

September 23, 2025

Nicole Justice Green  
Executive Director  
Ticonderoga Revitalization Alliance  
111 Montcalm Street  
Ticonderoga, NY 12883

Re: Ti Alliance 108 Montcalm Capital, Project #138,352

Dear Ms. Green:

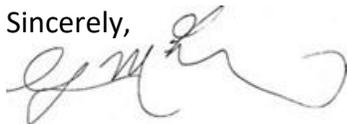
On behalf of the New York State Urban Development Corporation doing business as Empire State Development (ESD), I am pleased to inform you that at the recommendation of ESD's President & Chief Executive Officer, Hope Knight, the ESD Directors have approved \$1,265,000 in assistance for the project referenced above.

This approval is contingent upon the holding of a public hearing and the approval of the Public Authorities Control Board, the approval of the State Division of the Budget and the receipt of funds by ESD.

We have enclosed a **draft** Grant Disbursement Agreement (the "Agreement") for your review, which contains a copy of the materials that were presented for approval by the Directors. ESD will sign and send two original copies of the Agreement to you for your execution once all approvals mentioned above have been achieved. Please review this draft Agreement and contact Ketura Vics, your Project Manager, at 518-270-1131 within 45 days to proceed to the next step. **Do not sign this draft Agreement.**

We look forward to working with you.

Sincerely,



Glendon McLeary  
Vice President and Director of Loans & Grants

cc: Ketura Vics  
Stephen Hunt

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**CAPITAL GRANT**

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

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**NEW YORK STATE  
URBAN DEVELOPMENT  
CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT  
 (“ESD” or “GRANTOR”):**

655 Third Avenue  
New York, New York 10017  
Contact: Ketura Vics  
Phone: 518-270-1131  
E-mail: [ketura.vics@esd.ny.gov](mailto:ketura.vics@esd.ny.gov)

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**THE GRANTEE:**

Ticonderoga Revitalization Alliance  
111 Montcalm Street  
Ticonderoga, NY 12883  
Contact: Nicole Justice Green, Executive Director  
Phone: 518-585-6366  
E-mail: [executive.director@northcountryruraldevelopment.org](mailto:executive.director@northcountryruraldevelopment.org)  
Federal Taxpayer ID#: 90-0642083

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**PROJECT NAME:**

Ti Alliance 108 Montcalm Capital

**PROJECT LOCATION:**

108 Montcalm Street, Ticonderoga

**PROJECT NUMBER:**

138,352

**GRANT AMOUNT:**

\$1,265,000

**FUNDING SOURCE:**

Downtown Revitalization Initiative Rd 6

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**ESD APPROVAL DATE:**

September 18, 2025

**PACB APPROVAL DATE:**

PACB approval to be obtained prior to the execution of the Grant Disbursement Agreement

**EXPIRATION DATE:**

December 31, 2026

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**TERMS AND CONDITIONS**

**1. The Project**

The Grantee shall:

- (a) complete the project as set forth in the ESD General Project Plan attached hereto as Exhibit A (the "Project").
- (b) comply with the design and construction requirements attached hereto as Exhibit B.

**2. Employment Goals & Reporting**

- (a) The Grantee represents and warrants that it currently employs not less than the Baseline Employment (as hereinafter defined) set forth in Exhibit C to this Agreement and that it shall (i) achieve the employment goals as set forth in Exhibit C by retaining existing or hiring new Full-time Permanent Employees or (ii) repay a portion of the Grant as set forth in Exhibit C.
- (b) For purposes of this Agreement, a Full-time Permanent Employee shall mean (i) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties. Baseline Employment shall mean the number of Full-time Permanent Employees set forth in Exhibit C.
- (c) Grantee shall submit, by February 1 of each year during the term of this Agreement, the Employment Reporting Form attached hereto as Exhibit H, indicating the average number of Grantee's Full-time Permanent Employees for the 12 month period ending as of December 31 of the prior year. Full-time Permanent Employee Count, for each calendar year during the term of this Agreement, shall mean the greater of (i) the average number of Full-time Permanent Employees for the prior calendar year, computed by adding the number of Full-time Permanent Employees as of the Grantee's last payroll date in the months of March, June, September and December and dividing that sum by 4, or (ii) the number of Full-time Permanent Employees as of the Grantee's last payroll date in December of such year.

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3. Conditions Precedent to Disbursement of the Grant

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

- (a) If the Grant Amount exceeds \$100,000, or if, as described in Exhibit A, it is expected that there will be additional grants that in the aggregate exceed \$100,000, ESD has received an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit D.
- (b) Any necessary approval has been issued by the Director of the Budget of the State of New York, and the Grant funds have been received by ESD.
- (c) ESD has received a commitment fee, plus out-of-pocket expenses incurred by ESD in the making of the Grant, if any, as set forth in Exhibit E.
- (d) There have been no materially adverse changes in the financial condition of the Grantee since the date of submission of its application to ESD.
- (e) The Grantee employs at least the Baseline Employment as evidenced by the Employment Reporting Form attached hereto as Exhibit H.

4. Disbursement and Recapture Terms

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

- (a) ESD shall reimburse the Grantee for Project expenditures incurred by the Grantee as set forth in Exhibit E to this Agreement. Disbursements will be made upon submittal to ESD of a Payment Requisition Form, together with such supporting documentation as ESD may require, in the form attached to this Agreement as Exhibit F and its attachments, and Exhibit H.
- (b) In no event will ESD make any payment which would cause ESD's aggregate disbursements to exceed the Grant Amount.
- (c) The Grant, or a portion thereof, may be subject to recapture by ESD as provided in Exhibit C.

