

# MAIN AND CLINTON LOCAL DEVELOPMENT CORPORATION

## REQUEST FOR PROPOSALS

### REQUEST FOR PROPOSALS FOR WEBSITE DEVELOPMENT AND ASSOCIATED SERVICES

**October 2006**

**Proposals Due: 3 PM EST on November 20, 2006**

**Note: Proposals received after the Due Date/Time will be rejected.**

Main & Clinton Local Development Corporation  
8100 CityPlace  
50 West Main Street  
Rochester, New York 14614

## NO RESPONSE FORM

If you choose not to respond to this Request for Proposals, please fax this form back to M&CLDC at your earliest convenience, to the attention of:

Jane Naylor  
200 County Office Building  
Rochester, NY 14614  
Fax (585) 753-1104

**RFP**

**Company:**

**Address:**

**Contact:**

**Contact Phone:**

**Reason for No-Response\*:**

Project capacity.

Cannot bid competitively.

Cannot meet delivery requirements.

Cannot meet specifications.

Do not want to do business with  
M&CLDC.

Other:

**Suggested changes to RFQ**

Specifications for next

Request for Qualifications.

\*Reasons for not responding might include insufficient time to respond, do not offer product or service, unable to meet specifications, bid specs too stringent, scope of work too small or large, unable to meet Insurance Requirements, cannot meet delivery or schedule requirements, etc

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## **SECTION 1 - INVITATION TO PARTICIPATE**

### **1.1 Background**

The County of Monroe is served by the Rochester-Genesee Regional Transportation Authority (RGRTA), a public transportation agency that provides fixed route, paratransit and regional express bus service throughout the City of Rochester and a multi-county service area. The County has identified the need for a downtown transit center where passengers would wait in a secure climate-controlled facility for public transit and intercity buses. Various local stakeholders have recognized the importance of the transit center, as well as the value of co-locating the transit center with other uses that will encourage increased transit ridership and spur economic development.

The Main and Clinton Local Development Corporation (M&CLDC) is a local development corporation organized under New York State law to design and construct the transit center project that is known as Renaissance Square. Renaissance Square will include a transit center, a downtown campus of Monroe Community College, and a performing arts center. It also will likely include retail, services and amenities for transit riders, students, performing arts center patrons, and the public.

### **1.2 Purpose**

The Main and Clinton Local Development Corporation (M&CLDC) is seeking proposals for the provision of website design and development services. This Request for Proposals (RFP) is intended to provide interested vendors with information to enable them to prepare and submit proposals for consideration by the Main and Clinton Local Development Corporation ("M&CLDC").

Prospective Consultants must offer a proposal that will meet the scope of services, qualifications and general description of work activities identified in Section 2 of this Request for Proposals ("RFP").

In responding to this RFP, Consultants must follow the prescribed format as outlined in Section 3. By so doing, each Consultant will be providing comparable data submitted by other Consultants and, thus, be assured of fair and objective treatment in the review and evaluation process.

The M&CLDC will assess the relevant experience and expertise of each firm and the ability of each firm to meet the overall needs of the M&CLDC.

While every effort has been made to ensure the accuracy and completeness of the information in this RFP, the M&CLDC recognizes that the information may not be complete in every detail and that all required work and materials may not be expressly mentioned in this RFP. It is the responsibility of the proposers to include in their proposals all services and materials that are manifestly necessary for the full and faithful performance of the services in accordance with the objectives of this RFP.

### 1.3 RFP Coordinator-Issuing Office

This RFP is issued for the Main & Clinton Local Development Corporation. The RFP Coordinator, identified below, is the sole point of contact regarding this RFP from the date of issuance until the selection of the successful Consultant.

Jane Naylon  
Manager of Contractual Services  
Purchasing and Central Services Division  
Room 200, County Office Bldg.  
39 West Main Street  
Rochester, New York 14614  
Electronic mail: [jnaylon@monroecounty.gov](mailto:jnaylon@monroecounty.gov).

### 1.4 Presentation and Clarification of the M&CLDC's Intentions

As a result of this RFP, the M&CLDC intends to enter into a contract with the selected Consultant to supply the services described in Section 2. However, this intent does not commit the M&CLDC to award a contract to any responding Consultant, or to pay any costs incurred in the preparation of the proposal in response to this request, or to procure or contract for any services. The M&CLDC reserves the right, in its sole discretion, to (a) accept or reject in part or in its entirety any proposal received as a result of this RFP if it is in the best interest of the M&CLDC to do so; (b) award one or more contracts to one or more qualified Consultants if necessary to achieve the objectives of this RFP and if it is in the best interest of the M&CLDC to do so.

### 1.5 Procurement Schedule

The following *Procurement Schedule* represents the M&CLDC's best estimate of the schedule that shall be followed for this Procurement. The M&CLDC reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. It is the responsibility of interested parties to obtain notice of any changes in this Schedule.

The schedule of events for this RFP is anticipated to proceed as follows:

- ◆ This RFP will be distributed on October 30, 2006.
- ◆ All requests for RFP clarification must be submitted in writing to the RFP Coordinator at the email address provided in Section 1.1 above and received no later than 3:00 PM EST on **November 6, 2006**.
- ◆ All questions will be answered and documented in writing as an Addendum to the RFP. These will be sent out to all Consultants who received the original RFP on or before **November 13, 2006**.
- ◆ Final RFP submissions must be received by 3:00 PM EST on **November 20, 2006** at the address shown in Section 3.1. The right to withdraw will expire on this date.

### 1.6 Restriction on Communication

Pursuant to §139-j and §139-k of the State Finance Law, this solicitation includes and imposes certain procurement lobbying limitations. From the date of issuance of this RFP until announcement of the successful vendor ["restricted period"], proposers may contact only the RFP Coordinator. No contact will be allowed between the Consultant and any other member of the M&CLDC with regard to this RFP during the RFP process unless

specifically authorized in writing by the RFP Coordinator. Prohibited contact may be grounds for Consultant disqualification.

To maintain a fair and impartial competitive process, the RFP Coordinator will respond only to written questions (including electronic mail) submitted within the specified timeframe. Written questions submitted during the specified timeframe will be the only opportunity for respondents to ask questions as to form and content. Please respect this policy and do not attempt to query M&CLDC personnel regarding this RFP except through written questions submitted via electronic mail or the U.S. Postal service. In the event that a proposer or someone acting on the proposer's behalf attempts to discuss the RFP orally or in writing, with any employee of the M&CLDC, other than the RFP Coordinator, the proposer may be disqualified. Proposers may continue to communicate with the **M&CLDC** staff regarding other business matters relative to M&CLDC business.

The RFP Coordinator and the M&CLDC will determine whether any addenda should be issued as a result of any question or other matters raised. The M&CLDC will make every attempt to provide proposing firms timely access to all necessary reasonable requests for information.

## **SECTION 2 – DETAILED SCOPE OF WORK**

### **2.1 Scope of Work:**

The M&CLDC requires assistance with design and development of a new website to communicate project information; this project will include, but not be limited to, development of a web site similar, to the current website [www.rensquare.org](http://www.rensquare.org), a content management system, and an outbound e-mail campaign, as well as on-going hosting and maintenance of the website. The M&CLDC requires a qualified consultant to handle day-to-day processes to keep the LDC website current and assist with on-going analysis of the website design and associated processes.

The contractor selected as a result of this proposal is expected to provide the M&CLDC with an experienced professional in the areas of website design, development and maintenance.

The required services shall include the following tasks and responsibilities, among others:

- Website Design and Development
- Content Management System
- Website Hosting and Maintenance
- Development of an Outbound Electronic Mail Campaign
- Editing Web Files
- Broken Links Reports
- Business Requirements Documentation
- Technical Requirements Document
- Data Requirements Documentation
- Process Documentation
- Maintain Open Issues List
  
- The Consultant firm will maintain continuity of the Consultant Team staff throughout the course of the project. Changes in staff shall require approval by the M&C LDC. The replacement consultant(s) with comparable skills will be provided at the same or lower hourly rate.

This project will commence upon final contract execution and is expected to continue under a three (3)-year contract, with two annual options to renew at the sole discretion of the M&C LDC.

