers in a location that is visible to the public.
18. **DCA will ensure that it complies with LEP requirements, including providing publicly available eligibility criteria and application information in appropriate languages, translation of vital documents, providing information on websites, and communicating with individuals in appropriate languages, and that these resources are available to applicants before it markets to the public or accepts applications for the programs described in Sections IV. D. and E. of this Agreement. Starting sixty (60) days after the execution of this agreement, DCA will also ensure that all FRM-funded housing is marketed in a manner that complies with the LEP requirements set forth in this Agreement.**

V. SECTION 3 COMPLIANCE

A. Specific Provisions for Section 3 Compliance

1. Section 3 Oversight and Administration

- a. Unless compliance with applicable federal or state procurement statutes and regulations require a longer time period, within sixty (60) days of the effective date of this Agreement, the State shall complete selection of a firm responsible for ensuring compliance with Section 3 of the Housing and Community Development Act for its CDBG-DR funded activities.
- b. Within ninety (90) days of the effective date of this agreement, DCA shall hire or appoint a full time Section 3 coordinator for its CDBG-DR activities and notify FHEO of the name and contact information for its selection.
- c. DCA shall notify the Department in writing within 10 days after removing or replacing its Section 3 Coordinator(s).
- d. DCA shall take all appropriate measures to ensure that the person so hired or appointed will have the proper authorization and powers to ensure compliance with this Agreement and Section 3.

2. Section 3 Plan

- a. DCA shall develop and provide to HUD a Section 3 Plan for its CDBG-DR activities within ninety (90) days of the execution of this Agreement. HUD will complete its review of the plans within thirty (30) days of the plan being provided to HUD. The State shall adopt a final version of a Section 3 plan within one hundred fifty (150) days of the effective date of this Agreement. In addition, within one hundred twenty (120) days of the execution of this Agreement, DCA shall develop and provide to HUD a Section 3 Implementation Guide to facilitate consistent compliance with Section 3 in all aspects of the State's CDBG-DR activities. All final documents should clearly assert that Section 3 compliance is required by law, and describe specific penalties that may be imposed upon Subrecipients, contractors, and subcontractors for noncompliance. Section 3 Plans and Implementation Guides shall be posted on DCA's Sandy Website at each of the deadlines in this paragraph so they are accessible to prospective sub recipients, contractors, Section 3 residents and Section 3 businesses.
- b. No changes may be made to these Section 3 plans without the written consent of HUD.

3. Annual Reports. DCA shall timely submit Section 3 summary reports for all covered activities undertaken by the State, its Subrecipients, developers, contractors and subcontractors in accordance with the Section 3 annual reporting requirements at 24 CFR. § 135.90.

4. **Outreach and Training Efforts:**
 - a. **Within forty-five (45) days of the effective date of this Agreement, DCA must convene an internal information session and review the provisions of this Agreement with its key managers and staff.**
 - b. **Within one hundred fifty (150) days of the effective date of this Agreement, DCA shall develop and provide to HUD Section 3 training and outreach materials for staff, Section 3 businesses and Section 3 covered persons that describe the requirements of this Agreement, the Section 3 regulations and the State's Section 3 Implementation Plan. During the course of this Agreement, DCA must receive approval from HUD to use any new or modified Section 3 materials for its training/outreach efforts.**
 - c. **Within thirty (30) days of HUD's approval, DCA shall initiate outreach and education efforts to Section 3 businesses and Section 3 covered individuals, especially targeting business communities and potential Section 3 businesses in a manner consistent with the Section 3 Plan. It should coordinate its outreach efforts with local chambers of commerce and other organizations and agencies that engage in business growth activities. DCA shall include in its monitoring reports a schedule of events and activities under this section.**
 - d. **HUD may, at its discretion, direct Recipients to increase their outreach efforts or direct them to focus their outreach efforts to particular groups, organizations or a subset of Section 3 residents or Section 3 businesses. Outreach efforts for all Section 3 activities should include, but are not limited to, posting notices on its website, posting notices in the common areas or other prominent areas of its housing developments, advertising through local media, such as community television networks, newspapers of general circulation, minority owned newspapers, local business trade magazines/flyers, radio advertising, and internet media outlets (ex. Face book, Twitter, etc.).**
 - e. **DCA agrees to utilize the Section 3 Business Registry program provided by HUD and to encourage Section 3 individuals and businesses to sign up for the Business Registry.**