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5. Non Discrimination and Contractor & Supplier Diversity

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

6. No Liability of ESD

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

7. Responsibility Provisions

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

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8. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

- (a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) It is a duly organized corporation, validly existing and in good standing under the laws of the State of its incorporation, has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its corporate existence in good standing in each such jurisdiction.
- (d) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESD.
- (e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders.
- (f) The information contained in the application submitted by the Grantee in connection with the project and the Grant, as such application may have been amended or supplemented (the "Application"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Application, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that ESD has relied on the statements and representations made by the Grantee in the Application in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Application or otherwise in connection with the Grant and, except as otherwise disclosed in writing to ESD, there has been no adverse material change in the financial condition of Grantee from the date of submission of the Application to the date hereof and that all other the information contained in the Application continues on the date hereof to be materially correct and complete.
- (g) The Grantee covenants that it will neither hold itself out as, nor claim to be an officer, employee, agent or representative of ESD or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or

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privilege applicable to an officer, employee, agent or representative of ESD or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

- (h) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to influence any official act or the judgment of any person in the award of the Grant or the performance of any of the terms of this Agreement.
- (i) It shall maintain business operations at the Project Location for the term of this Agreement.
- (j) The Grant shall be used solely for Project expenses in accordance with the terms and conditions of this Agreement.
- (k) The Grantee is solely responsible and has sufficient funding for all Project costs in excess of the Grant.
- (l) Grantee will use ESD grant funds, and submit payment requisitions, exclusively for eligible expenses related to capital works or purposes in accordance with IRS rules and regulations relating to ESD's bonds and in accordance with the New York Debt Reform Act. Grantee acknowledges that grant funds must be used solely for authorized capital purposes and not for operating expenses or other working capital items or non-capital purposes, irrespective of whether the funds are still used for the benefit of the Project. Grantee acknowledges that the consequences of breaching this covenant could result in violations of state law and/or large bond issuances being treated as taxable instead of tax exempt for federal and state tax purposes, loss of certain federal subsidies to the state, adverse ratings changes for such bonds, and disproportionate negative financial consequences to the state and bondholders. Grantee recognizes its financial obligations, risks and liabilities for breach of this covenant. ESD may, from time to time, request information from Grantee to confirm its compliance with this covenant and Grantee acknowledges its obligation under Section 9 (a) (ii) of the GDA to provide information upon request to ESD.
- (m) The Grant shall not be used in any manner for any of the following purposes:
  - (i) political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
  - (ii) religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;

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- (iii) payments to any firm, company, association, corporation or organization in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and
  - (iv) payment to any member of Grantee's Board of Directors or other governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.
  
- (n) Grantee is in compliance and shall continue to comply with Section 7 of this Agreement.
  
- (o) Grantee agrees, warrants and represents that ESD has not made any promises, warranties or representations, either express or implied, oral or in writing, of any nature kind or description, that Grantee will be accorded any form of grant or other financial assistance or accommodation, other than the specific form of assistance that is described and referred to herein and/or is specifically set forth in Exhibit A. To the contrary, ESD has not made any promises, warranties or representations, either orally or in writing, of any nature, kind or description other than those, if any, that are set forth in the writings that are being executed in connection with the transaction that is described and referred to herein. Grantee further agrees, warrants and represents that it has the ability, including without limitation the financial ability, to meet all of the obligations that are set forth in the documents that are being executed at the closing of this transaction including, without limitation, if applicable, the obligation, by Grantee, to meet all of the job creation/job retention mandates that are set forth herein, and that it is aware of no facts or conditions that would serve to limit or otherwise interfere with its ability to meet all of its obligations and requirements, as set forth herein. Grantee agrees, warrants and represents, still further: (a) that the closing on this transaction, i.e., the date set forth by the last signatory to this Agreement, has taken place in a timely manner, consistent with its needs and requirements; (b) that it has no claims or causes of action against ESD of any nature kind or description, including without limitation any claims or causes of action pertaining to the manner and/or timing of the closing of the referenced transaction and the disbursement of the funds that are to be accorded to the Grantee thereunder, and that to the extent that it does or did have such claims or causes of action, those are in all respects fully and finally waived and released; and (c) that Grantee knows and understands that ESD is relying upon the truthfulness and accuracy of the Grantee's

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agreements, warranties and representations, as set forth herein.

9. Default and Remedies

- (a) Each of the following shall constitute a default by the Grantee under this Agreement:
- (i) Failure to perform or observe any obligation or covenant of the Grantee contained herein, other than an employment default as set forth in (iv) below, to the reasonable satisfaction of ESD and within the time frames established under this Agreement.
  - (ii) Failure to comply with any request for information reasonably made by ESD to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by ESD in connection with the Grant.
  - (iii) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant.
  - (iv) Failure of the Grantee, for any time period, to meet the minimum employment goals required by Exhibit C.
  - (v) A default beyond any applicable grace period by the Grantee, or any entity which Grantee directly or indirectly controls, is controlled by, or is under common control with, under any other agreement with ESD.
  - (vi) Any manifestation, on the part of the Grantee, of an intention either: (x) to terminate and/or (y) to restructure, under the terms of any bankruptcy or insolvency statute or law, its business at the Project Location. This includes, without limitation, the announced or actual cessation of business activities at the Project Location, the initiation of proceedings under any dissolution statute, or the execution of an assignment for the benefit of creditors, or the solicitation of any composition and/or arrangement with creditors, or the issuance of "closing" or "termination" notices to employees under any state or federal statute, or the filing of any voluntary petition under any chapter of the United States Bankruptcy Code, or the failure by the Grantee to obtain the dismissal, within sixty (60) days of filing, of any involuntary proceeding brought under any chapter of the United States Bankruptcy Code.
  - (vii) If the number of the Grantee's Full-Time Permanent Employees, as that term is defined in this Agreement, that are situated at the Project Location as of the Grantee's last payroll date on or prior to the end of any quarter (with the quarters being those the quarterly dates of March 31, June 30, September 30 and December 31, as set forth in the Report of Employment that is annexed

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as Exhibit H to this Agreement) is less than fifty percent (50%) of the number of Full Time-Permanent Employees, situated at the Project Location, required in accordance with the Employment Goals that are to be achieved as of the next Reporting Date, as specified in Exhibit C.

- (viii) Failure by the Grantee, for any period of time, to comply with Section 7 of this Agreement.
- (b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESD shall have the right to terminate this Agreement, provided however, that if the default is pursuant to paragraph 9(a)(i) or 9(a)(ii), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice of default from ESD, or if the default pursuant to paragraph 9(a)(i) or 9(a)(ii) cannot be reasonably cured within such ten day period, Grantee commences to cure such default within the ten day cure period and cures the default within ninety (90) days thereafter, provided further that ESD shall not be obligated to make any disbursements during any such cure period. Defaults occurring under the terms and provisions of paragraph 9(a)(iii), 9(a)(iv), 9(a)(v), 9(a)(vi), 9(a)(vii), and 9(a)(viii), are not subject to the cure provisions provided herein.
- (c) Upon termination of this Agreement, ESD may (i) withhold any Grant proceeds not yet disbursed and (ii) require repayment of Grant proceeds disbursed to the Grantee in accordance with Exhibit C of this Agreement. Notwithstanding the foregoing, if ESD determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESD may require repayment of all funds and may refer the matter to the appropriate authorities for prosecution. ESD shall be entitled to exercise any other rights and seek any other remedies provided by law.