## **2.2 Technical Requirements**

The following technical expertise must be provided:

- Minimum 2 years web development and web page modification.
- Minimum 2 years experience with on-going services, maintenance and support in relation to Web Hosting Services.
- Minimum 2 years experience with Microsoft Office suite of products including, but not limited to Access, Excel, Word, and FrontPage.
- Minimum 1-year's experience with Allaire Homesite or equivalent HTML editor program.
- Minimum 2 years experience with Windows 2000 and NT Workstation operating systems.
- Minimum 2 years experience with Computer-Aided Design & Drafting (CADD)
- Minimum 2 years experience with Electronic Commerce (EC) & Electronic Data Interchange (EDI)

## **2.3 Non-Technical Requirements**

- Good oral and written communication skills.
- Familiarity with and basic understanding of local development corporation procedures.
- Experience in information systems project management.
- Experience in translating business needs into system requirements.

## **SECTION 3 - SPECIFIC PROPOSAL REQUIREMENTS**

### **3.1 Proposal Submissions**

- A. Acceptance Period and Location:** To be considered, Consultants must submit a complete response to this RFP. Proposals not responding to all information requested in this RFP or indicating exceptions to those items not responded to may be rejected.

Sealed proposals must be received at the address below on or before **3:00 p.m. Eastern Standard Time, on Monday, November 20, 2006.**

Jane Naylon  
Manager of Contractual Services  
Purchasing and Central Services Division  
COB, Room 200  
39 West Main Street  
Rochester, New York 14614

**Proposals should be clearly marked as "Proposal for Website Design and Development Services".**

There will be no public opening of the proposals.

- B. Withdrawal Notification:** Consultants receiving this RFP who do not wish to submit a proposal should reply with a "No Proposal" letter to be received by the

RFP Coordinator no later than the proposal submission date. This copy of the RFP is to be returned with the withdrawal correspondence. The RFP is the property of M&CLDC and may not be reproduced or distributed for purposes other than proposal submission without the written consent of the M&CLDC.

- C. Required copies:** Consultants must submit one (1) signed original Proposal and five (5) complete copies of the signed original. The Consultant may respond electronically, in addition to submitting hardcopies of its proposal as provided above. The Consultant will make no other distribution of proposals. An official authorized to bind the Consultant to its provisions must sign proposals.
- D. Pricing Period:** For this RFP, the proposal must remain valid for a minimum of 120 days past the due date for receipt of RFPs.
- E. Economy of Preparation:** Proposals should be prepared as simply as possible and provide a straightforward, concise description of the Consultant's capabilities to satisfy the requirements of the RFP. Expensive bindings, color displays, promotional material, etc. are not necessary or desired. **Emphasis should be concentrated on accuracy, completeness, and clarity of content.** All parts, pages, figures, and tables should be numbered and clearly labeled. Vague terms such as "Consultant complies" or "Consultant understands" should be avoided.

### **3.2 Response Date**

To be considered, sealed proposals must arrive on or before the location, time and date specified in Section 3.1. **Requests for extension of the submission date will not be granted.** Consultants mailing proposals should allow ample delivery time to assure timely receipt of their proposals.

### **3.3 Clarification of RFP and Questions**

Questions that arise prior to or during proposal preparation must be submitted **in writing or via email** pursuant to instructions in Section 1 of this Request for Proposals.

### **3.4 Addenda to the RFP**

In the event it becomes necessary to revise any part of this RFP, the M&CLDC will make every effort to provide the addendum (a) to all who received the basic RFP. **An acknowledgment of such addenda, if any, must be submitted with the RFP response.**

### **3.5 Organization of Proposal**

This section outlines the information that must be included in your proposal. Please respond with your information in the same order as the items in the section.

- A. Transmittal Letter.** Each response to the RFP should be accompanied by a letter of transmittal not exceeding one (1) page that summarizes key points of the proposal and which is signed by a corporate officer of the firm authorized to commit the Consultant to the obligations contained in the proposal. The Consultant must certify that all material, supervision, and personnel will be provided as proposed, at no additional cost above the proposal price. Any costs not identified and subsequently incurred by the M&CLDC must be borne by the Consultant. This certification is accomplished by the Transmittal Letter being signed by an individual who has the authority to bind the Consultant. The transmittal letter should include a phone number, fax number and e-mail address for the Consultant's contact person.



**Any request for confidential treatment of information shall be included in the transmittal letter.** Any request for confidential treatment must comply with all requirements for such requests outlined herein. The absence of a request for confidential treatment shall be construed to mean that no portion of the proposal is requested by the offeror to be kept confidential.

**B. Table of Contents.** Include a *Table of Contents* at the beginning, which clearly outlines the contents of your proposal.

**C. Company Information.** Provide information related to your company and any companies you are proposing to use as sub-contractors. Specifically address the following:

1. Year the company was organized.
2. Identification of company ownership.
3. Financial history of the company covering the last three years. Attach the most recent copy of your latest financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principals. Also include the following information: current balance sheet, statement of revenues and expenses, statement of cash flows, and appropriate notes to these documents.
4. Functions and location of your nearest regional office to M&CLDC.
5. Anticipated growth of your organization including expansion of the client base and acquisitions

**D. Experience.** Provide information that clearly demonstrates your organization's prior experience and background (both business and technical) in engagements similar to this project. This section must include:

1. A list of all public sector clients in the State of New York, the dates of engagement for each client. Include the following information for each public sector client:
  - a. Name and address of the client;
  - b. Approximate annual budget;
  - c. Name and telephone number of contact person;
  - d. Summary of the savings and/or cost reductions obtained on behalf of the client as a result of your services.

2. Résumés for the key personnel to be involved in providing services to the M&CLDC.

**NOTE:** Employers are required by Federal law to verify that all employees are legally entitled to work in the United States. Accordingly, this Issuing Entity reserves the right to request legally-mandated employer-held documentation attesting to the same for each consultant assigned work under any project awarded as a result of this solicitation. In accord with such laws, this Issuing Entity does not discriminate against individuals on the basis of national origin or citizenship.

**E. Project Description.** Consultant must submit a detailed Project Narrative and Work Plan that describes:

- 1) its expertise and that of its proposed personnel and how its management procedures will ensure quality work is performed;
- 2) how its proposed services and proposed work plan will meet the tasks and deliverables as described in this Request for Proposals;
- 3) proposed quality control mechanisms that ensure a high level of quality and commitment to excellence.

**F. Conflict of Interest**

- (a) Discuss fully any conflict of interest, potential or actual, which might arise in connection with your firm's involvement in providing services to the M&CLDC.
- (b) State whether the proposing firm represents any party that is or may be adverse to the M&CLDC.
- (c) Discuss any past or present civil or criminal legal investigation or pertinent litigation and/or regulatory action involving your firm or any of its employees. Include a detailed discussion of the outcome of such investigation/litigation or regulatory action. If none, **include a statement that there are no past or present civil or criminal legal investigations, or pertinent litigation and/or regulatory actions involving your firm.**

**F. Cost Proposal.** Consultants must provide the proposed method of compensation for the services.

The work performed for the M&CLDC shall be charged as follows:

- |   |                         |
|---|-------------------------|
| • Website Design and Development:                         | Fixed Deliverable Price |
| • Website Hosting:  | Fixed Monthly Rate      |
| • Website Maintenance:                                    | Fixed Hourly Rate       |
| • On-going Site Design Work and Testing:                  | Fixed Hourly Rate       |
| • Additional hours for work beyond that described herein: | Fixed Hourly Rate       |

Rates quoted INCLUDE all auxiliary costs, such as printing, secretarial, program entry etc., as well as costs for Travel, Meals and Lodging.

In the event overtime is required, the consultant will be paid at the project's hourly rate.

Proposal costs shall include **all** costs associated with provision of the required services to the M&CLDC. To facilitate comparison among proposal submissions, the format shown on the Proposal Form included herein must be used to present the proposing firm's maximum billing amount for each item of work.

Identify any services for which the M&CLDC will be charged separately, if any, and provide your proposed price(s) for those services. Describe any other fees and expenses, if any, that may be charged to M&CLDC in connection with this project.

Based on the information provided, please provide a fee quote for the work described in this RFP. Fees should be structured as described herein, and must itemize the nature of services to be provided for the quoted fees. Separate fee schedules should

be included to reflect proposed items and fees for each (e.g., per hour (web design and development, website maintenance, etc.), deliverable, or month (hosting fees)).

Consultants' Cost Proposals shall include the "Required Forms," attached hereto (Appendix B).