B. Section 3 Monitoring and Enforcement by DCA

1. DCA shall establish an active Section 3 enforcement and monitoring process applicable to itself and to its Subrecipients and assign or designate appropriate personnel to do so, consistent with the terms of this Agreement. The enforcement and monitoring process must provide a methodology capable of monitoring the State's internal compliance with Section 3 and this Agreement, and monitoring contractors, subcontractors and private property management companies' compliance with Section 3. DCA shall refrain from knowingly entering into contracts with any contractor currently in violation of Section 3 pursuant to 24 CFR § 135.32(d).

VI. FAIR HOUSING TRAINING

- A. DCA will train their employees and contractor representatives (and those of their sub-recipients) who are responsible for the implementation of recovery programs on the requirements of the Affirmatively Furthering Fair Housing regulations and on civil rights compliance.
- B. The State will, within ninety (90) days of HUD's approval of this Agreement, require its employees, contractor representatives and agents and those of Subrecipients, charged with implementation of recovery programs, to participate in training on Affirmatively Furthering Fair Housing and on civil rights compliance, provided by HUD or by some entity approved by HUD using a curriculum approved by HUD. The training will be recorded in video format and all Subrecipients' principals shall certify that they have viewed the training prior to and as a condition of all contracts.
- C. The Respondent shall forward to HUD objective evidence of the successful completion of training required by this Agreement in the form of a Certificate or a letter from the entity conducting the training, together with a list of participants, within five (5) days of the completion of the training, as evidence of compliance.

VII. PREPARE A 2015 ANALYSIS OF IMPEDIMENTS

- A. The State agrees by January 15, 2015 to prepare its 2015 Analysis of Impediments to Fair Housing Choice (AI) including identifying post-storm impediments to fair housing in the storm affected counties as required by HUD's March 2013 Notice, and to submit the AI to HUD for review and approval.
- B. HUD agrees to provide technical assistance to the State regarding its preparation of the 2015 Analysis of Impediments and the State agrees to request technical assistance when preparing the AI.

VIII. REPORTING AND RECORDKEEPING

- A. Quarterly reporting. DCA will provide to FHEO and Complainants a quarterly report with the following information to track compliance with this Agreement:**
- 1. The first Report will be due August 1, 2014. Thereafter, Reports will be due quarterly for the duration of the Agreement.**
 - 2. An updated list of each applicant to RREM and the LMI Homeowners Program that provides the application ID, application status (i.e. approved, wait listed, rejected, still processing, in appeal), LMI status, LEP status, race, ethnicity, zip code, municipality, and county without personally identifying information.**
 - 3. The most current list of all units and projects funded through FRM, FRM-PHA, SSNHF, and all other programs in Section 4.2 of the Action Plan, including street address, municipal location, family/senior/supportive status, and income levels served. The State will also post this information on DCA's Sandy Website.**
- B. Quarterly Reporting on LEP. DCA will submit to FHEO and Complainants an Implementation Report ("Report") on a quarterly basis that quantifies all requests for LEP services, LEP services that have been provided, and also identifies all actions taken to implement the Agreement.**
- 1. The first Report will be due August 1, 2014. Thereafter, Reports will be due quarterly for the duration of the Agreement.**
 - 2. Each Report shall contain a summary and a numerical count of all requests for LEP services and all LEP services that have been provided by DCA.**
 - 3. Each Report shall contain a narrative regarding DCA's monitoring of sub-recipients' LAPs and LEP compliance and provide an overview of DCA's findings.**
 - 4. In the Reports due August 1 of each year for the remainder of the Agreement, DCA will submit an updated LAP to HUD for approval. If DCA has not updated the LAP, the Report shall contain an explanation of why DCA's current LAP is effective and sufficient and does not require updating.**
- C. Quarterly Reporting. DCA will provide to FHEO and Complainants and concurrently post on DCA's Sandy Website a quarterly report with the following information to track compliance with this Agreement:**

