

Lower Manhattan Acquisition Program REQUEST FOR QUALIFICATIONS

Issue Date: April 9, 2015

Bill de Blasio, Mayor

Alicia Glen, Deputy Mayor for Housing and Economic Development



**Department of
Housing Preservation
& Development**

Vicki Been

Commissioner

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APPENDICES

- A. EQUAL OPPORTUNITY**
- B. CDBG/LMDC REQUIREMENTS**
- C. QUALIFICATIONS FORMS**

FORMS ARE AVAILABLE FOR DOWNLOAD ON THE WEBSITE IN WORD AND EXCEL FORMATS AS PART OF THIS RFQ.

- FORM A-1: COMPLETENESS CHECKLIST
- FORM A-2: APPLICANT'S LETTER
- FORM B: APPLICANT DESCRIPTION
- FORM C: RESIDENTIAL DEVELOPMENT EXPERIENCE
- FORM D: ASSET MANAGEMENT AND OWNERSHIP EXPERIENCE
- FORM E: ASSETS STATEMENT

I. INTRODUCTION

Pursuant to this Request for Qualifications (“RFQ”), the City of New York (“City”), through its Department of Housing Preservation and Development (“HPD”), with up to \$11,800,000 in funding from the Lower Manhattan Development Corporation (“LMDC”), is inviting not-for-profit sponsors (“Applicants”) to submit qualifications (“Qualifications”) to receive funding assistance under the Lower Manhattan Acquisition Program (“Program”) for the acquisition and rehabilitation of eligible multi-family housing buildings (“Project(s)” or “Eligible Properties”) that are in the geographic area (“Eligible Geographic Area”) described herein. The Project(s) will consist of affordable dwelling units to be restricted under a regulatory agreement with HPD.

This RFQ seeks to encourage the preservation of affordable housing in the area of Lower Manhattan south of, and including properties on, East/West Houston Streets, bounded by the Hudson and East Rivers. The aim of the RFQ is to attract a diverse group of sponsors to acquire and rehabilitate and manage existing affordable housing projects. This RFQ is in accordance with the Mayor’s *Housing New York: A Five-Borough, Ten-Year Plan*, which commits to the preservation or new construction of 200,000 units by 2024. The proposed Project serves the Plan’s crucial goals of fostering diverse, thriving neighborhoods and building new affordable housing for eligible New Yorkers.

HPD will assess responding Applicants for pre-qualification to propose geographically eligible Projects for acquisition and rehabilitation funding assistance through this RFQ. The result of this RFQ will be a list of qualified sponsors (“Qualified Sponsors”). HPD will review proposals for funding assistance related to eligible Project(s) in the Eligible Geographic Area put forth by Qualified Sponsors on a first come first serve basis, subject to funding availability.

All Applicants must adhere to the requirements of this RFQ. HPD will select one or more Applicant(s) for the list of Qualified Sponsors based on experience in affordable housing development, management of affordable housing, and financial capacity. HPD reserves the right to select from the list of Qualified Sponsors for participation in other related HPD programs. This RFQ does not represent any obligation or agreement whatsoever on the part of the City, HPD, or LMDC.

II. DEFINITIONS

Applicant

A not-for-profit organization that submits Qualifications in response to this RFQ.

Area Median Income

Area Median Income (“AMI”) shall mean the median income levels as modified by household size for the New York metropolitan statistical area as determined from time to time by HUD. For 2014, 100% of the AMI is \$83,900 for a family of four in the New York Metropolitan Statistical Area and \$58,800 for a single person.

CDBG

The United States Department of Housing and Urban Development’s Community Development Block Grant Program.

City

The City of New York

DOB

The New York City Department of Buildings

Development Team

The Sponsor and the professional, technical, and construction entities (e.g. general contractor, architect, engineer, legal counsel, not-for-profit organization, marketing agent, and managing agent) that will participate in the design, development, rehabilitation, marketing, and/or management of the Project.

HUD

The United States Department of Housing and Urban Development

LMDC

The Lower Manhattan Development Corporation

Qualifications

Material submitted in response to this RFQ that details the Applicant’s affordable housing development experience, management/ownership experience, and financial capacity.

Principal

An individual, partnership, limited liability company, corporation, or other not-for-profit or for-profit entity that will act as the general partner, officer, or managing member of the Applicant, or any entity, known limited partner, or other member that has at least a 10% ownership interest in the Applicant.

Qualified Building or Qualified Property

A multi-family building (consisting of not less than five units on one site) in the Eligible Geographic Area* that has (or will have) (i) existing rents for all dwelling units that are affordable (requiring no more than 30% of income to go towards rent) to households earning up to 80% of AMI and that (ii) requires no more than \$125,000 per dwelling unit of acquisition assistance under the Program.

Should HPD and LMDC determine that it is helpful to the operation of the program, a building that contains or will contain units affordable to a range of income levels may also be deemed to be a Qualified Building or a Qualified Property, so long as the program funding is associated only with those units that are affordable to households earning up to 80% of AMI.

* If the property is located in Chinatown/Lower East Side and contains 15 – 40 units, all or part of the funding may be provided through the existing Chinatown/Lower East Side Acquisition Program.

Program

The Lower Manhattan Acquisition Program.

Project

An acquisition project under which HPD provides or may provide Funding Assistance.

Funding Assistance

Funding Assistance provided or to be provided by HPD for the acquisition of Qualified Buildings under the Program.

Qualified Sponsor

The entity or entities selected by the HPD that is eligible to commence negotiations regarding the acquisition of Qualified Buildings through this RFQ. The entity or entities will provide equity, secure financing, assemble a Development Team, and design, develop, rehabilitate if needed, market, and manage the Project. The City, HPD, and LMDC are under no obligation to enter into negotiations or proceed with a Project with any Qualified Sponsor as a result of this RFQ.

Commitment Letter

Letter from HPD issued prior to an acquisition and construction closing under which HPD conditionally commits to provide funding for a Project.

NEPA

National Environmental Policy Act

Section 3

Section 3 of the Housing and Urban Development Act of 1968

Section 18

Section 18 United States Housing Act of 1937 as Amended by the Quality Housing and Work Responsibility Act of 1998

Eligible Geographic Area

The area of Lower Manhattan south of, and including properties on, East/West Houston Streets, bounded by the Hudson and East Rivers.

III. QUALIFICATIONS ELIGIBILITY AND SELECTION PROCESS

A. Eligibility to Apply

This RFQ is open to not-for-profit entities that have the experience and organizational capacity to successfully rehabilitate and manage affordable housing buildings.