- G. Insurance Certificates.** Each Consultant must supply a copy of their current Certificate of Insurance showing the insurance coverage at or above those described in the final Agreement resulting from this RFP.
- H. Exceptions to General Information for the Consultant.** For all exceptions to Section 4, the Consultant must indicate on a separate sheet labeled "Exceptions Taken to the General Information for the Consultant", the section number of any requirement to which an exception is being taken and an explanation of their position.
- I. Exceptions to the Standard M&CLDC Contract.** For all exceptions to the Standard M&CLDC Contract, the Consultant must indicate on a separate sheet labeled "Exceptions Taken to the Standard M&CLDC Contract," the section number of any requirement to which an exception is being taken and an explanation of their position. It is not intended that new contract wording be proposed by the Consultant, but rather that the Consultant explain their position so that the conflict can be evaluated. If no exceptions are noted, the Consultant is presumed to have agreed with all sections of the standard contract.
- ◆ **The individual signing the Proposal must initial changes or corrections made to the Proposal.**
  - ◆ **Corrections will not be permitted after the proposals have been opened.**

### **3.6 Method of Evaluation**

Proposals will be evaluated based on **Best Value**. The proposal which "optimizes quality, cost, and efficiency among the responsible and responsive proposals" shall be selected for award. (State Finance Law, Article 11, Section 163.) The successful proposal(s) must meet all the technical and non-technical requirement factor(s) which are part of the evaluation.

- A. Evaluation Committee:** Selected personnel from the M&CLDC will form the evaluation committee for this RFP. It will be the responsibility of this committee to evaluate all properly prepared and submitted proposals for the RFP and make a recommendation for award.
- B. Evaluation and Selection Criteria:** A proposal shall be deemed unresponsive if it fails to meet the *minimum qualifying criteria* defined below. A non-responsive proposal will not be evaluated or ranked.

Responses to this RFP will be evaluated according to the following criteria:

- ◆ Technical Competence
- ◆ Understanding of the Project
- ◆ Degree of Relevant Experience
- ◆ Qualifications of staff assigned to service the M&CLDC project
- ◆ Capacity and Availability to Perform the Services
- ◆ Proposed Fees
- ◆ References

### C. Evaluation Criteria

1) The Technical and Financial components of the proposals will be evaluated separately bearing the weight assigned below:

- a) Technical Competence = [60%]  
(Includes understanding of project, degree of relevant experience, qualifications of staff assigned to the project, capacity and availability to perform the requested services, and client references)
- b) Financial Component = [40%]  
[Includes proposed fees]

### D. Scoring Process

The Technical Evaluation [60%] will be organized into three (3) categories:

1) **Minimum Qualifying Criteria** (Pass/Fail) – This is a Pass/Fail Category in which the Consultant must meet minimum qualifying criteria to receive a passing grade. Failure to do so will result in disqualification of the proposal.

The qualifying criteria are as follows:

- Minimum of two (2) years experience in overseeing website design and development for medium-sized projects comprised of sub-projects and deliverables.
- Minimum of two (2) years experience as the focal point regarding communicating project status, meetings, reporting requirements, scope changes, and other issues on medium-sized projects.
- Overall completeness, clarity, quality of proposal and conformance to RFP Requirements (*determination of responsiveness*),
- *Determination of Responsibility* of the Proposer (proposer's ability to provide the required services per the RFP, as evidenced by the qualifications of the proposing firm and its employees and references of current and/or past clients. The proposing firm's managerial and financial strength and organizational size and stability shall also be evaluated).

2) **Quantifiers** = [45%] - Consultants who meet the minimum qualifying criteria will be scored and rated for each of the criteria outlined in Section B above.

3) **Overall Effectiveness and Ease of Implementation, Operation, and Maintenance** = [15%] This evaluation will take into account the following:

- a) Resource commitment and level of effort (initial and on-going) to implement, operate and maintain the proposed solution.
- b) Compatibility and ease of use of hardware and software components required to implement the solution(s).

**Financial Component** = [40%]:

- a] Proposed fees and total project cost will be evaluated on their overall relationship to being advantageous and favorable to the M&CLDC, as well as the following:
- b] The relationship of the Proposer's total cost to other Proposer's costs.
- c] The Proposer's price quote must be reasonable, in the sole judgment of the M&CLDC.

**E. Contract Approval Process:** Consultants must be aware that any contract resulting from this request for proposals is subject to prior approval by the M&CLDC Board.

### **3.7 Oral Presentation**

Consultants who submit a proposal may also be required to make an oral presentation of their proposal to the M&CLDC. At the same time, M&CLDC is under no obligation to offer any Consultant the opportunity to make such a presentation.

The M&CLDC reserves the right to seek additional information and/or clarification from any proposer, the right to negotiate with any proposer submitting a response, and the right to reject any or all responses with or without cause.

The M&CLDC also reserves the right to accept or reject proposals on each item separately or the proposal as a whole, without further discussion.

### **3.8 Investigations**

The M&CLDC reserves the right to conduct any investigations necessary to verify information submitted by the Consultant and/or to determine the Consultant's capability to fulfill the terms and conditions of the bidding documents and the anticipated contract. The M&CLDC reserves the right to visit a prospective Consultant's place of business to determine the existence of the company and the management capabilities required to administer this agreement. The M&CLDC will not consider Consultants that are in bankruptcy or in the hands of a receiver at this time of tendering a proposal or at the time of entering into a contract.

## **SECTION 4 - GENERAL INFORMATION FOR THE CONSULTANT**

### **4.1 Reservation of Rights**

The M&CLDC reserves the right to refuse any and all proposals, in part, or in their entirety, or select certain products and/or services from various Consultant proposals, or to waive any informality or defect in any proposal should it be deemed to be in the best interest of the M&CLDC. The M&CLDC is not committed, by virtue of this RFP, to award a contract, or to procure or contract for services. The proposals submitted in response to this request become the property of the M&CLDC. If it is in its best interest to do so, the M&CLDC reserves the right to:

- A. Make selections based solely on the proposals or negotiate further with one or more Consultants. The Consultant selected will be chosen on the basis of greatest benefit to the M&CLDC as determined by an evaluation committee.
- B. Negotiate contracts with the selected Consultants.
- C. Award a contract to more than one Consultant for any portion of this specification.

#### **4.2 Contract Negotiation**

Negotiations may be undertaken with those Consultants whose proposals prove them to be qualified, responsible, and capable of fulfilling the requirements of this RFP. The contract that may be entered into will be the most advantageous to the M&CLDC, price and other factors considered. The M&CLDC reserves the right to consider proposals or modifications thereof received at any time before a contract is awarded, if such action is in the best interest of the M&CLDC. Attached as RFP Appendix A is a copy of M&CLDC's standard agreement which contains mandatory provisions.

#### **4.3 Acceptance of Proposal Content**

The contents of the proposal of the successful Consultant may become contractual obligations, should a contract ensue. Failure of a Consultant to accept these obligations may result in cancellation of the award.

#### **4.4 Prime Responsibilities**

**The selected Consultant will be required to assume responsibility for all services offered in its proposal whether or not provided by them.** The selected Consultant will be liable, both individually and severally, for the performance of all obligations under the awarded contract and will not be relieved of non-performance of any of its subcontractors. Further, the M&CLDC shall approve all subcontractors and will consider the selected Consultant to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

##### **Basis of Award**

Award will be based on receipt of a responsive proposal from a responsible firm that best meets the terms, conditions, and requirements of this RFP and that best meets the needs of the M&CLDC. The M&CLDC reserves the sole and exclusive right to determine if the offered services meet the M&CLDC's requirements for *Website Design Services*. The M&CLDC also reserves the sole and exclusive right to award to the firm whose proposal meets the terms, conditions, and specifications of the RFP and whose proposal is considered to best serve the M&CLDC's interests.

**All proposals shall be considered final when received.**

#### **4.5 Property Rights**

For purposes of this RFP and for the contract, the term "Work" is defined as all data, records, files, information, work products, discs or tapes developed, produced or generated in connection with the services to be provided by the Consultant. The M&CLDC and the Consultant intend the contract to be a contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by the Consultant to be a work made for hire. In submitting a proposal in response to this RFP, the Consultant acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of the M&CLDC.

The Consultant and the Consultant's employees shall have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of the M&CLDC. Any property or Work not specifically scheduled in the Contract, as property of the Consultant shall constitute property of the M&CLDC.