1. The first Report will be due August 1, 2014. Thereafter, Reports will be due quarterly for the duration of the Agreement.
 2. DCA will report cumulative numbers on of households served by FRM, FRM-PHA and SSNHF including household income as a percentage of area median family income as defined by HUD, the race and ethnicity of the head of the household if available, the household's LEP status, zip code, Census tract, municipality, and county.
 3. DCA will provide updated lists of all projects funded through all infrastructure, small business, economic development, and other programs with municipal location and LMI benefit, and the methodology used to determine that LMI benefit.
 4. DCA will provide total LMI benefit of all projects funded to date.
- D. Simultaneous with its quarterly submission to HUD, DCA will post reports on its Sandy Website containing all data reported in the HUD Disaster Recovery Grant Reporting System (DRGR) with respect to Superstorm Sandy.
- E. Recipients will cooperate with all requests from Complainants and other members of the public pursuant to the New Jersey Open Public Records Act. Nothing contained in this Agreement shall be construed to limit or affect Complainants' or any other parties' rights to request documents pursuant to the New Jersey Open Public Records Act.
- F. DCA shall require all Subrecipients of CDBG-DR funding to collect data that enables timely compliance with this section.
- G. Recordkeeping. During the term of this Agreement, DCA shall maintain the following records and upon request, make these records available for review by the Department. See 24 C.F.R. §§ 570.490, 570.492 and 570.493.
1. DCA shall maintain a monitoring file for each Subrecipient. The file will include: 1) any documentation regarding any LEP guidance or technical assistance provided by the Recipient; and 2) any documentation of Four-Factor Analyses and LAPs, or comparable documents, that were prepared by sub-recipients pursuant to Section VI. of this Agreement.
 2. DCA shall maintain files containing documentation of its efforts to meet the obligations of this Agreement and documentation of the information used to generate any of the reports required pursuant to this Agreement.
 3. DCA shall require all Subrecipients of CDBG-DR funding to retain and provide to DCA all records containing documentation of its efforts to meet the obligations of this Agreement and documentation

of the information used to generate any of the reports required pursuant to this Agreement.

IX. MONITORING AND COMPLIANCE WITH THIS AGREEMENT

- A.** The Recipients and Complainants will share information, hold periodic meetings and agree to participate in good faith in special meetings called by any Party to address compliance issues. Complainants agree to provide the Recipients notice of an alleged violation of the Agreement. Within 20 days of the notice the parties agree to meet and confer to discuss the alleged violations raised by Complainants prior to seeking enforcement through court proceedings.
- B.** An action by Complainants or any of them for breach of this Agreement may not be commenced until and unless the Recipients have been given written notice specifying the basis for the assertion of a material breach, a reasonable opportunity to cure in accordance with Section 11A, and have failed to cure or take steps to cure. Each party agrees that, in the event of a breach of this Agreement, the harmed party is limited to seeking injunctive relief to compel compliance with this Agreement, and reasonable attorney's fees related to any action to enforce the Agreement. Jurisdiction to enforce the agreement through a civil action by Complainants shall lie in the United States District Court or in New Jersey state court with venue in Superior Court, Law Division, Mercer County or Superior Court, Appellate Division, as applicable.
- C.** FHEO will monitor compliance with this Agreement, which may include, but is not limited to: reviewing reports required by this Agreement; interviewing the Recipients' staff and beneficiaries; conducting on-site reviews; and examining documents. By this Agreement, the Recipients will assure full cooperation with the monitoring review undertaken by the Department and assures it will produce requested data or information in a timely fashion.
- D.** Upon a finding of material non-compliance with this Agreement, FHEO will provide the Recipients with a written statement specifying the facts of the alleged material non-compliance and a reasonable opportunity to resolve or cure the alleged material non-compliance including an opportunity to meet and provide evidence supporting compliance. If after the above process, the Recipients have not satisfactorily resolved the claims of material non-compliance, the Department may take any contractual, statutory, administrative or regulatory remedy available to the Department to resolve the outstanding findings of non-compliance, including but not limited to referral to the Attorney General of the United States, to commence a civil action in the appropriate U. S. District Court, pursuant to §§ 810(c) and 814(b) (2) of the Act. The Recipients retain any due process or other rights to review or appeal the Department's determination. It is understood that no conditions in this Agreement, however, will limit or restrict the Department's legal rights to enforce Title VI or other applicable laws and regulations.
- E.** Prior to the expiration of any timeframe in this Agreement, the Recipients may submit a request for an extension supported by documentation of good cause. The Department shall review requests for extensions and grant them as a modification to this Agreement if they are reasonable, which shall be in their sole discretion to determine.