B. Process

HPD will review applications and identify a list of Qualified Sponsors based on the criteria in *Section V Qualification Requirements*.

When a Qualified Sponsor submits a proposal seeking Funding Assistance, HPD will evaluate the proposal for feasibility, including an evaluation of whether the building is a Qualified Building and of the financing proposal for the specific property. Should the proposal meet the required preliminary criteria, HPD may commence negotiations with the Qualified Sponsor and may ultimately issue a Commitment Letter communicating the terms of the assistance.

If a Qualified Sponsor is selected to receive assistance as part of the Program, the Sponsor must adhere to all requirements in *Section IV Obligations of Selected Qualified Sponsor*. However, the City, HPD, and LMDC are under no obligation to commit funding to a proposal submitted by a Qualified Sponsor. Not all Applicants who are deemed qualified will ultimately receive funding under this program. Any obligation or agreement on the part of the City, HPD, or LMDC may only be incurred after the parties enter into a written agreement approved (in the case of the City and HPD) by the Mayor and the City's Law Department and after all necessary environmental reviews have been completed.

IV. OBLIGATIONS OF SELECTED QUALIFIED SPONSOR

A. Development Team

If HPD selects a Qualified Sponsor to receive funding assistance under the Program to acquire and rehabilitate a Qualified Building, the Qualified Sponsor will be responsible for assembling a Development Team, including at minimum a contractor and marketing agent, and managing agent (if applicable). Applicants should not assemble a development team for the purpose of submitting Qualifications for this RFQ.

B. Schedule

The selected Qualified Sponsor will be responsible for arranging timely commencement and completion of the Project and to submit ongoing status reports regarding Project development, financing, marketing, leasing, and management.

C. Community Outreach

The Qualified Sponsor will participate in required public forums, hearings, and briefings with the Community Board, elected officials, City agencies, and other organizations, as needed. The Qualified Sponsor will be responsible for obtaining all necessary public approvals.

D. HPD Design Process

The design and construction plans of any proposed Project may be subject to review by HPD's Division of Building and Land Development Services (BLDS). In Projects where this review is required, the provision of Funding Assistance will be contingent on a satisfactory review by BLDS. Any submitted designs must also conform to the current New York City Zoning Resolution and Building Code, and all other applicable laws and regulations including, but not limited to, the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.

E. Sustainability and Active Design

HPD will encourage energy efficiency improvements as part of any rehabilitation efforts so as to reduce the negative impact buildings have on the health of the environment and communities, as well as to create a healthy indoor and outdoor environment for occupants through integrated design, best practices and emerging technologies.

F. Environmental Review Requirements

Any selected Qualified Sponsor will be responsible for preparing associated environmental studies including, but not limited to environmental assessments, Phase I Environmental Site Assessments (ESA), Phase II ESAs, Phase IA archaeological assessments, and site-specific (subsurface) soil and groundwater investigations. The Qualified Sponsor will be responsible for implementing any remedial measures

identified in connection with the redevelopment of sites sourced through this RFQ.

The Qualified Sponsor will obtain all necessary environmental approvals. All environmental reviews and determinations must be completed prior to the closing on any Project site. LMDC will serve as the Responsible Entity (RE) for National Environmental Policy Act (NEPA) reviews and will oversee the preparation of all NEPA documentation. The Qualified Sponsor will be responsible for the preparation and submission of all NEPA environmental reviews to LMDC in accordance with applicable federal environmental requirements.

G. Equity and Financing

The Qualified Sponsor must secure all necessary financing sources for the Project. The amount of the Qualified Sponsor's equity will be determined by HPD and the other lender(s). The Qualified Sponsor will be required to submit a term sheet and letter of intent from a lender indicating willingness to lend an amount for acquisition financing of the Project within a period of time to be defined in a Commitment Letter.

H. Taxes

The selected Qualified Sponsor will pay all applicable transfer taxes associated with the acquisition of the Site(s) and all transfer and recording taxes associated with project financing. The Qualified Buildings are subject to New York City Real Property Taxes and charges. However, tax exemptions may be available through HPD. Once a Qualified Sponsor is approved to receive Funding Assistance, it is the responsibility of the Qualified Sponsor to apply for and meet the requirements of the specific tax benefit program(s). **The City, HPD, and LMDC make no representations or warranties as to the continued availability of these benefits or as to the eligibility to receive these benefits.**

I. Marketing

The selected Qualified Sponsor will market the residential units in accordance with City requirements.

V. ADDITIONAL REGULATIONS

A. Fair Housing Requirements

The selected Qualified Sponsor is required to comply with all applicable Federal, State, and local laws, orders, and regulations prohibiting housing discrimination.

B. Rent Stabilization

Initial rents will be established in accordance with the regulatory agreement. Prior to initial occupancy all units must be entered into the New York State Rent Stabilization system at rents specified in the regulatory agreement, requiring affordability for at least 30 years.

C. Section 3 Clause

Any project resulting from this RFQ may be subject to Section 3 of the Housing and Urban Development Act of 1968 ("Section 3") and the implementing regulations at 24 CFR part 135. If applicable to the project, (i) to the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of the project must be given to "Section 3 Residents" as such term is defined in 24 CFR 135.5 or NYCHA residents for projects on NYCHA sites; and (ii) to the greatest extent feasible, contracts for work to be performed in connection with any such project must be awarded to "Section 3 Business Concerns" as such term is defined in 24 CFR part 135.5.

D. HUD Funds and Davis-Bacon

Every contract for the construction of housing (rehabilitation or new) assisted with HUD funds will be required to comply with Davis Bacon and the Contract Work Hours and Safety Standards Acts.

E. Equal Opportunity

Agreements resulting from this RFQ will be subject to the provisions of Executive Order 50 and its implementing regulations as stated in Appendix A (Equal Opportunity). If a Qualified Sponsor is selected for a site, a representative from the Qualified Sponsor and each entity with which the Qualified Sponsor partners will be required to attend a class administered by HPD outlining the requirements of Executive Order 50 and to submit Equal Opportunity forms provided by HPD verifying their compliance with its provisions.

F. CDBG and LMDC Requirements

Since this Project is funded through LMDC's HUD CDBG Grant, Agreements resulting from this RFQ will be subject to the provisions of Exhibit A to this RFP (see Appendix B). In addition, a thorough review will be conducted by HPD to avoid duplicative federal assistance.