In addition to compliance with the right to audit provisions of the contract, the



Consultant must deliver to the M&CLDC, no later than the twenty-four (24) hours after receipt of the M&CLDC's written request for same; all completed, or partially completed, Work and any and all documentation or other products and results of the services under such contract. The Consultant's failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of the contract. With the prior written approval of the M&CLDC, this twenty-four (24) hour period may be extended for delivery of certain completed, or partially completed, work or other such information, if such extension is in the best interests of the M&CLDC.

The Consultant will not make or retain any copies of the Work or any and all documentation or other products and results of the services provided under such Contract without the prior written consent of the M&CLDC.

#### **4.6 Contract Payment**

Actual terms of payment will be the result of agreements reached between M&CLDC and the Consultant selected.

#### **4.7 News Release**

News releases pertaining to this RFP or the services to which it relates will not be made without prior approval by the M&CLDC.

#### **4.8 Incurring Costs**

M&CLDC is not liable for any costs incurred by Consultants prior to the effective date of the contract.

#### **4.9 Material Submitted**

All right, title and interest in the material submitted by the Consultant as part of a proposal shall vest in M&CLDC upon submission of the Consultant's proposal to M&CLDC without any obligation or liability by M&CLDC to the Consultant. M&CLDC has the right to use any or all ideas presented by a Consultant.

M&CLDC reserves the right to ownership, without limitation, of all proposals submitted. However, because M&CLDC could be required to disclose proposals under the New York Freedom of Information Law (Public Officers Law §§ 84 – 90), M&CLDC will, to the extent permitted by law, seek to protect the Contractor's interests with respect to any trade secret information submitted as follows:

Pursuant to *Public Officers Law § 87*, M&CLDC will deny public access to Consultants' proposal to the extent the information constitutes a trade secret, which if disclosed would cause substantial harm to the Consultant's competitive position, provided the Consultant identified the information it considers to be a trade secret and explains how disclosure would cause harm to the Consultant's competitive position.

#### **4.10 NYS Date/Time Warranty**

Contractor warrants that any Product(s) furnished pursuant to this agreement ("Product"), including, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein) shall, when used in accordance with the Product documentation, be able to accurately process date/time data transitions (including, but not limited to, calculating, comparing, and sequencing), including leap-year calculations. When a Contractor proposes or an acquisition requires that specific Products must perform as a

package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this agreement. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

#### **4.11 NYS Technology Policy**

Any custom applications or programming delivered as part of a project shall comply with NYS Office for Technology Policy P04-002 titled *Accessibility of State Agency Web-based Intranet and Internet Information and Applications*, dated June 21, 2004, which replaces Technology Policy 96-13 *Accessibility to Technology* and supercedes Technology Policy 99-3 *Universal Accessibility for NYS Web Sites* (<http://www.oft.state.ny.us/policy/p04-002/index.htm>). This policy requires that all NYS agencies' web sites provide universal accessibility to persons with disabilities. The State of New York has adopted the W3C Web Content Accessibility Guidelines (<http://www.w3.org/TR/WAI-WEBCONTENT>) as a means to provide access to NYS agency web sites and the content therein. The Prime Contractor agrees to apply the most current version of these guidelines and conform with level "A" of the guidelines, satisfying all priority one checkpoints, as respects any custom applications or programming delivered pursuant to the project. Additional information for ADA-compliant website design may be found at the following website: <http://www.usdoj.gov/crt/ada/publicat.htm#anchor-website>.)



## APPENDIX A:

### STANDARD M&CLDC CONTRACT (To Be Revised As Necessary)

*The M&CLDC contemplates that, in addition to all terms and conditions described in this RFP, final agreement between the M&CLDC and the selected Vendor will include, without limitation, the terms and provisions contained in this Appendix B, Standard M&CLDC Contract.*

*Although such provisions will govern all bids as submitted, the M&CLDC may later amend such provisions. The Sample Agreement is included so that all proposal submissions will be governed by the same basic contractual terms.*

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between M&CLDC, a municipal corporation, with offices at 50 West Main Street, Rochester, New York 14614, hereinafter referred to as the "M&CLDC", and \_\_\_\_\_, with offices at \_\_\_\_\_, hereinafter referred to as the "CONTRACTOR".

#### WITNESSETH:

**WHEREAS**, the M&CLDC is desirous of obtaining the services of the CONTRACTOR to perform the scope of work set forth in Section 1 hereof, and

**WHEREAS**, the M&CLDC issued a Request for Proposal ("RFP"), attached hereto as Contract Attachment "A", and

**WHEREAS**, the CONTRACTOR has submitted a proposal, attached hereto as Contract Attachment "B" dated, \_\_\_\_\_ to perform the requested services, and

**WHEREAS**, the Board of the M&CLDC by Resolution No. \_\_\_\_\_ of 2006, authorized the M&CLDC, or its designee, to enter into a contract for services as hereinafter described, and

**WHEREAS**, the CONTRACTOR is willing, able, and qualified to perform such services,

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth the parties hereto mutually agree as follows:

#### I. SCOPE OF SERVICES

The Contractor shall perform the following services for the M&CLDC:

A.

B.

#### II. TERM OF CONTRACT

The term of this Agreement shall be for the period of \_\_\_\_\_ through \_\_\_\_\_.

This Agreement shall remain in effect for the period specified above, unless it is terminated by either party hereto, upon 30 day's prior written notice sent by registered or certified mail to the M&CLDC or the Contractor. This notice shall be sent to the respective party at

the addresses first above set forth or at such other address as specified in writing by either party. Upon termination of this Agreement, the Contractor shall have no further responsibility to the M&CLDC or to any other person with respect to those services specified in this Agreement. Upon termination of this Agreement, the M&CLDC shall be obligated to pay the Contractor for services only performed through the date of termination. Following such payment, the M&CLDC shall have no further obligations to the Contractor under this Agreement.

### **III. PAYMENT FOR SERVICES**

The M&CLDC agrees to pay the Contractor, and the Contractor agrees to be paid, a sum in full satisfaction of all expenses and compensation due the Contractor not to exceed \_\_\_\_\_ (\$\_\_\_\_\_).

Payment by the M&CLDC for the sum(s) herein contracted for shall be made upon the submission of properly executed M&CLDC claim vouchers, supported with such information and documentation necessary to substantiate the voucher, audited and approved by the M&CLDC.

The M&CLDC may audit records relating to expenses for services provided by the Contractor pursuant to this Agreement at any time during this Agreement and through and including twelve (12) months following this Agreement.

The Contractor shall prepare and make available such statistical and financial service and other records requested by the M&CLDC. These records shall be subject at all reasonable times to inspection, review or audit by the M&CLDC, the State of New York and other personnel duly authorized by the M&CLDC. These records shall be maintained for the period set forth in the State regulations.

### **IV. AMENDMENTS**

This Agreement may be modified or amended only in writing duly executed by both parties. Any modification or amendment shall be attached to and become part of this Agreement. All notices concerning this Agreement shall be delivered in writing to the parties at the principal addresses as set forth above unless either party notifies the other of a change in address.

### **V. INSURANCE**

The Consultant shall procure and maintain at his own expense until final completion of the work covered by the contract, insurance for liability for damages imposed by law of the kinds and in the amounts hereinafter provided, issued by insurance companies authorized to do business in the State of New York, covering all operations under the Contract whether performed by the Consultant or by his subcontractors.

The Contractor's general liability insurance shall provide for and name M&CLDC as an additional insured. All policies shall insure the M&CLDC for all claims arising out of the Agreement. All policies of insurance shall be issued by companies in good financial standing duly and fully qualified and licensed to do business in New York State or otherwise acceptable to the M&CLDC.

If any required insurance coverage contain aggregate limits or apply to other operations of the Contractor, outside of those required by this Agreement, the Contractor shall provide M&CLDC with prompt written notice of any incident, claims settlement, or judgment against that insurance which diminishes the protection of such insurance affords

M&CLDC. The Contractor shall further take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

The successful Consultant shall furnish to the M&CLDC a certificate or certificates of insurance in a form satisfactory to the M&CLDC Attorney showing that (s)he has complied with all insurance requirements set forth in the contract for services, that certificate or certificates shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been provided to the M&CLDC. Said certificates shall be delivered to the M&CLDC before final execution of this Agreement and original renewal certificates conforming to the requirements of this section shall be delivered to the M&CLDC at least sixty (60) days prior to the expiration of such policy or policies of insurance.