### 10. Term

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

### 11. Books and Records; Project Audit

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

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that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

- (c) In the event that Grantee fails, during the period following the expiration or earlier termination of this Agreement, to comply with the terms of this Section 11, including without limitation failing to accord ESD the ability to conduct field inspections and audits, ESD shall have the right to recover all of its costs, inclusive of attorneys' and other related professional fees, incurred in order: (i) to compel the production of books and records; (ii) to conduct field inspections and audits; and (iii) to assess and evaluate the Grantee's business and, inter alia, the manner in which the funds provided under this Agreement were employed. Such recovery shall be in addition to, and not in lieu of, any sums to which ESD is and/or was entitled to recapture under the terms of Section 9 hereof and Exhibit C of this Agreement, including without limitation Section 9(a)(ii), resulting from the Grantee's pre-expiration/termination default.

## 12. Maintenance of Insurance

Grantee shall maintain in full force and effect insurance, including, but not limited to, the insurance described hereafter, in such amounts and covering such risks as Grantor may require from time to time.

- (a) The Grantee shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended. The insurance required in this paragraph (a) shall provide coverage for an amount not less than the full replacement value of the buildings at the Project Location and the building equipment, or such other amount as the Grantor may reasonably require, provided that (i) the amount of insurance coverage shall be in an amount sufficient to satisfy, at all times, any co-insurance requirements, and (ii) the amount of any flood hazard insurance shall not exceed the maximum amount of coverage available under the National Flood Insurance Act.
- (b) When and to the extent required by the Grantor, the Grantee shall maintain in full force and effect insurance against (i) loss of rental income, (ii) loss of business income, (iii) damages to boiler, and (iv) any other risk as is customary in the industry of the Grantee. The insurance required in this paragraph (b) shall provide coverage in an amount satisfactory to Grantor.
- (c) The Grantee shall maintain Commercial General Liability Insurance providing both

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bodily injury (including death) and property damage insurance in a limit not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate and Three Million Dollars (\$3,000,000) umbrella. In addition, if the grant contemplates the purchase, construction or renovation of any buildings or equipment, the Recipient shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

- (d) All insurance required in this Section shall be issued by companies authorized to do business in the State of New York, satisfactory to Grantor pursuant to policies satisfactory to Grantor in form and substance. Without limiting the generality of the foregoing, the policies of insurance required hereby shall provide for thirty (30) days, or ten (10) days for non-payment, prior written notice of cancellation to Grantor.
- (e) The Grantee shall give prompt written notice to the Grantor in the event of substantial damage to the Project Location by reason of fire or other hazard or casualty.
- (f) Notwithstanding the provisions of Subdivision 4 of Section 254 of the Real Property Law, the Grantor shall be entitled to retain and apply the proceeds of any insurance required hereby to the payment of any obligations or, in the sole discretion of the Grantor, apply any or all such proceeds to the cost of restoration of the Project Location, in which case the Grantee shall proceed with reasonable diligence to repair, replace or rebuild the Project Location to substantially their condition prior to such damage in full compliance with all legal requirements.
- (g) The Grantee shall provide the Grantor with copies of all certificates for the required insurance coverages in form and substance satisfactory to the Grantor. In addition, the Grantee shall provide the Grantor with copies of renewal certificates or temporary binders in the event renewal policies have not been issued, in a timely manner. The Grantee must, in any event, provide Grantor with satisfactory confirmation of renewal coverage by the renewal date.
- (h) In the event that the Grantee fails to maintain the insurance required hereby, the Grantor may obtain such insurance and pay the premiums therefor and the Grantee shall, on demand, reimburse the Grantor for any insurance premiums paid, together with interest thereon computed at the highest rate per annum allowable under New York State law.
- (i) The Grantee will not take any action, or permit any condition to exist, with respect to the Project Location which may, in any manner, partially or wholly invalidate the insurance on the Project Location required hereby.

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- (j) ESD shall be named as additional insureds for ongoing and completed operations under Commercial General Liability and Umbrella Insurance policies. Coverage afforded to these additional insureds will be primary and non-contributory with any other insurance available to such additional insureds, whether such insurance is on a primary, excess, umbrella, or contingent basis. Additional insured coverage for ongoing and completed operations and shall be provided on ISO endorsement forms CG 20 10 and CG 20 37. Recipient will provide additional insured coverage to the fullest extent permitted by applicable law. This insurance shall contain an endorsement waiving all rights of subrogation against ESD.

**13. Survival of Provisions**

It is agreed that: (a) the provisions of Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 (except insofar as any of the aforesaid Sections have been waived in accordance with the terms of Exhibit I to this Agreement) shall survive the expiration or early termination of this Agreement; and (b) such expiration or early termination shall not serve to limit, alter or modify any of the Grantee's obligations or responsibilities under the aforesaid Sections, and/or ESD's rights under such Sections, referenced in subsection (a) of this Section 13 of this Agreement. It is further agreed, moreover, that notwithstanding the expiration or early termination of this Agreement, ESD shall nevertheless retain the right to pursue, through and until the expiration of any applicable period of limitations established under the statutory or common law of the State of New York, any claim or claims arising from any Section of this Agreement, including but not limited to the above referenced Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 of this Agreement, and the expiration or early termination of this Agreement shall not constitute a defense to any such timely filed claim or cause of action that is asserted on ESD's behalf.

**14. Notices**

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

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

Empire State Development

Name: Ketura Vics  
Title: Project Manager

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Address: 433 River Street, Suite 1003 Troy, NY 12180  
Telephone Number: 518-270-1131  
E-Mail Address: ketura.vics@esd.ny.gov

With a copy to:

Title: General Counsel  
Address: 655 Third Avenue, 3<sup>rd</sup> Floor, New York, NY 10017  
Telephone Number: (212) 803-3750  
Facsimile Number: (212) 803-3975

Ticonderoga Revitalization Alliance

Name: Nicole Justice Green  
Title: Executive Director  
Address: 111 Montcalm Street, Ticonderoga, NY 12883  
Telephone Number: 518-585-6366  
E-Mail Address: executive.director@northcountryruraldevelopment.org

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of mailing to the address provided herein, or in the case of facsimile transmission or email, upon receipt of a record, by the sender, that such a transmission has been completed.
- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

15. No Assignment

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

16. No Waiver

No waiver of any ESD's rights arising under this Agreement, or any other source, can occur unless such waiver shall be in writing and signed by ESD and such written document manifests a clear and unequivocal intent by ESD to waive its contractual or other legal rights. The term "waiver" as used herein is a term of art as used in the legal profession. ESD may not be estopped from asserting any of its legal rights, including but not limited to its rights under

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this agreement, unless ESD has signed a written document that clearly and unequivocally states that the other party may detrimentally rely upon the terms of such written document. Absent such written document, there shall be no estoppel against ESD and the other parties' alleged detrimental reliance shall be deemed to be unreasonable. The term "estoppel" is used herein is a term of art as used in the legal profession.