VI. QUALIFICATION REQUIREMENTS

Applicants must be qualified in each of the following qualification criteria in order to be considered Qualified Sponsors and be able to submit proposals to HPD for Funding Assistance. HPD will evaluate Qualifications to determine if they meet the qualification criteria. All Applicants, including those qualified through other HPD RFQs, must submit a full response to this RFQ and meet the minimum criteria set forth in this RFQ. Submissions that are not complete or do not conform to the requirements of this RFQ will be eliminated from further consideration. HPD may request additional information, site visits, interviews, or presentations.

A. Completeness of Submissions

The Qualifications must contain all documentation required under *Section VII Submission Requirements and Qualification Process*. All of the required forms must be fully completed and application requirements met at the time of submission. Please complete Forms using 11 point font or above. The Applicant must comply with maximum page limits for all narrative answers. Upon review, HPD, at its discretion, may notify an Applicant that additional information or clarification is necessary. Applicants that do not adhere to these requirements risk disqualification from consideration under this RFQ.

B. Asset Management and Ownership Experience

Asset management and ownership experience will be evaluated by characteristics of the Applicant's recent portfolio, including:

- physical condition and number of Housing Code Maintenance violations on buildings owned and/or managed;
- current capacity to provide effective management services in a timely and responsive manner, including the handling of tenant complaints;
- familiarity with compliance for other existing rental affordability programs, and regulations regarding rental assistance.

C. Ability to Finance

Applicants must demonstrate adequate financial resources to acquire and manage an affordable housing project. HPD will evaluate the Applicant's most recent audited financial statements, bank or other lender references, and current commitments in order to assess the Applicant's capacity to secure acquisition financing, meet a lender's equity requirements, absorb any rehabilitation cost overruns, and complete any needed rehabilitation work in a timely manner.

D. Adverse Findings

An Applicant's Proposal may be rejected at any time during or after the evaluation process if there are any adverse findings regarding the Applicant, any entity or

individual associated with the Applicant, or any property owned and/or managed by them. Such adverse findings may include, but are not limited to:

- conviction, administrative violation, judicial or administrative finding, pending judicial or administrative case, or pending litigation for harassment, arson, fraud, bribery, grand larceny, any felony or crime of dishonesty, or noncompliance with fair housing or anti-discrimination laws, any applicable codes or ordinances, labor laws, or construction laws.
- defaults or poor performance under any government-assisted program;
- suspension or debarment by any governmental entity;
- mortgage arrears, default, or foreclosure proceedings;
- tax arrears, tax foreclosure or enforcement proceedings, or sale of tax liens;
- voluntary or involuntary bankruptcy proceeding; or
- negative findings by the Department of Investigation.

VII. SUBMISSION REQUIREMENTS AND QUALIFICATION PROCESS

A. Inquiries

All communications and inquiries regarding this RFQ should be directed in writing to HPD at:

E-mail: HPDPres@hpd.nyc.gov

All written questions should be submitted by April 27, 2015 to be included in the RFQ addendum.

People with disabilities requiring special accommodations to pick up the RFQ should contact HPD at the email address provided above.

B. General Requirements

Time and Place of Submission

The Applicant must make Qualifications in accordance with the instructions and attachments contained in this RFQ, as well as in any addenda that may be issued to the RFQ. All Qualifications become the property of HPD. Submissions will be promptly reviewed. Interviews, site visits and/or additional information may be requested.

Applications must be delivered by hand to:

N.Y.C Department of Housing Preservation and Development
Office of Development
100 Gold Street, Room 9-Q3
New York, NY 10038
Attention: Lower Manhattan Acquisition Program RFQ Review Coordinator

C. Format of Submissions

One fastened original, and one electronic copy (computer disc or USB flash drive) of the Applicant's qualifications must be submitted in response to this RFQ. (All forms are available in Microsoft Word and Microsoft Excel format, as applicable, on the HPD website.) The copies must be organized in a three ring binder. The copies of the Qualifications must be clearly labeled with the name of the Applicant(s) on the cover and with tabs as indicated below. The tabs should run down the right hand side of the submission.

Each set of Qualifications must be tabbed as indicated below in *Section VI, Part I Contents of Qualifications and Tabbing*. All forms included with the Qualifications must follow the format included in this RFQ. All forms included in Appendix C

(Qualifications Forms) will be made available for download on the HPD website.

D. Submissions Modification

An Applicant may submit a complete modified set of Qualifications to replace all or any sections of a previously submitted set of Qualifications. HPD personnel will not insert pages or otherwise modify the Applicant's Qualifications. The Applicant has the full responsibility for ensuring that its final set of Qualifications has been submitted in the desired form. The front cover of a modified set of Qualifications must identify the submission as modified Qualifications and include the date on which the modified Qualifications are provided.

If HPD determines, upon review of the Qualifications, that any items are missing and/or incomplete, HPD, in its sole discretion, by written notification given to the Applicant, may permit the Applicant to provide or clarify such items. Failure to provide complete information in a timely fashion could result in rejection of the Qualifications.

E. RFQ Addenda

HPD reserves the right to amend or withdraw this RFQ at any time. In order to be considered, Qualifications must conform to any amendments that may be issued to this RFQ. Amendments may include, without limitation, any requirements and terms or conditions contained in this RFQ. HPD will advise each Applicant that has requested a copy of this RFQ of any clarifications or revisions.

F. Complete Qualifications

Qualifications that are not complete or are not in conformance with the requirements of this RFQ will be eliminated from further consideration. Applicants should note carefully the submission requirements listed below in *Section IV, Part I Contents of Qualifications and Tabbing*.

G. References and Requests for Further Information

Submission of Qualifications shall constitute permission from the Applicant for HPD to make such inquiries concerning the Applicant as HPD deems necessary. HPD reserves the right to communicate with any of the Applicants, but HPD is not obligated to do so. HPD may discuss the Qualifications of any Applicants concurrently or sequentially, as HPD may determine. No Applicant has any rights against HPD arising from any such invitation to a discussion, or from any negotiations that may arise pursuant to the discussions.