Except for *Worker's Compensation Insurance*, no insurance required herein shall contain any exclusion of municipal operations performed in connection with the Contract resulting from this proposal solicitation. The kinds and amounts of insurance are as follows:

- A. WORKER'S COMPENSATION AND DISABILITY INSURANCE: A policy covering the operations of the Consultant in accordance with the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workers' Compensation Law, covering all operations under contract, whether performed by him or by his subcontractors. The Contract shall be void and of no effect unless the person or corporation making or executing same shall secure compensation coverage for the benefits of, and keep insured during the life of said Contract, such employees in compliance with the provisions of the Worker's Compensation Law known as the Disability Benefits Law (chapter 600 of the Laws of 1949) and amendments hereto.
- B. GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE issued to the Consultant naming M&CLDC as an additional insured, and covering liability with respect to all work performed by him under the Contract. The minimum limits for this policy for property damage and personal injury shall be \$1,000,000 per occurrence, \$3,000,000 aggregate covered under liability and damage property. All of the following coverage shall be included:
- Comprehensive Form
  - Premises-Operations
  - Products/Completed Operations
  - Contractual Insurance covering the Hold Harmless Provision
  - Broad Form Property Damage
  - Independent Consultants
  - Personal Injury
- C. CONTRACTOR'S PROTECTIVE LIABILITY INSURANCE issued to the Consultant and covering the liability for damages imposed by law upon the said Consultant for the acts or neglect of each of his subcontractors with respect to all work performed by said subcontractors under the agreement.
- D. PROFESSIONAL LIABILITY INSURANCE covering errors and omissions of the Consultant with minimum limits of \$2,000,000 per occurrence.
- E. AUTOMOBILE LIABILITY INSURANCE issued to the Consultant and covering liability and property damage on the Consultant's vehicles in the amount of \$1,000,000 per occurrence.

## **VI. INDEMNIFICATION**

The Contractor shall defend, indemnify and save harmless the M&CLDC, its officers, agents, servants and employees from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorneys' fees and disbursements, brought against the M&CLDC which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the performance of the services by the Contractor, its agents or employees, the provision of any products by the Contractor, its agents or employees, arising from any act, omission or negligence of the Contractor, its agents or employees, or arising from any breach or default by the Contractor, its agents or employees under the Agreement resulting from this RFP. Nothing herein is intended to relieve the M&CLDC from its own negligence or misfeasance or to assume any such liability for the M&CLDC by the Contractor.

## **VII. INDEPENDENT CONTRACTOR**

For the purpose of this Agreement, the Contractor is and shall in all respects be considered an independent contractor. The Contractor, its individual members, directors, officers, employees and agents are not and shall not hold themselves out nor claim to be an officer or employee of M&CLDC nor make claim to any rights accruing thereto, including, but not limited to, Worker's Compensation, unemployment benefits, Social Security or retirement plan membership or credit.

The Contractor shall have the direct and sole responsibility for the following: payment of wages and other compensation; reimbursement of the Contractor's employees' expenses; compliance with Federal, state and local tax withholding requirements pertaining to income taxes, Worker's Compensation, Social Security, unemployment and other insurance or other statutory withholding requirements; and all obligations imposed on the employer of personnel. The M&CLDC shall have no responsibility for any of the incidences of employment.

## **VIII. TITLE TO WORK**

- A. The title to all work performed by the Contractor and any unused materials or machinery purchased by the Contractor with funds provided by the M&CLDC in order to accomplish the work hereunder shall become legally vested to the M&CLDC upon the completion of the work required under this Agreement. The Contractor shall obtain from any subcontractors and shall transfer, assign, and/or convey to M&CLDC all exclusive, irrevocable, or other rights to all work performed under this Agreement, including, but not limited to trademark and/or service mark rights, copyrights, publication rights, distribution rights, rights of reproduction, and royalties.
- B. No information relative to this Agreement shall be released by the Contractor or its employees for publication, advertising or for any other purpose without the prior written approval of the M&CLDC. The Contractor hereby acknowledges that programs described herein are supported by this Agreement by the M&CLDC and the Contractor agrees to state this fact in any and all publicity, publications and/or public information releases.

## **IX. EXECUTORY NATURE OF CONTRACT**

This Agreement shall be deemed executory only to the extent of the funding available and the M&CLDC shall not incur any liability beyond the funds annually budgeted therefore. The M&CLDC may make reductions in this Agreement for the loss/reduction in State Aid

or other sources of revenues. If this occurs, the Contractor's obligations regarding the services provided under this Agreement may be reduced correspondingly.

**X. NO ASSIGNMENT WITHOUT CONSENT**

The Contractor shall not, in whole or in part, assign, transfer, convey, sublet, mortgage, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Agreement or any of its right, title or interest herein or its power to execute the Agreement, or any part thereof to any person or entity without the prior written consent of the M&CLDC.

**XI. FEDERAL SINGLE AUDIT ACT**

In the event the Contractor is a recipient through this Agreement, directly or indirectly, of any funds of or from the United States Government, Contractor agrees to comply fully with the terms and requirements of Federal Single Audit Act [Title 31 United States Code, Chapter 75], as amended from time to time. The Contractor shall comply with all requirements stated in Federal Office of Management and Budget Circulars A- 102, A-110 and A-133, and such other circulars, interpretations, opinions, rules or regulations that may be issued in connection with the Federal Single Audit Act.

Of the amount specified in Section  of this Agreement,  (\$) of such amount or  (%) of such amount, is being passed-through the M&CLDC from the United States Government under the following:

Award Name:

Award Number:

Award Year:

Name of Federal Agency:

Catalog of Federal Domestic Assistance (CFDA) Number:

The Award [ ] is [ ] is not related to Research and Development.

If on a cumulative basis the Contractor expends Five Hundred Thousand and no/100 Dollars (\$500,000.00) or more in federal funds in any fiscal year, it shall cause to have a single audit conducted, the Data Collection Form (defined in Federal Office of Management and Budget Circular A-133) shall be submitted to the M&CLDC; however, if there are findings or questioned costs related to the program that is federally funded by the M&CLDC, the Contractor shall submit the complete reporting package (defined in Federal Office of Management and Budget Circular A-133) to the M&CLDC.

If on a cumulative basis the Contractor expends less than Five Hundred Thousand and no/100 Dollars (\$500,000.00) in federal funds in any fiscal year, it shall retain all documents relating to the federal programs for three (3) years after the close of the Contractor's fiscal year in which any payment was received from such federal programs.

All required documents must be submitted within nine (9) months of the close of the Contractor's fiscal year end to:

Main and Clinton Local Development Corporation  
8100 City Place  
50 West Main Street  
Rochester, New York 14614

The Contractor shall, upon request of the M&CLDC, provide the M&CLDC such documentation, records, information and data and response to such inquiries as the M&CLDC may deem necessary or appropriate and shall fully cooperate with internal and/or independent auditors designated by the M&CLDC and permit such auditors to have access to, examine and copy all records, documents, reports and financial statements as the M&CLDC deems necessary to assure or monitor payments to the Contractor under this Agreement.

The M&CLDC's right of inspection and audit pursuant to this Agreement shall survive the payment of monies due to Contractor and shall remain in full force and effect for a period of three (3) years after the close of the Contractor's fiscal year in which any funds or payment was received from the M&CLDC under this Agreement.

## **XII. RIGHT TO INSPECT**

Designated representatives of the M&CLDC shall have the right to monitor the provision of services under this Agreement which includes having access at reasonable times and places to the Contractor's employees, reports, books, records, audits and any other material relating to the delivery of such services. The Contractor agrees to maintain and retain all pertinent records related to this Agreement for a period of ten (10) years after final payment.

## **XIII. NON-DISCRIMINATION**

The Contractor agrees that in carrying out its activities under the terms of the Agreement that it shall not discriminate against any person due to such person's age, marital status, disability, genetic predisposition or carrier status, race, color, creed, sexual orientation, sex or national origin, and that at all times it will abide by the applicable provisions of the Human Rights Law of the State of New York as set forth in Section 290-301 of the Executive Law of the State of New York.

## **XIV. CONTRACTOR QUALIFIED, LICENSED, ETC.**

The Contractor represents and warrants to the M&CLDC that it and its employees is duly and fully qualified under the laws of the state of its incorporation and of the State of New York, to undertake the activities and obligations set forth in this Agreement, that it possesses as of the date of its execution of this Agreement, and it will maintain throughout the term hereof, all necessary approvals, consents and licenses from all applicable government agencies and authority and that it has taken and secured all necessary board of directors and shareholders action and approval.