### 17. Integration/Modification

- (a) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter. In addition, this Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.
- (b) The Grantee's representations and warranties, as set forth in Section 8(o) herein, are repeated and reiterated and are made part of this Section 17 of this Agreement. Furthermore, the Grantee acknowledges and agrees that ESD has made no representations, either oral or in writing, other than those that are set forth in this Agreement. Specifically, the Grantee acknowledges and agrees that ESD has made no promises, warranties or representations, of any nature, kind or description: (a) that the Project will and/or can be, the assistance received from ESD notwithstanding, successful; and (b) that the Grantee will be able, following the closing of this transaction, i.e., the date set forth by the last signatory to this Agreement, to obtain the particular complement of personnel, and/or any other resource, material or item that its business requires. To the contrary, the Grantee acknowledges, agrees, warrants and represents to ESD that it has, prior to the consummation of this transaction, engaged in its own complete and comprehensive due diligence inquiry with respect to all aspects of the Project, including without limitation the suitability of the Project Location, the probability of the Project's success at that location and its ability to obtain, at the Project Location, the particular complement of personnel and/or any other resource, material or item that its business requires and/or will in the future require. The Grantee acknowledges and agrees and specifically represents to ESD that it is not relying upon any statements or representations from ESD, oral or otherwise, regarding any such matters, and/or about any other aspect of the Project. Any such reliance by Grantee, which understands and fully accepts any and all risks that it is undertaking in connection with the Project, and its absolute responsibility as Grantee to fulfill all of its obligations under the Agreement, including without limitation its obligation to fulfill all job creation/retention goals, would be and is unreasonable.

### 18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other

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rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein. In the event of a conflict between the Directors' materials attached hereto as Exhibit A and any other term or condition of this Agreement, then the term or condition of this Agreement shall govern.

### 19. Confidentiality of Information

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

### 20. Special Provisions

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

### 21. Litigation Costs

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

### 22. Waiver

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

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Ti Alliance 108 Montcalm Capital, Project Number 138,352

This agreement is entered into as of the latest date written below:

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

---

(Signature) Glendon McLeary, Vice President and Director, Loans and Grants

(date)

Ticonderoga Revitalization Alliance

DRAFT: do not sign this version

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(Signature)

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(Printed name and title)

(date)

Rev. 5/14/2025

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**ESD CAPITAL GRANT DISBURSEMENT AGREEMENT**

**EXHIBITS**

EXHIBIT A	General Project Plan
EXHIBIT B	Reports & Design & Construction Requirements
EXHIBIT C	Recapture Terms
EXHIBIT D	Opinion of Counsel
EXHIBIT E	Disbursement Terms
EXHIBIT F	Payment Requisition Form
EXHIBIT F-1	Financial Condition Documentation
EXHIBIT F-2	Project Cost Documentation
EXHIBIT F-3	Equity and Total Project Cost Expenditure Documentation
EXHIBIT G	Non-Discrimination and Contractor & Supplier Diversity – Requirements and Procedures
EXHIBIT G-1	M/WBE Participation / Equal Opportunity Policy Statement
EXHIBIT G-2	Staffing Plan
EXHIBIT G-3	Workforce Employment Utilization Report
EXHIBIT G-4	M/WBE Utilization Plan
EXHIBIT G-5	Waiver Request Form
EXHIBIT G-6	M/WBE Contractor Compliance and Payment Report
EXHIBIT H	Employment Reporting Form (With Company's NYS Form 45 Attached)
EXHIBIT I	Special Provisions

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**EXHIBIT A: GENERAL PROJECT PLAN**

**See Materials Attached**

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**EXHIBIT B: REPORTS – DESIGN & CONSTRUCTION REQUIREMENTS**

**Intentionally Deleted**

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**EXHIBIT C: EMPLOYMENT GOALS AND RECAPTURE TERMS**

**Intentionally Deleted**

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**EXHIBIT D: OPINION OF COUNSEL**

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development  
433 River Street, Suite 1003  
New York, New York 10017

Attn: Ketura Vics

Re: Ti Alliance 108 Montcalm Capital, Project #138,352

Ladies and Gentlemen:

We have acted as special counsel to Ticonderoga Revitalization Alliance, a 501-c-3 not for profit organization (the “Grantee”), in connection with the execution and delivery of the Grant Disbursement Agreement dated [Date of Agreement] (the “Agreement”) between New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and the Grantee.

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

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

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

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

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

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

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

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

Very truly yours,

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**EXHIBIT E: DISBURSEMENT TERMS**

**Disbursement**

Upon compliance with the terms of this Agreement, and receipt of the fees as set forth below, ESD shall disburse the Grant to the Grantee as follows:

Fees due:

Commitment Fee:	\$12,650 (One percent (1%) of grant amount)
Reimbursement for out-of-pocket expenses	\$ _____ (To be determined)
TOTAL due:	\$ _____

Up to \$1,265,000 will be disbursed to the Grantee in a lump sum upon documentation of construction/renovation, infrastructure/site work, and soft project costs totaling \$1,405,000 and completion of the project substantially as described in Exhibit A as evidenced by a Certificate of Occupancy, Certificate of Compliance and/or other documentation verifying project completion as ESD may require. Expenses must be incurred on or after to be considered eligible project costs.

Grantee must submit all documentation for the final disbursement of the Grant by no later than April 1, 2026.

ESD reserves the right to require additional documentation to support draw down requests.

**Wire Transfer Information:**

If ESD assistance is \$10,000 or greater, please provide a Letter from a financial officer of the company certifying to the accuracy of the following information:

Bank Name: \_\_\_\_\_

ABA #: \_\_\_\_\_

Account Name: \_\_\_\_\_

Account #: \_\_\_\_\_

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**EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM**

Ti Alliance 108 Montcalm Capital, Project #138,352 Disbursement Request Amount: \$ \_\_\_\_\_

ESD funds may be applied by Grantee in payment or reimbursement of the following costs:

Minimum Expense Incurred (per Exhibit E)		1,405,000				
Employment Goals (per Exhibit E)	Eligible Expenses	A: Actual Costs Incurred (this request)	B: ESD Share (this request)	C: Cumulative Amount Previously Received from ESD	D: Grant Amount (Cumulative if multi-year grant)	E: (D-C-B) Grant Balance Remaining
N/A	Construction/renovation, infrastructure/site work, engineering				1,265,000	
	TOTAL				\$1,265,000	

**CERTIFICATION**

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

- 1) To the best of my knowledge, information and belief, the expenditures for which Ticonderoga Revitalization Alliance is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and Ticonderoga Revitalization Alliance, are eligible expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source. These findings will be subject to audit by ESD’s Internal Audit Department.
  