Applicants must comply with all requests for information and, if requested by HPD, appear for presentations or discussions. If any Applicant fails to do so within the time period given (or within any time extension that HPD may grant), HPD may deem this as a failure and act of non-compliance with the RFQ, which will permit HPD to disqualify the Applicant or to solicit new Qualifications. In furtherance and not in

limitation of the foregoing, before a final selection is made, an Applicant may be required to produce more detailed information concerning the professional background of those persons who own and manage such Applicant, a report on the financial background of such Applicant, and information concerning the nature and status of any past or pending threatened charges or actions (including lawsuits, criminal or disciplinary actions, administrative proceedings by any governmental or regulatory agency or bankruptcy action) against such Applicant or any of its partners, directors, officers, employees, shareholders, subsidiaries, or affiliates, as the case may be.

H. Contents of Qualifications and Tabbing

Each set of Qualifications must contain the forms and supporting documentation described below. Each copy of the Qualifications must be tabbed as indicated below. All Qualifications Forms can be found in Appendix C. For narrative questions, please answer using 11 point font or above and comply with maximum page limits set forth in the Forms.

TAB A - Completeness Checklist and Applicant's Letter

Each Applicant must submit a Completeness Checklist (Form A-1) and Applicant's Letter (Form A-2). The letter must be printed on the Applicant's letterhead and signed by an authorized representative of the Applicant.

TAB B – Applicant Description

All Applicants must submit Applicant Description (Form B) in its entirety. Please note that Applicant must be a not-for-profit or partner with a not-for-profit to submit Qualifications. If the Applicant is a joint venture between not-for-profit and for-profit entities, the Principals of each entity that comprises the joint venture must be identified, and a Principal of each entity must sign the Form.

TAB C - Residential Development Experience

A completed Residential Development Experience Form for the principal(s) of the Applicant. In Part 1 (Form C), list all projects that have been completed within the last seven (7) years or that are in construction, pre-development, or have otherwise been committed, and provide unit totals for each category. Please specify the building population and financing sources.

TAB D – Asset Management and Ownership Experience

A completed Asset Management and Ownership Experience Form (Form D) for the principal(s) of the Applicant.

TAB E – Assets Statement

Form E asks a variety of questions regarding management experience that should be answered in narrative form. Please adhere to the section's specified page limit.

Each not-for-profit Applicant must also submit audited or reviewed financial

statements describing in detail the not-for-profit's financial status in the most recent fiscal year preceding the date of the submission of Qualifications in response to this RFQ.

I. Review and Evaluation

HPD will determine if Applicants meet minimum qualification requirements based on the criteria specified in *Section IV Qualifications Requirements*. HPD may disapprove the inclusion of any or all members of the Applicant's development team and may require Applicants to substitute other individuals. HPD will notify all Applicants as to whether or not they meet the eligibility requirements for Qualified Sponsors. Inclusion on the list of Qualified Sponsors does not ensure that a sponsor will ultimately receive funding for a project under this program.

VIII. CONDITIONS, TERMS, AND LIMITATIONS

This RFQ is subject to the specific conditions, terms and limitations stated below:

- A. Neither the City, nor LMDC, are obligated to pay nor shall in fact pay any costs or losses incurred by any Applicant at any time including the cost of responding to the RFQ.
- B. The City reserves the right to reject at any time any or all Qualifications and/or withdraw this RFQ in whole or in part, to negotiate with one or more Qualified Sponsors, and/or undertake projects on terms other than those set forth herein. The City likewise reserves the right, at any time, to waive compliance with, or change any of the terms and conditions of this RFQ, and to entertain modifications and additions to the applications of Qualified Sponsors.
- C. The qualification of an Applicant will mean only that HPD will accept and review proposals for Funding Assistance from the Applicant; it is not a guarantee that Funding Assistance will be provided to the Qualified Sponsor.
- D. Qualification of an Applicant through this RFQ will not create any rights on the Applicant's part, including without limitation, rights of enforcement, equity, or reimbursement.
- E. This RFQ and any agreement or other documents resulting there from are subject to all applicable laws, rules and regulations promulgated by any Federal, State or municipal authority having jurisdiction over the subject matter thereof, as the same may be amended from time to time.
- F. This RFQ does not represent any obligation or agreement on the part of the City, or LMDC, which, in the case of the City, may only be incurred or entered into by a written agreement which has been approved as to form by the City's Law Department and duly executed by the Applicant and the City.
- G. No transaction will be consummated if any principal of any selected Applicant is in arrears, or in default upon any debt, lease, contract or obligation to the City of New York, including without limitation real estate taxes and any other municipal liens or charges. The City reserves the right not to review any applications by any such Applicant.
- H. Entities that are in debarred status by either the Comptroller of the City of New York or the United States Department of Labor, and entities with histories of convictions of criminal violations of the Occupational Health and Safety Act within the five years preceding the closing date, will not be eligible to enter into development agreements or serve as prime or general contractors on this project.

- I. No commission for brokerage or any other fee or compensation shall be due or payable by the City, and an Applicant undertaking to indemnify and hold the City harmless from and against any such claim for any such fee or compensation based upon, arising out of, or in connection with any action taken by the Applicant, the selection of the Applicant's submission for the list of Qualified Sponsors and invitation to the Applicant to respond to this RFQ, or the conditional designation of a Sponsor pursuant to this RFQ.
- J. All determinations as to the completeness or compliance of any Qualifications, or as the eligibility of any Applicant, will be within the sole discretion of the City.
- K. The City advises all Applicants that there is no legal obligation on the part of the City to issue the RFQ, and that the City reserves the right to use the Qualifications submitted pursuant to this RFQ as a basis for negotiation with Applicants as the City deems appropriate.
- L. This RFQ and any resulting agreement are subject to all applicable laws, rules and regulations promulgated by any Federal, State, or municipal authority having jurisdiction over the subject matter thereof, as the same may be amended from time to time.

IX. CONFLICTS OF INTEREST

Current and former employees of the City of New York may respond to this RFQ only in accordance with Chapter 68 of the New York City Charter governing ethics and conflicts of interest affecting City personnel. Section 2604(b)(7) of the City Charter contains specific prohibitions that exclude enumerated groups of employees from participating in the sales process. In addition, current HPD employees may not respond to this RFQ.

Persons in the employ of the City considering the submission of Qualifications are advised that opinions regarding the propriety of their purchase of City-owned property may be requested from the New York City Conflicts of Interest Board. This body is empowered, under Section 2602 of the City Charter, to issue advisory opinions on conflict of interest questions and other matters of ethical considerations. It is not necessary, however, that such an opinion be obtained prior to responding to this RFQ.

Former employees of the City of New York are also advised that the City Charter imposes certain restrictions on post-employment and business relationships with the City. Such individuals should consult the specific provisions on this issue contained in the City Charter.