## **XV. CONFIDENTIAL INFORMATION**

- A. For the purpose of this Agreement, "Confidential Information" shall mean information or material proprietary to the M&CLDC or designated as "Confidential Information" by the M&CLDC, and not generally known by non-M&CLDC personnel, which Contractor may obtain knowledge of or access to as a result of a contract for services with the M&CLDC. The Confidential Information includes, but is not limited to, the following types of information or other information of a similar nature (whether or not reduced to writing): methods of doing business, computer programs, computer network operations and security, finances and other confidential and proprietary information belonging to the M&CLDC. Confidential Information also includes any information described above which the M&CLDC obtained from another party which the M&CLDC treats as proprietary or designates as Confidential Information, whether or not owned or developed by the M&CLDC.



Information publicly known and that is generally employed by the trade at the time that Contractor learns of such information or knowledge shall not be deemed part of the Confidential Information.

### **1. Scope of Use**

- a. Contractor shall not, without prior authorization from M&CLDC, acquire, use or copy, in whole or in part, any Confidential Information.
- b. Contractor shall not disclose, provide or otherwise make available, in whole or in part, the Confidential Information other than to those employees of Contractor who have executed a confidentiality agreement with the M&CLDC, have a need to know such Confidential Information, and who have been authorized by M&CLDC to receive such Confidential Information.
- c. Contractor shall not remove or cause to be removed, in whole or in part, from M&CLDC facilities, any Confidential Information, without the prior written permission of M&CLDC.
- d. Contractor shall take all appropriate action, whether by instruction, agreement or otherwise, to insure the protection, confidentiality and security of the Confidential Information and to satisfy its obligations under this Confidentiality Agreement.

### **2. Nature of Obligation**

- a. Contractor acknowledges that the M&CLDC, because of the unique nature of the Confidential Information, would suffer irreparable harm in the event that Contractor breaches its obligation under this Agreement in that monetary damages would be inadequate to compensate the M&CLDC for such a breach. The parties agree that in such circumstances, the M&CLDC shall be entitled, in addition to monetary relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by the M&CLDC.

## **XVI. GENERAL PROVISIONS**

This Agreement constitutes the entire Agreement between the M&CLDC and the Contractor and supersedes any and all prior Agreements between the parties hereto for the services herein to be provided. The Agreement shall be governed by and construed in accordance with the laws of New York State without regard or reference to its conflict of law principles.

## **XVII. FEDERAL, STATE AND LOCAL LAW AND REGULATIONS COMPLIANCE**

Notwithstanding any other provision in this Agreement, the Contractor remains responsible for ensuring that any service(s) provided pursuant to this Agreement complies with all pertinent provisions of Federal, State and local statutes, rules and regulations.

## **XVIII. USAGE OF COMPUTER AND ELECTRONIC EQUIPMENT**

The Contractor acknowledges and agrees that usage of any computer hardware, computer software and/or electronic equipment used in the course of carrying out duties under this Agreement will be governed by all applicable laws, rules and regulations, including M&CLDC policies and procedures.

## **XIX. MISCELLANEOUS**

The Contractor agrees to comply with all confidentiality and access to information requirements in Federal, State and Local laws and regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the last day and year written below.

**M&CLDC**

By \_\_\_\_\_  
Maggie Brooks  
President, M&CLDC

**CONTRACTOR**

By \_\_\_\_\_

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

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

\_\_\_\_\_  
Contractor's Federal ID Number or  
Social Security Number



State of New York    )  
                                  )       ss:  
County of Monroe    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared MAGGIE BROOKS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signatures on the instrument, the individual(s), or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York    )  
                                  )       ss:  
County of Monroe    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## **MANDATORY CONTRACTUAL PROVISIONS**

### **NON-DISCRIMINATION PROVISIONS**

During the performance of this Agreement, [Insert Contractor Name], for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **COMPLIANCE WITH REGULATIONS:** Contractor shall comply with the regulations relative to non-discrimination in federally-assisted programs of the New York State Department of Transportation and Title 49, Code of Federal Regulations, Part 26, as the same may be amended from time to time (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this Agreement.
2. **SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations, either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin.
3. **INFORMATION AND REPORTS:** Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Owner to be pertinent, to ascertain compliance with required Federal and/or State Regulations, orders and instructions. Where any information is required, or the Contractor is in the exclusive possession or control of another who fails or refuses to furnish this information, the Contractor shall so certify to the Owner, and shall set forth efforts it has made to obtain the information.
4. **SANCTIONS FOR NON-COMPLIANCE:** In the event of Contractor’s non-compliance with the non-discrimination provisions of this Agreement, the Owner shall impose such sanctions as it, the Federal Transportation Administration and/or the New York State Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding of payments to the Contractor under this Agreement until the Contractor complies; and/or
  - b. cancellation, termination or suspension of this Agreement, in whole or in part.
6. **INCORPORATION OF PROVISIONS:** Contractor shall include the provisions of paragraphs 1 - 4 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the Owner may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, Contractor may request the Owner to enter into such litigation to protect the interests of the recipient and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the recipient or the United States.

## NYS REQUIRED CONTRACT CONTRACTS

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

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

## **NYS REQUIRED CONTRACT CLAUSES (Continued)**

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

### **11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

### **12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or

rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations 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.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

## NYS REQUIRED CONTRACT CLAUSES (Continued)

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

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

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

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

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

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

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

## REQUIRED CLAUSES FOR FEDERAL CONTRACTS (Continued)

### 1. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October 1999) between M&CLDC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### 2. NO OBLIGATION BY THE FEDERAL GOVERNMENT

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(1) The M&CLDC and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed.

In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under

the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 4. TERMINATION

(1) **Termination for Convenience (General Provision):** The M&CLDC may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the M&CLDC's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to M&CLDC to be paid the Contractor. If the Contractor has any property in its possession belonging to M&CLDC, the Contractor will account for the same, and dispose of it in the manner M&CLDC directs.

(2) **Termination for Default [Breach or Cause] (General Provision):** If the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, M&CLDC may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by M&CLDC that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, M&CLDC, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(3) **Opportunity to Cure (General Provision):** M&CLDC, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to M&CLDC's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from M&CLDC setting forth the nature of said breach or default, M&CLDC shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude M&CLDC from also pursuing all available remedies against Contractor and its sureties for said breach or default.

## REQUIRED CLAUSES FOR FEDERAL CONTRACTS (Continued)

**(4) Termination for Convenience (Professional or Transit Service Contracts)** The M&CLDC by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, M&CLDC shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**(5) Termination for Default (Supplies and Service)** If the contractor fails to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, M&CLDC may terminate this contract for default. The M&CLDC shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of M&CLDC.

**(6) Waiver of Remedies for any Breach:** In the event that M&CLDC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by M&CLDC shall not limit M&CLDC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

### 5. CIVIL RIGHTS REQUIREMENTS

#### (1) Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

#### (2) Equal Employment Opportunity

##### (a) Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (US DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment

Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246 "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

##### (b) Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

##### (c) Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, " 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### 6. Disadvantaged Business Enterprises

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is \_\_ %.

(1) If a specific DBE goal is assigned to this contract, it will be clearly stated in the bid documents, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the M&CLDC may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the bid documents, it will be understood that no specific goal is assigned to this contract.

## REQUIRED CLAUSES FOR FEDERAL CONTRACTS (Continued)

(a) Policy – It is the policy of the Department of Transportation and the M&CLDC that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of Contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26, have the opportunity to participate in whole or in part with federal funds provided under this Agreement.

In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

If is further the policy of M&CLDC to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of M&CLDC procurement activities are encouraged.

(b) DBE obligation – The Contractor and its subcontractors agree to ensure that DBEs have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, M&CLDC may declare the contractor noncompliant and in breach of contract. Guidance concerning good faith efforts may be found in the bid documents and are also listed in M&CLDC Disadvantaged Business Enterprise Program document.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with M&CLDC's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of M&CLDC and will be submitted to M&CLDC upon request.

(e) M&CLDC will provide affirmative assistance, as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBEs,
- Available listing of Minority Assistance Agencies,
- Holding bid conferences to emphasize requirements.

(2) Prime Contractors are encouraged to use the services of DBE banks.