- 2) I have the authority to submit this invoice on behalf of Ticonderoga Revitalization Alliance. The project, or portion thereof for which this invoice relates, has been completed in the manner outlined in the Agreement.
  
- 3) I hereby attach the following documents for ESD approval, in support of this requisition (note N/A if not applicable for this request):
  - \_\_\_ Exhibit F-1: Financial Condition Documentation
  - \_\_\_ Exhibit F-2: Project Cost Documentation
  - \_\_\_ Exhibit F-3: Equity Expenditures and Project Cost Affidavit
  - \_\_\_ Exhibit G-2: Staffing Plan
  - \_\_\_ Exhibit G-3: Workforce Employment Utilization Report
  - \_\_\_ Exhibit G-4: M/WBE Utilization Plan
  - \_\_\_ Exhibit G-5: Waiver Request Form
  - \_\_\_ Exhibit G-6: M/WBE Contractor Compliance and Payment Report
  - \_\_\_ Exhibit H: Report of Employment & NYS-45 form including Part C - Quarterly employee/payee wage reporting and withholding information (with social security numbers blocked out and location indicated as necessary) or equivalent documentation of employees, location, status, and payroll information.
  - \_\_\_ A copy of all current policies of insurance (or certificates thereof) in full compliance with the terms and conditions of Section 12 of the Agreement
  - \_\_\_ A copy of Certificate of Occupancy, Certificate of Compliance and/or other documentation verifying project completion as ESD may require
  
- 4) There have been no materially adverse changes in the financial condition of the Grantee, except as disclosed in writing to ESD, from the date of submission of the Application to the date hereof.

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**EXHIBIT F: Capital Grant Payment Requisition Form, Cont.**

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

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

At any point in the course of your project, ESD would appreciate feedback regarding this ESD program. Please comment on the application, project approval, and/or payment reimbursement process or any other interactions with ESD related to the project. You may submit your feedback under separate cover to Glendon McLeary, Vice President and Director of Loans and Grants, 655 Third Avenue, NY, NY 10017. Please include your Project Number and Project Name which are listed at the top of this exhibit on your submission.  
Thank you.

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d\b\ a EMPIRE STATE DEVELOPMENT  
Ti Alliance 108 Montcalm Capital, Project Number 138,352

**EXHIBIT F-1: FINANCIAL CONDITION DOCUMENTATION**

[Letterhead of CPA]

(Date)

Empire State Development  
655 Third Avenue  
New York, NY 10017  
Attn: Ketura Vics

Re: Ti Alliance 108 Montcalm Capital, Project #138,352  
**Bankruptcy Filing or Default on Debt Obligations**

Dear Ketura Vics:

In preparation for closing on the above-referenced project, [name of CPA firm] has performed the procedures enumerated below, which were agreed to by Ticonderoga Revitalization Alliance (the "Company") and Empire State Development ("ESD") (collectively the "specified parties"). The Company is responsible for its books and records and for notifying ESD of any materially adverse changes in its financial condition. These procedures are being performed solely to assist ESD in determining whether there has been a bankruptcy filing of the Company or whether the Company has experienced a default on any of its debt obligations subsequent to the date of the ESD Directors' approval of the project on June 26, 2025.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

1. Obtain from the Company, their most recent historical financial statements that have been prepared subsequent to the project's approval date. Read the financial statements for the purpose of noting whether there is any indication that the company has filed bankruptcy or whether the entity has experienced a default on any of its debt obligations. Report as a finding any indication that the Company may have filed for bankruptcy or has experienced a default subsequent to the Project's approval date.

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2. Request all minutes of the board of directors and other committee meetings since the date of the project's approval. If minutes are not available, obtain any abstracts or notes from such meetings. Read the minutes or abstracts and report as a finding any indication that the Company has filed for bankruptcy or whether the entity has experienced a default on any of its debt obligations subsequent to the project's approval date.
3. Obtain a description and evaluation of any pending litigation, claims, or assessments and examine supporting documents, including legal correspondence. Report as a finding any indication that the Company may have filed bankruptcy filing or whether the entity has experienced a default on any of its debt obligations subsequent to the project's approval date.
4. Obtain or prepare an analysis of notes payable, long-term debt, capitalized lease obligations, and other financing transactions or arrangements, such as lines of credit that existed as of the project's approval date. Compare balances in the company's liability accounts to debt amortization schedules and, if applicable, to the terms of new debt agreements. Report any findings of default.

[Findings should be listed here. If there were no findings, the CPA should state "We found no exceptions or matters to report as a result of our procedures"]

We were not engaged to and did not conduct an audit or an examination, the objective of which would be the expression of an opinion. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified parties and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

\_\_\_\_\_, CPA



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EXHIBIT F-3: EQUITY EXPENDITURES\* AND PROJECT COST\*\* AFFIDAVIT

Ti Alliance 108 Montcalm Capital, Project Number 138,352

\*Equity Amount is defined as cash injected into the project by the Grantee or by investors, and should be auditable through Grantee financial statements or Grantee accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project or grants from a government source.

\*\*Project Cost should correspond to the total stated in Exhibit F-2

STATE OF NEW YORK )
) ss.:
COUNTY OF )

The Undersigned, being duly sworn, deposes and says:

1. I, \_\_\_\_\_, am the \_\_\_\_\_ of \_\_\_\_\_ (the "Grantee"), an organization that is duly organized and validly existing under the laws of \_\_\_\_\_, and is authorized to do business and is in good standing in the State of New York.

2. I have read and know the contents of a certain Grant Disbursement Agreement (the "Agreement") executed by and between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

3. After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do certify, on the Grantee's behalf, that the equity\* expenditures by the Grantee were incurred in the manner set forth in the Agreement and such expenditures were equal to or greater than \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do further certify, on the Grantee's behalf, that the costs for the project were incurred in the manner set forth in the Agreement, that all such costs are capital expenses in accordance with applicable state and federal law, and the total cost of the project\*\* was equal to or greater than \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

4. I make this affidavit and the certifications contained herein to induce ESD to disburse the grant under the terms of the Agreement, knowing that ESD will rely on the statements contained herein. I am aware that the swearing of a false oath is a Class A misdemeanor and may be a Class E felony.