APPENDIX A. EQUAL OPPORUNTITY

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APPENDIX B. CDBG/LMDC REQUIREMENTS

Every contract for the construction of housing (rehabilitation or new) assisted with HUD funds will be required to comply with the following Regulations:

I. GENERAL CONDITIONS

A. General Compliance

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

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as Subrecipient is an independent contractor.

C. Hold Harmless

Subrecipient shall hold harmless, defend and indemnify Grantee, the New York State Urban Development Corporation d/b/a/ Empire State Development, and the State of New York from any and all claims, actions, suits, charges and judgments whatsoever that arise out of Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

Subrecipient represents that it is self-insured. Subrecipient shall require contractors involved in the performance of this Agreement to provide Workers' Compensation Insurance coverage for all of their employees involved in the performance of this Agreement.

E. Insurance and Bonding

Subrecipient represents that it is self-insured. Subrecipient shall require contractors involved in the performance of this Agreement to carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, or undue physical damage.

Subrecipient shall require contractors involved in the performance of this Agreement to provide bonding and insurance, including but not limited to the following:

1. Insurance

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

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

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

d. Excess Liability Insurance in an amount not less than [\$10,000,000, unless otherwise determined for a particular project or class of contracts.] LMDC, the New York State Urban Development Corporation d/b/a/ Empire State Development, the State of New York and Subrecipient shall be named as additional insureds on each such certificate.

e. Certificates of Insurance for all of the aforementioned coverages shall be provided to LMDC prior to the commencement of work under this Agreement.

2. Construction Bonds for Contracts Valued at Over \$250,000

a. Bid Bond or Bid Deposit, equal to five percent of the bid.

b. Performance Bond, equal to 100 percent of the bid.

c. Payment Bond, equal to 100 percent of the bid.

F. Grantor and Grantee Recognition

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

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, the obligations of Subrecipient, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

Either party may terminate this Agreement for convenience at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. Termination for convenience by Grantee shall only be with the specific authorization of the LMDC Board of Directors. Partial terminations of the Scope of Service in Section I.A above may only be undertaken with the prior approval of Grantee. In the event of any termination for convenience, copies of all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by Subrecipient under this Agreement shall be delivered to Grantee, and Subrecipient shall be entitled to receive reimbursement for all actual costs incurred pursuant to this Agreement prior to the termination.

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

II. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

Pursuant to 24 CFR § 570.489(d), Subrecipient agrees to comply with 24 CFR §§ 85.20, 85.21, 85.22, and 85.26, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

Subrecipient shall administer the Program in conformance with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," A-122 "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

Subrecipient shall maintain all records as required by the HUD regulations specified in 24 CFR § 570.490 that are pertinent to the activities to be funded under this Agreement. A partial list of required records is included in Exhibit A-4. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Pursuant to 24 CFR § 570.489(d), financial records as required by 24 CFR § 85.20; and
- g. Records necessary to document compliance with 24 CFR § 570.487.

2. Retention

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

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

Notwithstanding the provisions of this clause 2 of this subparagraph B, Subrecipient shall retain all records required by this subparagraph B for at least four (4) years after the

termination or completion of Grantee's \$2 billion grant from HUD (Grant No. B-02-DW-36-0001).

3. Personal Data

Subrecipient shall maintain personal data demonstrating eligibility for individual services provided. Such data shall include, but not be limited to, name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request, to the extent that such information may be legally disclosed.

4. Disclosure

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

5. Property Records

Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and conform with the "changes in use" restrictions as specified in 24 CFR § 570.489(j), where applicable. [Where applicable, add City representation that it owns property on which it is making improvement.]

6. Close-Outs

Subrecipient's obligation to Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to making final payments, disposing of program assets (including the return of all unused materials and equipment provided by Grantee, unspent cash advances, program income balances, and accounts receivable to Grantee), and determining the custodianship of records.

7. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to Grantee, HUD, their respective auditors, and their designees or the Federal Government, at any time during normal business hours, as often as Grantee or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Subrecipient shall provide office support services necessary to ensure timely production of records, including but not limited to (i) availability of office space, telephones, computers, telephone, and data lines, (ii) personnel to provide such services and (iii) access to records in electronic format. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements

will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit, commonly referred to as a Single Audit, conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income

Subrecipient shall report quarterly all program income as defined at 24 CFR § 570.500(a) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by Subrecipient shall comply with the requirements set forth at 24 CFR § 570.504. By way of further limitations, Subrecipient may only use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to Grantee at the end of the contract period. Any interest earned on cash advances from the United States Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to Grantee.

2. Indirect Costs

If indirect costs are charged, Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to Grantee for approval, in a form specified by Grantee.

3. Payment Procedures

In accordance with the payment terms in Section IV above, the Grantee will pay to Subrecipient funds available under this Agreement based upon information submitted by Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by Grantee on behalf of Subrecipient.

4. Reporting Requirements

Monthly:

(a) For all projects: Progress Report to Grantee substantially in the form attached hereto as Exhibit A-5, or as may be updated or supplemented by Grantee on 30 days' notice to Subrecipient. The monthly Exhibit A-5 shall reflect the overall project or program status, including recent progress or delays. These reports shall describe progress towards the specific performance benchmarks listed in Section 1.C, Exhibit A-1, and Exhibit A-9 (refer to Section XI.E.), if applicable. The report shall also summarize Subrecipient's monitoring of its contractors, referred to herein as "subcontractors." Subrecipient may use Exhibit A-6 as a guideline for monitoring such subcontractors.

(b) For construction-related projects, monthly submission of completed Schedule C-Attachment C1 (Workforce Employment Utilization Report) and Schedule C-Attachment C2 (MBE/WBE Compliance Report Construction), or similar form acceptable to LMDC as set forth in Section X.B(2) below.

Quarterly:

(a) For all projects: Completed Exhibit A-7 (Workforce Utilization Report for Section 3 Clause) or similar form acceptable to the Grantee as set forth in Section X.C(3) below.

(b) For non-construction projects, quarterly submission of completed Schedule C-Attachment C1 (Workforce Employment Utilization Report) and Schedule C-Attachment C2 (MBE/WBE Compliance Reports LMDC Non-Construction Contract), or similar form acceptable to the Grantee.

Subrecipient will endeavor to submit all reports by the end of the month following the reporting period.