**7. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### **8. GOVERNMENT DEBARMENT AND SUSPENSION**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the M&CLDC. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to M&CLDC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **9. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City Utilities requests which would cause City Utilities to be in violation of the FTA terms and conditions.



REQUIRED CLAUSES FOR FEDERAL CONTRACTS (Continued)	
<p><b>10. COMPLIANCE WITH FEDERALLY REQUIRED CLAUSES AND REQUIREMENTS</b></p> <p>Contractor (bidder) is responsible for ensuring its compliance with all applicable Federal Transit Administration (FTA) requirements. Additionally, Contractor is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable FTA requirements. Upon request of City Utilities or FTA, Contractor shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.</p>	

**CONTRACT ATTACHMENT A**

REQUEST FOR PROPOSAL DOCUMENT

**CONTRACT ATTACHMENT B**

Contractor's Proposal Response to Request for Proposals

**CONTRACT ATTACHMENT C**

Insurance Certificates

**CONTRACT ATTACHMENT D**

Tax Law – Section 5-a Compliance  
Contractor Certification (Form ST-220)

## Contract Attachment D

### *Tax Law – Section 5-a Compliance Contractor Certification (Form ST-220)*

**User/Purpose:** On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts [projects] valued at more than \$15,000 **with state agencies, public authorities or public benefit corporations** to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority **if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.** A contractor must use Contractor Certification form- ST-220 to make this certification before the contract [project] may be approved by the Office of the State Comptroller (OSC), or other contract [project] approver if OSC is not required to approve the contract [project].

This statute applies to contracts [projects] resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP [or Project Definition] was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

Contractors must also certify, at specified intervals during the terms of multi-year contracts [projects] and those contracts [projects] subject to renewal upon expiration of an initial or renewal term, that they as well as their affiliates, subcontractors and subcontractors' affiliates making sales delivered within New York State have a valid certificate of authority to collect New York State and local sales and compensating use taxes.



New York State Department of Taxation and Finance

**Contractor Certification**

(Pursuant to Section 5-a of the Tax Law)

**SAMPLE ONLY-To be Completed Only in Event of Contract Award)**For more information, see Publication 222, *Question and Answers Concerning Tax Law Section 5-a.*

Contractor name			For office use only Contract number
Contractor's principal place of business	City	State ZIP code	
Mailing address (if different than above)			Estimated contract value
Contractor's federal employer identification number (EIN)			
Contractor's sales tax ID number (if different from contractor's EIN)			\$
Contractor's telephone number ( )	Contracting state agency		

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am  
(name)  
\_\_\_\_\_ of the above-named contractor, that I am authorized to make  
(title)  
this certification on behalf of such contractor, and that:

**Part I. Contract services that are not services for purposes of Tax Law section 5-a**

(Mark an X in the box if this statement is applicable. If you mark this box, you do not have to complete Parts II through V.)

- ☐ The requirements of Tax Law section 5-a do not apply because the subject matter of the contract concerns the performance of services which are not *services* within the meaning of Tax Law section 5-a.

(If you did not mark the box next to the statement in Part I, mark an X next to the applicable statement in Parts II through V.)

**Part II. Contractor registration status**

- ☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law.
- ☐ As of the date of this certification, the contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

**Part III. Affiliate registration status**

- ☐ As of the date of this certification, the contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and each affiliate exceeding the \$300,000 sales threshold during such periods is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address, and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates and, as of the date of this certification, each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

#### Part IV. Subcontractor registration status

- ☐ As of the date of this certification, the contractor does not have any subcontractors.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that it is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each subcontractor exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

#### Part V. Subcontractor affiliate registration status

- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it does not have any affiliates
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification it has any affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has one or more affiliates having made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that each such affiliate is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has no affiliate having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

**Schedule A - List of affiliates**

A Relationship to Contractor	B Name	C Address	D ID Number	E Sales Tax ID Number	F Proof of Registration

Column A - Enter **C** if the contractor; do not complete columns C, D, and E. Enter **A** if an affiliate of the contractor; **S** if a subcontractor; or **SA** if an affiliate of a subcontractor, and complete columns B through F.

Column B - Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State. If person is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.

Column C - Address - Enter the street address of person's principal place of business. Do not enter a PO box.

Column D - ID number - Enter the federal identification number assigned to the person or person's business, as applicable.

Column E - Sales tax ID number - Enter only if different from federal ID number in column D.

Column F - Enter **CA** if a paper copy of the certificate of authority is attached; or **RC** if person is registered with DTF and has confirmed this status with DTF.

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

## Instructions

### General information

On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts valued at more than \$15,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. A contractor must use Form ST-220, *Contractor Certification*, to make this certification before the contract may be approved by the Office of the State Comptroller (OSC), or other contract approver if OSC is not required to approve the contract.

This statute applies to contracts resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

The statute does not apply to purchases from preferred sources. For additional information, please see Publication 222, *Questions and Answers Concerning Tax Law Section 5-a*.

### Definition of terms associated with section 5-a

The following is a partial list. Please see Publication 222 for additional information.

A *contractor* is defined as a person awarded a contract by a covered agency.

The term *person* is defined as any entity in business for either profit or not-for-profit purposes and can refer to an individual, partnership, limited liability company, society, association, joint stock company, or corporation.

A *covered agency* is defined as New York State or any department, board, bureau, commission, division, office, council or agency of New York State; public authorities and public benefit corporations. The State Legislature, the judiciary, Department of Law, Office of State Comptroller, State Education Department, State University of New York and the senior colleges of City University of New York are included in this definition.

An *affiliate* is an entity which, through stock ownership or any other affiliation, directly, indirectly or constructively, controls another entity, is controlled by another entity, or is, along with another entity, under the control of a common parent company.

A *subcontractor* is an entity specifically engaged by a contractor or another subcontractor to provide commodities or perform services necessary to allow a contractor to fulfill a particular contract with a covered agency.

*Commodities* means, other than with respect to contracts for State printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange.

*Tangible personal property* means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes, without limitation: (1) raw materials, such as wood, metal, rubber and minerals; (2) manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, computers, clothing, motor vehicles, boats, yachts, appliances, lighting fixtures, building materials; (3) pre-written off-the-shelf software; (4) artistic items such as sketches, paintings, photographs, moving picture films and recordings; (5) animals, trees, shrubs, plants and seeds; (6) bottled water, soda and beer; (7) candy and confections; (8) cigarettes and tobacco products; (9) cosmetics and toiletries; (10) coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange; (11) postage stamps, when purchased for purposes other than mailing; and (12) precious metals in the form of bullion, ingots, wafers and other forms.

### Completing Form ST-220 Identification information

**Contractor name:** Enter the exact legal name of the person or entity who is contracting to provide commodities or services to a covered agency of New York State. This is the name registered with the New York Department of State.

**Contractor's principal place of business:** Enter a street address, not a PO box number.

**Mailing address:** Enter the address where contractor receives mail, if different than the principal place of business.

**Contracting state agency:** Enter the state agency awarding the contract to the contractor.

**Certification statement:** If the contractor is a corporation, the statement must be completed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the corporation. If the contractor is a partnership, the statement must be completed by a partner or person authorized by the partnership. If the contractor is a limited liability company, the statement must be completed by a member of the LLC and be authorized by the LLC.

### Part I - Contract services not pursuant to Tax Law section 5-a

If the services to be performed under the contract are not services within the meaning of Tax Law section 5-a, mark an X. You do not have to complete Parts II through V. You must sign and have the certification acknowledged.

For procurement law purposes, *services* means, other than with respect to contracts for State printing, the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For procurement law purposes, technology is a service. The term *services* for procurement law purposes does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article eleven-B of the State Finance Law.

The term *taxable services* for New York State and local sales and compensating use tax law purposes includes, but is not limited to: 1) providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed manner in any other

manner; 2) processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale; 3) installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets); 4) storing tangible personal property that is not being held for sale; 5) renting safe deposit boxes, vaults, and similar storage facilities; 6) maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs); 7) providing parking, garaging, or storing services for motor vehicles; 8) interior decorating and designing; 9) protective or detective services; and 10) entertainment or information services provided by means of telephony or telegraphy.

### Parts II through V

If the contract is covered under Tax Law section 5-a, you must mark an **X** in one box in each of these parts. You must also sign and have the certification acknowledged, and complete Schedule A.