By:
Name:
Title:

Subscribed and sworn to before me
this \_\_\_\_ day of \_\_\_\_\_, 20

Notary Public

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

### **I. General Provisions**

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

### **II. Contract Goals**

- A. For purposes of this Contract, the ESD hereby establishes an overall goal of **30%** for Minority and Women-Owned Business Enterprises (“MWBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Recipient should reference the directory of New York State Certified MWBEs found at the following internet address:

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

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

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

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

constitutes a breach of contract and the Recipient shall be liable to the ESD for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

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

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

provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

### **C. EXHIBIT G-2: Staffing Plan**

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

### **D. EXHIBIT G-3: Work Force Employment Utilization Report (“Workforce Report”)**

1. Once a contract has been awarded and during the term of Contract, Recipient is responsible for updating and providing notice to the ESD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
  2. Separate forms shall be completed by Recipient and any subcontractor performing work on the Contract.
  3. In limited instances, Recipient may not be able to separate out the workforce utilized in the performance of the Contract from Recipient's and/or sub's total workforce. When a separation can be made, Recipient shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Recipient's and/or subcontractor's total workforce, Recipient shall submit the Workforce Report and indicate that the information provided is Recipient's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Recipient shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Recipient and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

## **IV. MWBE Utilization Plan**

- A. The Recipient represents and warrants that Recipient has submitted an MWBE Utilization Plan (EXHIBIT G-4) either prior to, or at the time of, the execution of the Contract.

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

- B. Recipient agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Exhibit.
- C. Recipient further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Recipient non-responsiveness.

### **V. Waivers**

- A. For Waiver Requests Recipient should use the Waiver Request Form (EXHIBIT G-5).
- B. If the Recipient, after making good faith efforts, is unable to comply with MWBE goals, the Recipient may submit a Request for Waiver form documenting good faith efforts by the Recipient to meet such goals. If the documentation included with the waiver request is complete, the ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Recipient is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the ESD may issue a notice of deficiency to the Recipient. The Recipient must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

### **VI. Quarterly MWBE Contractor Compliance Report**

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

### **VII. Liquidated Damages/Recapture - MWBE Participation**

- A. Where ESD determines that Recipient is not in compliance with the requirements of the Contract and Recipient refuses to comply with such requirements, or if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals, Recipient shall be obligated to pay to the ESD liquidated damages or be subject to recapture of grant proceeds ("Recapture").
- B. Such liquidated damages or Recapture shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Recipient achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

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

## **EXHIBIT G: PARTICIPATION BY SERVICE-DISABLED VETERANS WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

Article 3 of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. Empire State Development (“ESD”) recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the ESD’s contracts.

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

### **I. Contract Goals**

- A. ESD hereby establishes an overall goal of **0%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to ESD’s Office of Contractor and Supplier Diversity (“OCSD”). Additionally, following Contract execution, the Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Agreement.
- B. The Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Agreement (see clause IV below).

### **II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Contractors are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Contractor intends to use to perform the Agreement, a description of the work that the Contractor intends the SDVOB to perform to meet the goals on the Agreement, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Contractor acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Agreement award and during the term of the Agreement must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Contractor of ESD’s acceptance or issue a notice of deficiency within 20 days of receipt.

**EXHIBIT G: PARTICIPATION BY SERVICE-DISABLED VETERANS WITH RESPECT TO STATE  
CONTRACTS: REQUIREMENTS AND PROCEDURES**

- D. If a notice of deficiency is issued, the Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Contractor and direct the Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Contractor's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Contractor fails to submit an SDVOB Utilization Plan;
  - (b) If a Contractor fails to submit a written remedy to a notice of deficiency;
  - (c) If a Contractor fails to submit a request for waiver; or
  - (d) If ESD determines that the Contractor has failed to document good faith efforts.
- F. If awarded a Contract, the Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Agreement pursuant to the prescribed SDVOB contract goals set forth above.
- G. The Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

**III. Request for Waiver**

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

## **EXHIBIT G: PARTICIPATION BY SERVICE-DISABLED VETERANS WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

- C. The Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Agreement. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Agreement to ESD, but must be made no later than prior to the submission of a request for final payment on the Agreement.
- D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that the Contractor is failing or refusing to comply with the Agreement goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

### **IV. Required Good Faith Efforts**

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

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Agreement.
- (4) Information describing the specific steps undertaken to reasonably structure the Agreement scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

### **V. Monthly SDVOB Contractor Compliance Report**

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

**EXHIBIT G: PARTICIPATION BY SERVICE-DISABLED VETERANS WITH RESPECT TO STATE  
CONTRACTS: REQUIREMENTS AND PROCEDURES**

**VI. Breach of Contract and Damages**

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



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

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

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(c) At the request of the ESD, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
(e) The organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this contract.

MWBE PARTICIPATION (MWBE)

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.



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

- (2) Request a list of State-certified M/WBEs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at OCSD@ESD.NY.GOV.
(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
(4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

Agreed on this \_\_\_ day of \_\_, 20\_\_.

By: \_\_\_\_\_
(SIGNATURE)

Print Name:

Title:

Minority & Women-owned Business Enterprise and Service-Disabled Veteran-Owned Business- Equal Employment Opportunity Liaison

\_\_\_ (Name of Designated Liaison) is designated as the Minority Business Enterprise and Service-Disabled Veteran-Owned Business Liaison responsible for administering the Minority and Women-Owned Business Enterprises/Service Disabled Veteran-Owned Business- Equal Employment Opportunity (MWBE/SDVOB-EEO) program.

M/WBE Contract Goals

30 % Minority and Women's Business Enterprise Participation

EEO Contract Goals

NOT APPLICABLE % Minority Labor Force Participation

NOT APPLICABLE % Female Labor Force Participation



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

\_\_\_\_\_  
(Signature of Contractor's Authorized Representative)

\*Name: \_\_\_\_\_

\*Grantee: \_\_\_\_\_

\*Title: \_\_\_\_\_

\*Phone: \_\_\_\_\_

\*Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT G-2 - STAFFING PLAN**

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

Submit with Bid or Proposal – Instructions on page 4

<b>Contract/Project No.:</b>	<b>Contract/Project Title:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor  <b>Subcontractor's name</b> _____
<b>Contractor/Grantee Name:</b>		
<b>Contractor/Grantee Address:</b>		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified.