D. Procurement

1. Compliance

Subrecipient shall maintain inventory records of all non-expendable personal property valued over \$1,000.00 as may be procured with funds provided herein. Inventory records shall include, but not be limited to, the date of purchase, cost of the item, description, user, and disposition status. All inventory records shall be retained for four (4) years after the termination of all activities funded under this Agreement. If non-expendable personal property is disposed of before the end of this record retention period, inventory records shall identify how the property was disposed of and such records shall be maintained for four (4) years after the termination of all activities funded under this Agreement.

All unexpended program income shall revert to Grantee upon termination or completion of this Agreement. Title to real property, to improvements to real property, and to personal property (including equipment and supplies) acquired pursuant to this Agreement shall vest upon acquisition in Subrecipient. Notwithstanding the above, title to the following items shall vest in Grantee upon termination or completion of this Agreement: [if any, per specific project].

All real property, improvements to real property, and personal property (including equipment and supplies) acquired pursuant to this Agreement shall be used by Subrecipient in accordance with program purposes set forth in this Agreement, unless another use is approved by Grantee. In the event that Subrecipient receives any income or other financial benefit from the use of such property or improvements, such income or benefit shall be applied to program purposes set forth in this Agreement, unless otherwise approved by Grantee. These restrictions shall apply for 10 years from the completion of this Agreement or, if amended, the completion date of the amended agreement.

2. Procurement Requirements

Subrecipient shall procure all property in accordance with all applicable state and local laws, and shall procure all goods, services, and construction in accordance with all applicable state and local laws, and with the rules of the New York City Procurement Policy Board (PPB). Furthermore, in the event that the New York City Economic Development Corporation procures the above, it shall do so in accordance with the following procedures: EDC may procure goods, services, or construction in accordance with the following methods set forth in its master contract with Subrecipient: Competitive Sealed Bidding, Competitive Sealed Proposals, Small Purchases, and Emergency Procurements. In addition, EDC may utilize the source selection methods set forth in Chapter 3 of the PPB Rules. If EDC uses a PPB source selection method, it shall follow all applicable requirements set forth in Chapter 3 for the procurement itself, including notice requirements, but it shall follow its own procedure for any internal administrative processes that may be required. Where the PPB Rules require approval of an oversight agency, such approval shall be sought from the City's Deputy Mayor for Economic Development and Rebuilding.

3. Travel

Subrecipient shall obtain written approval from Grantee for any travel outside the New York City metropolitan area with funds provided under this Agreement. The parties acknowledge that travel may be required by various contractors retained by Subrecipient or EDC. Any contract for which reimbursable travel is required shall require that such reimbursement be made consistent with either LMDC's policy regarding travel reimbursement or the directive of the New York City Comptroller regarding reimbursement for travel costs.

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

As required by 24 CFR § 570.488, Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), as amended, and implementing regulations at 49 CFR Part 24 and 24 CFR § 570.606(b); (b) the requirements of 24 CFR § 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements of 24 CFR § 570.606(d) governing optional relocation policies. Subrecipient shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project.

IV. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

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

2. Nondiscrimination

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

3. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and 24 CFR §§ 570.487. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that Grantee and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

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

B. Affirmative Action

1. Compliance with E.O. 11246

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

2. M/WBE

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

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

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

3. Access to Records

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

4. Notifications

Subrecipient 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 Subrecipient, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. EEO/AA Statement

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

6. Subcontract Provisions

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

C. Employment Restrictions

1. Prohibited Activity

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

2. Labor Standards

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

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

3. “Section 3” Clause

a. Compliance

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

Subrecipient further agrees to comply with these “Section 3” requirements and to include the language contained in 24 CFR § 135.38 in all subcontracts executed under this Agreement for which applicable law requires the inclusion of such clause. In addition, the following paragraph shall be added in such circumstances:

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

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

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

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

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

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

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

D. Conduct

1. Assignability

Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of Grantee thereto; provided, however, that claims for money due or to become due to Subrecipient from Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to Grantee.

2. Subcontracts

a. Approvals. Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of Grantee prior to the execution of such subcontract agreement. Prior to such approval being given, Grantee must be provided with a completed LMDC Standard Business Background Questionnaire or its equivalent, for each proposed subcontractor. Subrecipient may provide its standard background questionnaire as an equivalent, if it is submitted to LMDC and is approved in writing by LMDC in advance.

b. Monitoring. Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in the Monthly Progress Reports (see Exhibit A-5) as part of the Reporting Requirements set forth in Section VIII.C above and supported with documented

evidence of follow-up actions taken to correct areas of noncompliance. Exhibit A-6 is provided as a guideline for Subrecipient to use in monitoring its subcontractors.

c. Content. Subrecipient shall include in and make part of any subcontract executed in the performance of this Agreement the following: all provisions required by all applicable laws and rules; and all provisions required by this Agreement.

d. Selection Process. Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded in accordance with all applicable state and local laws, and with the rules of the New York City Procurement Policy Board. Furthermore, in the event that the New York City Economic Development Corporation lets any subcontract, it shall do so in accordance with the following procedures: EDC may procure goods, services, or construction in accordance with the following methods set forth in its master contract with Subrecipient: Competitive Sealed Bidding, Competitive Sealed Proposals, Small Purchases, and Emergency Procurements. In addition, EDC may utilize the source selection methods set forth in Chapter 3 of the PPB Rules. If EDC uses a PPB source selection method, it shall follow all applicable requirements set forth in Chapter 3 for the procurement itself, including notice requirements, but it shall follow its own procedure for any internal administrative processes that may be required. Where the PPB Rules require approval of an oversight agency, such approval shall be sought from the City's Deputy Mayor for Economic Development and Rebuilding. Executed copies of all subcontracts shall be given to Grantee along with documentation concerning the selection process.

3. Hatch Act

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

4. Conflict of Interest

Subrecipient agrees to abide by the provisions of 24 CFR § 570.489(h) with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Subrecipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of Subrecipient, or of any designated public agencies or subrecipients that are receiving funds from HUD under the CDBG program.

5. Lobbying

Subrecipient hereby certifies that:

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

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

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

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

6. Intellectual Property; Copyrights and Patents

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

7. Religious Organization

Subrecipient agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization.

V. ENVIRONMENTAL CONDITIONS

A. Air and Water

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

1. Clean Air Act, 42 U.S.C. § 7401, *et seq.*, as amended, including section 114 of the Act (42 U.S.C. § 7414) relating to inspection, monitoring, entry, reports, and information and all regulations and guidelines issued thereunder;
2. Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*, as amended, including section 308 relating to inspection, monitoring, entry, reports, and information, and all regulations and guidelines issued thereunder;
3. Environmental Protection Agency (“EPA”) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

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

C. Lead-Based Paint

Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR § 570.487(c), and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement be conducted.