- F.** Failure by HUD or Complainants to enforce this entire Agreement or any provision in the Agreement with regard to any deadline or any other provision herein shall not be construed as a waiver of its right to do so regarding to other deadlines and provisions of this Agreement. Furthermore, HUD's or Complainants' failure to enforce this entire Agreement or any provision thereof shall not be construed as a waiver of any obligation of the Recipient under this Agreement.
- G.** If any section of this Agreement is determined by a court to be in violation of the laws of the State, federal law or regulation, or against public policy, that section shall be severable and the remainder of the Agreement shall continue to operate in full force.
- H.** This Agreement contains the entire Agreement and understanding between the Parties. With respect to this Agreement, no representations, promises, agreements or understandings, written or oral, not herein contained shall be valid or binding unless the same is in writing and signed by the party intended to be bound.
- I.** This Agreement is the result of conciliation negotiations undertaken in good faith and in that regard the rule of contractual construction that an ambiguous term shall be construed against the drafter shall not be employed.
- J.** Each of the Parties represents and warrants to the others that it has had this Agreement reviewed by counsel prior to execution.

X. SIGNATURES



Peter J. O'Connor, Executive Director
FAIR SHARE HOUSING CENTER, COMPLAINANT

5/29/14

Date

Frank Argote-Freyre
Frank Argote-Freyre, President
LATINO ACTION NETWORK, COMPLAINANT

MAY 29, 2014
Date



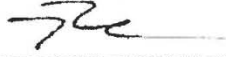
Richard Smith, ~~President~~
COMPLAINANT NJ STATE CONFERENCE
OF THE NAACP

05.29.2014

Date


COUNSEL FOR COMPLAINANTS

5/29/14
Date



[RESPONDENT]

5-30-14

Date



COUNSEL FOR RESPONDENTS

5/30/14
Date

EXHIBIT 5-5
`CDBG COMPLIANCE PROVISIONS
FOR
PROFESSIONAL SERVICES CONTRACTS

CONTENTS

1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)
2. CERTIFICATION OF NONSEGREGATED FACILITIES
3. CIVIL RIGHTS
4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974
5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES
6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED
8. AGE DISCRIMINATION ACT OF 1975
9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS
10. FLOOD DISASTER PROTECTION
11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS
12. INSPECTION
13. REPORTING REQUIREMENTS
14. CONFLICT OF INTEREST
15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED
16. PATENTS
17. COPYRIGHT
18. TERMINATION FOR CAUSE
19. TERMINATION FOR CONVENIENCE

20. ENERGY EFFICIENCY
21. SUBCONTRACTS
22. DEBARMENT, SUSPENSION, AND INELIGIBILITY
23. BREACH OF CONTRACT TERMS
24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED
25. CHANGES
26. PERSONNEL
27. ANTI-KICKBACK RULES
28. ASSIGNABILITY
29. INTEREST OF CONTRACTOR
30. POLITICAL ACTIVITY
31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET
32. DISCRIMINATION DUE TO BELIEF
33. CONFIDENTIAL FINDINGS
34. LOBBYING

1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)
(applicable to contracts and subcontracts above \$10,000)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

3. CIVIL RIGHTS

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training

positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)

(applicable to contracts and subcontracts over \$10,000)

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

8. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) and Section 308 of the Federal Water Pollution

Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

10. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The State of New Jersey, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the State's final closeout of the grant.

12. INSPECTION

The authorized representative and agents of the State of New Jersey and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

14. CONFLICT OF INTEREST

A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED

(applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Contractor agrees as follows:

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. Contractors shall incorporate foregoing requirements in all subcontracts.

16. PATENTS

A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

17. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

18. TERMINATION FOR CAUSE

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

19. TERMINATION FOR CONVENIENCE

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

20. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

21. SUBCONTRACTS

- A. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of New Jersey.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

22. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

23. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

25. CHANGES

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

26. PERSONNEL

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner. All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

27. ANTI-KICKBACK RULES

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

28. ASSIGNABILITY

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

29. INTEREST OF CONTRACTOR

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

30. POLITICAL ACTIVITY

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

32. DISCRIMINATION DUE TO BELIEFS

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

33. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

34. LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the contractor, 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.
2. If any funds other than federally 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, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

APPENDIX C

BUSINESS ENTITY DISCLOSURE CERTIFICATION FOR NON-FAIR AND OPEN
CONTRACTS

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

BUSINESS ENTITY DISCLOSURE CERTIFICATION
FOR NON-FAIR AND OPEN CONTRACTS
Required Pursuant To N.J.S.A. 19:44A-20.8
CITY OF SEA ISLE CITY

The following is statutory text related to the terms and citations used in the Business Entity Disclosure Certification form.