			EEO-Job Category								Totals
			Officials/ Administrators	Professionals	Technicians	Sales Workers	Office/ Clerical	Craft Workers	Laborers	Service Workers	
Total Work Force											
Work force by Gender	Total Male (M)										
	Total Female (F)										
	Total X (X)										
Work Force by Race/Ethnic Identification	White	(M)									
		(F)									
		(X)									
	Black/ African American	(M)									
		(F)									
		(X)									
	Hispanic	(M)									
		(F)									
		(X)									
	Asian	Chinese	(M)								
			(F)								
			(X)								
		Japanese	(M)								
			(F)								
			(X)								
Filipino		(M)									
		(F)									
		(X)									

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**EXHIBIT G-2 - STAFFING PLAN**

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

		EEO-Job Category									Totals			
		Officials/ Administrators	Professionals	Technicians	Sales Workers	Office/ Clerical	Craft Workers	Laborers	Service Workers	Temporary/ Apprentices				
Work Force by Race/Ethnic Identification	Asian	Korean	(M)											
			(F)											
			(X)											
		Vietnamese	(M)											
			(F)											
			(X)											
		Asian Indian	(M)											
			(F)											
			(X)											
		Bangladeshi	(M)											
			(F)											
			(X)											
		Pakistani	(M)											
			(F)											
			(X)											
		Hmong	(M)											
			(F)											
			(X)											
		Cambodian	(M)											
			(F)											
			(X)											
		Thai	(M)											
			(F)											
			(X)											

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**EXHIBIT G-2 - STAFFING PLAN**

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

			EEO-Job Category									Totals	
			Officials/ Administrators	Professionals	Technicians	Sales Workers	Office/ Clerical	Craft Workers	Laborers	Service Workers	Temporary/ Apprentices		
Work Force by Race/Ethnic Identification	Pacific Islander	Native Hawaiian	(M)										
			(F)										
			(X)										
		Guamanian & Chamorro	(M)										
			(F)										
			(X)										
		Samoan	(M)										
			(F)										
			(X)										
	Other Asian or Pacific Islander	(M)											
		(F)											
		(X)											
Native American	(M)												
	(F)												
	(X)												
Other Categories	Disabled	(M)											
		(F)											
		(X)											
	Veteran	(M)											
		(F)											
		(X)											

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>			



EXHIBIT G-2 - STAFFING PLAN

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

General Instructions: All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form OCSD-2) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

- 1. Enter the Contract or Solicitation number that this report applies to along with the name and address of your company or organization.
2. Check off the appropriate box to indicate if the Contractor completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Contractor's total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name and contact details of the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- WHITE (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
BLACK a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
HISPANIC a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
ASIAN a person of Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Bangladeshi, Pakistani, Hmong, Cambodian, or Thai origin.
PACIFIC ISLANDER a person of Native Hawaiian, Guamanian and Chamorro, or Samoan origin.
OTHER ASIAN OR PACIFIC ISLANDER a person of Asian or Pacific islander origin who does not fit within any of the specific racial/ethnic groups above.
NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE) a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES:

- DISABLED INDIVIDUAL any person who: - has a physical or mental impairment that substantially limits one or more major life activity(ies)
- has a record of such an impairment; or
- is regarded as having such an impairment.
VIETNAM ERA VETERAN a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
GENDER Male, Female, or "X"



**EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**  
**WORKFORCE EMPLOYMENT UTILIZATION REPORT**

Submit the above completed form to:

**Empire State Development**  
**Office of Contractor and Supplier Diversity**  
**655 Third Avenue, 6<sup>th</sup> Floor**  
**New York, NY 10017**

**General Instructions:** The work force utilization (M/WBE 102) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

## EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY WORKFORCE EMPLOYMENT UTILIZATION REPORT

### RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

### OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female



**EXHIBIT G-4**

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

\* indicates mandatory fields

\*Contractor Name:

Address:

\*Representative Name:      Town, State & Zip:

\*Phone:

\*ESD Contract/Project Number:

\*Fax:

RFP/RFQ/Solicitation Number:

\*Email:

\*MWBE Goal: MBE \_\_\_% + WBE \_\_\_% = MWBE GOAL \_\_\_%

\*Total Dollar Value of Contract/Grant: \$\_\_\_

\*SDVOB Goal: \_\_\_%

1. * Certified MWBE or SDVOB Firm Name, Contact Person's Name, Address, Phone and Email.	2. * Check All That Apply	3. * Federal ID No.	4. *Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)	5. *Check Firm Type That Applies for Work Completed on this Project	6. *Dollar Value of Contract (if unavailable or yet undetermined, indicate \$1)
A.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	
B.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	



EXHIBIT G-4

7. If unable to fully meet the MWBE and/or SDVOB goals set forth in the contract, the Contractor must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).

PREPARED BY (Signature): \_\_\_\_\_ DATE: \_\_\_\_\_

Preparer's Name (Print or Type): \_\_\_\_\_

Preparer's Title: \_\_\_\_\_

Date: \_\_\_\_\_

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

The MWBE Certification status of the firms listed on this form **MUST** be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises.

**This directory is available at <https://ny.newnycontracts.com>.**

The SDVOB Certification status of the firms listed on this form **MUST** be verified using the Directory of New York State Certified Service-Disabled Veteran-Owned Businesses.

**This directory is available at <https://online.ogs.ny.gov/SDVOB/search>.**

TELEPHONE NO.:

EMAIL ADDRESS:

**Policy Regarding Use of MWBE Suppliers and Brokers**

Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

**FOR CONSTRUCTION/CAPITAL PROJECTS** – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

**FOR ALL OTHER PROJECTS** - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

**\*\* FOR OCSD USE ONLY \*\***

REVIEWED BY:

DATE:

UTILIZATION PLAN APPROVED?