D. Historic Preservation

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

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

E. Environmental Performance Commitments

Subrecipient agrees to implement the Lower Manhattan environmental performance commitments set forth in Exhibit A-9, attached hereto. Subrecipient will identify the specific measures implemented and may include additional commitments and specific measures as part of the project's governmental entities coordination plan, construction environmental plan, design documents, and contracts.

VI. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

APPENDIX C. QUALIFICATION FORMS

Form A: Completeness Checklist and Applicant's Letter

A1 – Completeness Checklist (Tab A)

Before completing the following forms, please see instructions in **Section VII (Submission Requirements)**.

Tab	Form	✓
A	Completeness Checklist and Applicant's Letter	
	1. Completeness Checklist (Form A-1)	
	2. Applicant's Letter (Form A-2)	
B	Applicant Description	
	1. Development Team Information and Applicant Questionnaire (Form B-1)	
	2. Not-For-Profit Organization Form (Form B-2)	
	3. Additional Evidence of Experience and Qualifications (<i>provided by Applicant</i>)	
C & D	Development Experience, Management Experience and Current Workload	
	1. Residential Development Experience and Current Workload (Form C)	
	2. Residential Management Experience and Current Workload (Form D)	
E	Assets Statement	
	1. Assets Statement (Form E and financial statements)	

Lower Manhattan Acquisition Program RFQ
APPLICANT'S LETTER

NYC Department of Housing Preservation and Development
Office of Neighborhood Strategies
100 Gold Street, Room 9-Q3
New York, NY 10038
Attention: Lower Manhattan Acquisition Program RFQ Review Coordinator

Re: Application in Response to Lower Manhattan Acquisition Program RFQ

Dear Lower Manhattan Acquisition Program RFQ Review Coordinator:

This letter is being submitted in connection with my qualifications ("Qualifications") submitted in response to the Lower Manhattan Acquisition Program RFQ ("RFQ") issued by the Department of Housing Preservation and Development ("HPD") of the City of New York ("City").

I have received, read, and understand the provisions of the RFQ. I understand that if HPD qualifies Applicant under the RFQ (thus designating such an Applicant a "Qualified Sponsor", such a qualification will mean only that Applicant may be able to request funding in conjunction with a proposal under the Lower Manhattan Acquisition Program. I recognize that the qualification process and any subsequent designation as a sponsor to receive program funds are subject to the following terms and conditions:

- A. The City is not obligated to pay nor shall in fact pay any costs or losses incurred by any Applicant at any time including the cost of responding to the RFQ.
- B. The City reserves the right to reject at any time any or all submissions and/or withdraw this RFQ in whole or in part, to negotiate with one or more Qualified Sponsors, and/or undertake projects on terms other than those set forth herein. The City likewise reserves the right, at any time, to waive compliance with, or change any of the terms and conditions of this RFQ, and to entertain modifications and additions to the applications of Qualified Sponsors.
- C. Qualification of an Applicant through this RFQ will not create any rights on the Applicant's part, including without limitation, rights of enforcement, equity, or reimbursement.
- D. This RFQ and any agreement or other documents resulting there from are subject to all applicable laws, rules, and regulations promulgated by any federal, state or municipal authority having jurisdiction over the subject matter thereof, as the same may be amended from time to time.
- E. This RFQ does not represent any obligation or agreement on the part of the City, which may only be incurred or entered into by a written agreement which has been approved as to form by the City's Law Department and duly executed by the Applicant and the City.

- F. No commission for brokerage or any other fee or compensation shall be due or payable by the City, and an Applicant shall indemnify and hold the City harmless from and against any such claim for any such fee or compensation based upon, arising out of, or in connection with any action taken by the Applicant, the selection of the Applicant's submission for the List of Qualified Sponsors and invitation to the Applicant to respond to this RFQ, the conditional designation of a Sponsor pursuant to this RFQ, or the sale of a site.
- G. All determinations as to the completeness or compliance of any Qualifications, or as the eligibility of any Applicant, will be within the sole discretion of the City.
- H. The City advises all Applicants that there is no legal obligation on the part of the City to issue the RFQ, and that the City reserves the right to use the Qualifications submitted pursuant to this RFQ as a basis for negotiation with Applicants as the City deems appropriate.
- I. This RFQ and any resulting agreement are subject to all applicable laws, rules, and regulations promulgated by any federal, state, or municipal authority having jurisdiction over the subject matter thereof, as the same may be amended from time to time.

Very truly yours,

Signature

Title

Applicant

Form B: Development Team Information and Applicant Questionnaire

B1 – Development Team Information (Tab B)

All applicants shall complete pages 1 - 3 of this form. Applicants that include a not-for-profit entity as principal of the developer or part of the Development Team shall also complete pages 4 -6.

Name of Applicant: _____

Name of Contact Person: _____ E-mail: _____

Mailing Address: _____

Telephone No: _____ Alternate Phone: _____

COMPOSITION OF APPLICANT ENTITY:

1. Type of organization (i.e. partnership, corporation, limited liability company, joint venture): _____

2. Provide the following information about all principals of the applicant. For corporations, provide the names of the officers and any shareholders owning 10% or more; for partnerships, provide the names of all general partners. For joint ventures, provide the information separately for each entity that comprises the joint venture. Also, state the role(s) that each principal would play in the development of the sites, using the categories specified below.

NAME OF ENTITY # 1: _____ **Percent Interest in Proposed Project:** _____

PRINCIPALS: Name/Position/Title	Home Address	Role*	% Interest in Entity

NAME OF ENTITY # 2: _____ **Percent Interest in Proposed Project:** _____

PRINCIPALS: Name/Position/Title	Home Address	Role*	% Interest in Entity

* Role Categories: GP = General/Managing Partner; GC = General Contractor; F = Provides financing, inactive; A = Architect; L = Legal Services; MA = Managing Agent; O = Other (specify)

Use additional sheets as necessary.

3. Provide the names, addresses, e-mail addresses, and telephone of members of the development team to the extent that these have been decided; if unknown, enter "N/A".