“Local Unit Pay-To-Play Law” (P.L. 2004, c.19, as amended by P.L. 2005, c.51)

19:44A-20.6 Certain contributions deemed as contributions by business entity.

5. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

19:44A-20.7 Definitions relative to certain campaign contributions.

6. As used in sections 2 through 12 of this act:

“business entity” means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

“interest” means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

Temporary and Executing

12. Nothing contained in this act shall be construed as affecting the eligibility of any business entity to perform a public contract because that entity made a contribution to any committee during the one-year period immediately preceding the effective date of this act.

~~~~~

**The New Jersey Campaign Contributions and Expenditures Reporting Act (N.J.S.A. 19:44A-1 et seq.)**

**19:44A-3 Definitions.** In pertinent part...

p. The term "political party committee" means the State committee of a political party, as organized pursuant to R.S.19:5-4, any county committee of a political party, as organized pursuant to R.S.19:5-3, or any municipal committee of a political party, as organized pursuant to R.S.19:5-2.

q. The term "candidate committee" means a committee established pursuant to subsection a. of section 9 of P.L.1973, c.83 (C.19:44A-9) for the purpose of receiving contributions and making expenditures.

r. the term "joint candidates committee" means a committee established pursuant to subsection a. of section 9 of P.L.1973, c.83 (C.19:44A-9) by at least two candidates for the same elective public offices in the same election in a legislative district, county, municipality or school district, but not more candidates than the total number of the same elective public offices to be filled in that election, for the purpose of receiving contributions and making expenditures. For the purpose of this subsection: ...; the offices of member of the board of chosen freeholders and county executive shall be deemed to be the same elective public offices in a county; and the offices of mayor and member of the municipal governing body shall be deemed to be the same elective public offices in a municipality.

**19:44A-8 and 16 Contributions, expenditures, reports, requirements.**

*While the provisions of this section are too extensive to reprint here, the following is deemed to be the pertinent part affecting amounts of contributions:*

“The \$300 limit established in this subsection shall remain as stated in this subsection without further adjustment by the commission in the manner prescribed by section 22 of P.L.1993, c.65 (C.19:44A-7.2)

## EXHIBIT A

### **MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127) N.J.A.C. 17:27**

#### **GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at:

[www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance) )

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

Name of Company \_\_\_\_\_

Name of Highest Officer \_\_\_\_\_

Signature of Officer \_\_\_\_\_

**DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

Quote Number: \_\_\_\_\_ Bidder/Offeror: \_\_\_\_\_

**PART 1: CERTIFICATION**  
**BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX.**  
**FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE.**

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders must review this list prior to completing the below certification. **Failure to complete the certification will render a bidder's proposal non-responsive.** If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party

**PLEASE CHECK THE APPROPRIATE BOX:**

I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. **I will skip Part 2 and sign and complete the Certification below.**

OR

I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

**PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN**

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

NAME: \_\_\_\_\_ Relationship to Bidder/Offeror: \_\_\_\_\_

Description of Activities \_\_\_\_\_

Duration of Engagement: \_\_\_\_\_ Anticipated Cessation Date \_\_\_\_\_

Bidder/Offeror Contact Name: \_\_\_\_\_ Contact Phone Number: \_\_\_\_\_

**PLEASE PROVIDE THOROUGH ANSWERS FOR EACH QUESTION.**  
**IF YOU NEED TO MAKE ADDITIONAL ENTRIES PLEASE ATTACH A SEPARATE SHEET(S) TO THIS FORM**

**Certification:** I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey/City of Sea Isle City is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State/City to notify the State/City in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey/City of Sea Isle City and that the State/City at its option may declare any contract(s) resulting from this certification void and unenforceable.

FULL NAME (PRINT): \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_