YES  PARTIAL  NO Date:

**EXHIBIT G-5**

## WAIVER REQUEST FORM

<b>Request for Waiver</b>		
Grantee / Contractor Name:	Fed ID No.:	
Full Address:	Contract / Project Number:	
Project Details (Project Name, Project Location):	Have you Previously submitted a Waiver Request? (YES/NO)	
Current Contract Value:	MWBE Goal: MBE   % + WBE   % Overall MWBE Goal:   % SDVOB Goal:   %	
<p><b>By submitting this form and the required information, the Contractor certifies that every “Good Faith Effort” has been taken to promote MWBE and SDVOB participation pursuant to the MWBE and SDVOB requirements set forth under the contract. Review <a href="#">5 NYCRR § 142.8</a> and <a href="#">9 NYCRR § 252</a>, Contractor’s Good Faith Efforts, for the precise definition of “Good Faith Effort.” Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor’s responsibility to ensure that adequate, clear and complete information is presented to the Office of Contractor and Supplier Diversity (“OCSD”).</b></p>		
<p><b>*UTILIZATION VALUE MET:</b></p> <p style="text-align: center;">MBE: \$__   WBE: \$__   SDVOB: \$</p>		
<p><b>*CONTRACTOR IS REQUESTING :</b></p> <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> <b>MBE Waiver</b> – A waiver of the MBE Goal for this procurement is requested.              REQUESTED MBE GOAL: __%</li> <li>2. <input type="checkbox"/> <b>WBE Waiver</b> – A waiver of the WBE Goal for this procurement is requested.              REQUESTED WBE GOAL: __%</li> <li>3. <input type="checkbox"/> <b>OVERALL MWBE Waiver</b> – A waiver of the MWBE Goal for this procurement is requested.              REQUESTED MWBE GOAL: __%</li> <li>4. <input type="checkbox"/> <b>SDVOB Waiver</b> – A waiver of SDVOB Participation Goal for this procurement is requested.              REQUESTED SDVOB GOAL: __%</li> </ol>		
<p>PREPARED BY (Signature): _____ Date: _____</p> <p><small>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR’S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8 AND/OR 9 NYCRR §252, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES AND SERVICE DISABLED VETERAN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENTATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.</small></p>		
<b>*Name and Title of Preparer:</b>	<b>*Telephone Number:</b>	<b>*Email:</b>

EXHIBIT G-5

WAIVER REQUEST FORM

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**Contractor's Good Faith Efforts**

- (a) Contractors must document their good faith efforts toward utilizing certified firms, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:
- (1) Copies of its solicitations of certified firms enterprises and any responses thereto;
  - (2) If responses to the contractor's solicitations were received, but a certified firm was not selected, the specific reasons that such firm was not selected;
  - (3) Copies of any advertisements for participation by certified firms timely published in appropriate general circulation, trade, MWBE and SDVOB oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
  - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified firms enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
  - (5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified firms.
- (b) In addition to the information provided by the contractor in subdivision (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
- (1) where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontract or supplier opportunities in the contract;
  - (2) the number of certified firms in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
  - (3) the actions taken by the contractor to contact and assess the ability of certified firms located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
  - (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified firms sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
  - (5) the terms and conditions of any subcontract or provision of suppliers offered to certified firms and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
  - (6) whether the contractor offered to make up any inability to comply with the certified firms goals in the subject State contract in other State contracts being performed or awarded to the contractor;
  - (7) the extent to which contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part, Articles 15-A or 17-B of the Executive Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;
  - (8) whether the contractor knowingly utilized one or more certified firms, in the performance of the subject State contract, that contractor knew or reasonably should have known could not perform a commercially useful function.

**EXHIBIT G-5**

WAIVER REQUEST FORM

- (9) whether the contractor submitted compliance reports, which identified certified firms that contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned. and
- (10) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

<p>Submit with the bid or proposal or if submitting after award submit to:</p> <p><b>Empire State Development Office of Contractor and Supplier Diversity 655 Third Avenue, 6<sup>th</sup> Floor New York, New York 10017</b></p>	<b>***** FOR OCSD USE ONLY *****</b>	
	<b>REVIEWED BY:</b>	<b>DATE:</b>
	<p> <b>Waiver Granted:</b> <input type="checkbox"/> YES    <b>MBE:</b> <input type="checkbox"/>    <b>WBE:</b> <input type="checkbox"/>    <b>SDVOB:</b> <input type="checkbox"/>  <input type="checkbox"/> <b>Total Waiver</b>                      <input type="checkbox"/> <b>Partial Waiver</b>  <input type="checkbox"/> <b>*Conditional</b>                        <input type="checkbox"/> <b>Notice of Deficiency Issued</b> </p> <p><b>* <u>Comments:</u></b></p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

MWBE AND SDVOB COMPLIANCE AND PAYMENT REPORT

**EXHIBIT G-6**

CONTRACTOR/GRANTEE:

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD OCSD REPRESENTATIVE:

CONTRACT/PROJECT NAME:

CONTRACT/PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

REPORTING PERIOD:  Monthly for the Month of: (Month) (Year)

Quarterly (Check Applicable):  Quarter 1 (4/1-6/30) |  Quarter 2 (7/1-9/30) |  Quarter 3 (10/1-12/31) |  Quarter 4 (1/1-3/31)

Attach MWBE and SDVOB executed contracts, wire transfer confirmations and cancelled checks as proof of payment to the identified MWBEs and SDVOBs. This report should be completed and signed by an officer of the Reporting Company. Attach additional sheets if necessary.

PRIME CONTRACTOR, if different from above (Name, Address, Contact Person, Title and Phone # with area code)	PRIME CONTRACT AMOUNT	MWBE or SDVOB SUBCONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	NYS CERTIFICATION (Check One)	DESCRIPTION OF SERVICES	CONTRACT AMOUNT	PAYMENTS PREVIOUSLY REPORTED	PAYMENTS ON CURRENT REPORT	TOTAL PAYMENTS TO DATE
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$

CERTIFICATION: I, \_\_\_ (Print Name), the \_\_\_ (Title) of the Reporting Company above, do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

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

DATE:

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.



EXHIBIT G-6

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

MWBE AND SDVOB COMPLIANCE AND PAYMENT REPORT

SUBMIT REPORT TO: Office of Contractor and Supplier Diversity
Empire State Development
655 Third Avenue, 6th Floor
New York, NY 10017

Completed forms may be emailed directly to OCSD at ocsd@esd.ny.gov. All email submissions must include ESD's project/contract number(s), and the name and contact information of the individual or firm submitting the information.

QUESTIONS? Please contact the OCSD's Compliance Managers or email the office at ocsd@esd.ny.gov.

Table with 5 columns: Name, Phone, Email, Region, and Department. Columns include Monique Campbell, Kelly Forsey, Ridwan Ahmed, Alex Adolphe, and Ami Shipley. Regions listed include Long Island, Capital District, Mid-Hudson, Central New York, and Southern Tier.

**DRAFT**

**EXHIBIT H: REPORT OF EMPLOYMENT**

**Intentionally Deleted**

**DRAFT**

**EXHIBIT I: SPECIAL PROVISIONS**

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

Neither the Grant, nor any equipment or facility funded in part or whole by the Grant, shall be used at any time or in any manner for religious worship, instruction or proselytizing.

The following sections of the Terms and Conditions of this Agreement are waived: Section 2; Section 3(e); the reference to "Exhibit H" in Section 4(a); Section 4(c); Section 9(a)(iv) and Section 9(a)(vii).