DEVELOPMENT TEAM:

<u>Architect:</u>	<u>Marketing Agent:</u>
<u>General Contractor:</u>	<u>Managing Agent:</u>
<u>Legal Counsel:</u>	<u>Social Service Provider:</u>
<u>Other:</u>	<u>Other:</u>

Is there an identity of interest between any principals of the developer and any other entities that make up the development team? Yes [] No []

If yes, please explain.

4. Has any principal identified above, or any organization in which the principal is or was a general partner, corporate officer, or owned more than 10% of the shares of the corporation, been the subject of any of the following:

- (1) Conviction of, or charges currently pending for, arson, fraud, bribery, or grand larceny any felony or crime of dishonesty?
Yes [] No []
- (2) Noncompliance with fair housing or anti-discrimination laws, any applicable codes or ordinances, labor laws, or construction laws?
Yes [] No []
- (3) Had an ownership or management interest in real property that was the subject of a tax lien sale, was or is the subject of tax, mortgage, or lien foreclosure or enforcement proceedings, or is currently in tax or mortgage arrears?
Yes [] No []
- (4) Had an ownership or management interest in a property with respect to which HPD commenced an action in the Housing Part of the Civil Court, or with respect to which an administrator was appointed pursuant to Article 7-A of the Real Property Actions and Proceedings Law?
Yes [] No []
- (5) Denial of a certification of no harassment or any administrative or judicial finding of harassment?
Yes [] No []
- (6) Default or poor performance rating under any agreement with, or suspension or debarment by, any governmental entity?
Yes [] No []
- (7) In the last seven years, filed a bankruptcy petition or been the subject of involuntary bankruptcy proceedings?
Yes [] No []
- (8) In the last five years, failed to file any required tax returns, or failed to pay any applicable Federal, State of New York, or City taxes or other charges?
Yes [] No []
- (9) Had any negative findings from the City's Department of Investigation?
Yes [] No []

If the answer to any question is yes, provide the following information about each instance: name of principal(s); name(s) of organization(s) or corporation(s); principal's status in the organization or corporation (e.g. officer), the date of the action, and current status and disposition.

CERTIFICATION

[This certification must be signed by one of the principals listed above; if the applicant is a joint venture, it must be signed by a principal of each entity that comprises the joint venture.]

I certify that the information set forth in this application and all attachments and supporting documentation is true and correct. I understand that the City of New York will rely on the information in or attached to this document and that this document is submitted to induce the City of New York to select this proposal for development of a site.

I understand that this statement is part of a continuing application and that until such time that the subject project is finally and unconditionally approved by the City of New York, I will report any changes in or additions to the information herein, and will furnish such further documentation or information as may be requested by the City of New York or any agency thereof.

I understand that if I receive preliminary designation to develop this site, I must submit all additional disclosure forms required.

Name of Organization

Signature

Date

Print or Type Name and Title

Name of Organization

Signature

Date

Print or Type Name and Title

B2 – Not-For-Profit Organization: Applicant Description

Name of Organization: _____

Office Address: _____

City: _____ State: _____ ZIP Code _____

Executive Director: _____

Contact Person: _____ Title: _____

Phone No. _____ FAX No. _____

ROLE OF ORGANIZATION IN THE PROJECT: Describe the role that the not-for-profit organization will play, such as developer, marketing agent, etc.

Date Established: _____ Date Incorporated: _____

CERTIFICATION: I CERTIFY THAT THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND ITS ATTACHMENTS IS TRUE AND CORRECT.

Signature of Officer

Print Name and Title

Date

B2 – Not-For-Profit Organization: Directors, Officers, and Key Staff

Name of Organization: _____

Name and Home Address	Position and/or Office in Organization	Date of Initial Appointment	Current Occupation and Name of Employer

Use additional sheets as necessary

B2 – Not-For-Profit Organization: Major Sources of Funding

Name of Organization: _____

Provide the following information regarding your major sources of funding during the two years preceding the deadline for submission of proposals under this RFP.

Funding Source (Agency, Department, etc.)	Name of Program	Contact Person Name and Phone Number	Purposes of Funding	Dates of Funding	Funding Amount

Use additional sheets as necessary

Form E: Assets Statement

E- Assets Statement (Tab E)

[Assets Statement must describe financial status within the last twelve months and must be dated and signed.]

Principal or Individual whose assets are described below:

1. Personal Information

Name:

Business Name:

Business Phone:

Residence Address:

City:

State:

Zip Code:

Business Address:

City:

State:

Zip Code:

Position (Title):

Years of Service:

Salary:

Bonus/Commission:

Other Income:

Source of Other Income:

Are you a defendant in any lawsuits or legal action that may impact your financial standing?

If so, please describe:

Do you have any contingent liabilities?

If so, please describe:

2. Statement of Financial Condition

Assets	Dollars (omit cents)	Liabilities	Dollars (omit cents)
Cash On Hand and in Banks		Notes Payable to Banks <i>Secured</i>	
Notes Receivable		Notes Payable to Banks <i>Unsecured</i>	
Mortgages Owned		Notes Payable to Others <i>Secured</i>	
		Notes Payable to Others <i>Unsecured</i>	
Marketable Securities Owned See Schedule A		Debt Balances in Margin Accounts with Brokers	
Real Estate Owned		Mortgages on Real Estate	
Cash Value of Life Insurance		Loans Against Life Insurance	
Other Assets* (Itemize)		Other Liabilities (Itemize)	
Total Assets		Total Liabilities	
		Net Worth	

* Any interest in a closely held business must be documented by providing a current balance sheet for that business and stating the percent of interest held by the applicant.

Schedule A: Marketable Securities Owned

List separately and check (X) next to those pledged as collateral.

Marketable Securities Owned	Dollars (Omit Cents)	Collateral?

3. Signature Page

For the purpose of procuring and maintaining credit from time to time in any form whatsoever with you, the undersigned hereby represents the above to be a true and accurate Statement signed as of the date herein before set forth and agrees (I) that, if said Statement or any part thereof proves false or misleading in any particular, each and all of the obligation and/or liabilities of the undersigned of every kind to you, whether joint or several, primary or secondary, direct or contingent, shall, at your option, become immediately due and payable all without demand or notice of any kind and (II) that you will be notified promptly in writing of any materially unfavorable changes in the financial conditions herein set forth. Whenever the undersigned may apply to you for credit, and until a substitute Statement may have been submitted to you, this Statement shall have the same force and effect as if delivered at the time such further credit is requested.

Name of Principal: _____

Signature of Individual: _____

Print Name and Title of Individual: _____

Date: _____