### Schedule A

#### Column A - Relationship to the contractor

The contractor should enter a **C**. It is not necessary for the contractor to complete columns C through E since this information has been provided on page 1.

If the person listed in column B is an affiliate of the contractor, enter an **A**; if a subcontractor, enter an **S**, if an affiliate of a subcontractor, enter **SA**.

#### Column B - Name

Enter the exact legal name as registered with the New York Department of State of each corporation or limited liability company. If the person is a partnership or sole proprietor, enter each partner's or the owner's given name. If the person uses a different name or DBA (doing business as), enter that name as well.

#### Column C - Address

Enter the street address of the person's principal place of business. Do not enter a PO box.

#### Column D - ID number

If the person listed in column B is an individual, enter the social security number of that person. Otherwise enter the employer identification number (EIN) assigned to the person.

#### Column E - Sales tax ID number

Enter the sales tax identification number, if different from the federal identification.

#### Column F - Proof of registration

Enter **CA** and attach a copy of the certificate of authority for the person.

If the certificate of authority is not readily available and if the person is registered with the Department of Taxation and Finance and has confirmed this status with the DTP, enter **RC**.

**Return a signed and acknowledged original Form ST-220, and a copy, with the contract to the procuring state agency.**



## APPENDIX B

### M&CLDC REQUIRED FORMS

**THE FOLLOWING FORMS ARE REQUIRED PROPOSAL SUBMISSION DOCUMENTS. FAILURE TO COMPLETE ANY OF THESE FORMS AND SUBMIT THEM WITH YOUR PROPOSAL MAY RENDER THE PROPOSAL NON-RESPONSIVE AND INELIGIBLE FOR AWARD.**

- Attachment 1: Non-Collusion Certification
- Attachment 2: Certification Regarding Debarment, Suspension, and Responsibility
- Attachment 3: Acknowledgement of Authority to Submit Proposal
- Attachment 4: Proposal Cost Statement (Services Component)
- Attachment 5: Proposal Cost Statement (Products Component)
- Attachment 6: On-going Services “Minimum Discount from List” Cost Statement (if applicable)
- Attachment 7: Equipment Maintenance “Minimum Discount from List” Cost Statement (if applicable)
- Attachment 8: Project Abstract Form
- Attachment 9: Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)
- Attachment 10: Contractor Disclosure of Contacts
- Attachment 11: Procurement Law Bidder/Offerer Disclosure of Prior Non-Responsibility Determinations

## NON-COLLUSION CERTIFICATION

By submission of this proposal, the Offeror \_\_\_\_\_certifies,  
Name of Offeror

that (s)he is \_\_\_\_\_ of \_\_\_\_\_ and,  
Title Name of Firm

under penalty of perjury, affirms:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor; and
3. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not submit a proposal for the purpose of restricting competition.
4. The proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation.
5. Each person signing the proposal certifies that:
  - [a] He is the person in the Consultant's organization responsible within that organization for the decision as to prices being offered in the proposal and that he has not participated and will not participate in any action contrary to (1-4) above;
  - or**
  - [b] He is not the person in the Consultant's organization responsible within that organization for the decision as to prices being offered in the proposal but that he has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate, in any action contrary to (1-4) above, and that as their agent, does hereby so certify; and that he has not participated, and will not participate in any action contrary to (1-4) above.

\_\_\_\_\_  
Offeror Signature

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)

## Attachment 2

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND RESPONSIBILITY**

The undersigned certifies, to the best of his/her knowledge and belief, that the Contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
2. Have not within a three-year period preceding this transaction/application/proposal/ contract/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three-year period preceding this transaction/application/proposal/contract/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

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

\_\_\_\_\_  
[Print name of Contractor]

\_\_\_\_\_  
[Signature of Authorized Individual]

\_\_\_\_\_  
[Print Name of Signer]

\_\_\_\_\_  
[Print Title/Office of Signer]

### Attachment 3

## ACKNOWLEDGEMENT OF AUTHORITY TO SUBMIT PROPOSAL

### Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF \_\_\_\_\_ }  
: SS.:  
COUNTY OF \_\_\_\_\_ }

On the day \_\_\_\_\_ of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_ known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he resides at \_\_\_\_\_ ,

Town of \_\_\_\_\_ ,

County of \_\_\_\_\_ ,

State of \_\_\_\_\_ ; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If \_\_\_\_\_ a \_\_\_\_\_ corporation): \_\_\_\_\_ \_he \_\_\_\_\_ is \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If \_\_\_\_\_ a \_\_\_\_\_ partnership): \_\_\_\_\_ \_he \_\_\_\_\_ is \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_ , the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

Registration No. \_\_\_\_\_

## Attachment 4

### PROPOSAL COST STATEMENT SERVICES COMPONENT

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

**Proposal Due Date:** \_\_\_\_\_

**Contractor/Firm Name:** \_\_\_\_\_

### SERVICES DELIVERABLE PAYMENT SCHEDULE

<u>Job Classification/Title</u>	<u>Person Hours</u>	<u>Hourly Rate (\$)</u>	<u>Total Cost (\$)</u>
Web Site Design and Testing			
Web Site Development			
Web Site Hosting			
Web Site Maintenance			
Monthly outbound E-mail Campaign			
Hourly Rate for Additional Work			
(Other):			

**MAXIMUM SERVICES COST:**

**(Billable Amounts + Project Withholding)** \$ \_\_\_\_\_

**MAXIMUM PRODUCT COST:**

\$ \_\_\_\_\_

**TOTAL PROJECT COST:**

\$ \_\_\_\_\_

**Do you guarantee that all product and services proposed to be supplied against this project definition are in compliance with the Date/Time warranty outlined herein?  
(Select Yes or No)**

\_\_\_\_\_ **Yes**      \_\_\_\_\_ **No**

**Comments/Instructions:**

- 1) Only M&CLDC-approved Project Scope Changes may justify changes to the established project cost.
- 2) The M&CLDC will NOT pay "up front" for any services or products.

## Attachment 5

### PROPOSAL COST STATEMENT PRODUCTS COMPONENT

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

**Proposal Due Date:** \_\_\_\_\_

**Contractor/Firm Name:** \_\_\_\_\_

#### PRODUCT DELIVERABLE PAYMENT SCHEDULE

Must Attach the Price List for Products

<b>Product Name</b>	<b>Product Identifier (Item Code, #, etc.)</b>	<b>Purchased by Contractor (Y/N)</b>	<b>Purchased by M&amp;CLDC (Y/N)</b>	<b>Total Cost (\$)</b>	<b>Billable Amount (\$)</b>
<b>TOTALS:</b>					

**MAXIMUM SERVICES COST:**

(Billable Amounts + Project Withholding)

\$ \_\_\_\_\_

**MAXIMUM PRODUCTS COST:**

\$ \_\_\_\_\_

**TOTAL PROJECT COST:**

\$ \_\_\_\_\_

**Do you guarantee that all product and services proposed to be supplied against this project definition are in compliance with the Date/Time warranty outlined herein? (Select Yes or No)**

\_\_\_\_\_ **Yes**      \_\_\_\_\_ **No**

**Comments/Instructions:**

- 1) Only M&CLDC-approved Project Scope Changes may justify changes to the established project cost.
- 2) The M&CLDC will NOT pay "up front" for any services or products.

## Attachment 6

### ON-GOING SUPPORT SERVICES

### MINIMUM DISCOUNT FROM LIST

### COST STATEMENT

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

**Proposal Date:** \_\_\_\_\_

**Contractor/Firm Name:** \_\_\_\_\_

**Comments/Instructions:**

- 1) Only M&CLDC -approved Project Scope Changes may justify changes to the established project cost.
- 2) The M&CLDC does NOT pay "up front" (pre-pay) for services.
- 3) Published Price List must be attached to Cost Statement.

<b>On-Going Services (Brief Description)</b>	<b>Published List Price ***** Must attach list price to Cost Statement *****</b>	<b>Discount from List</b>	<b>Total Cost</b>
<b>MAXIMUM SERVICES COST:</b>			
<b>ADDITIONAL COSTS: (licensing Set up fees, etc. if separate from above costs)</b>			
<b>TOTAL PROJECT COST:</b>			

**Do you guarantee that all product and services proposed to be supplied against this project definition are in compliance with the Date/Time warranty outlined herein?**

\_\_\_\_\_ Yes \_\_\_\_\_ No

**Attachment 7**

**EQUIPMENT MAINTENANCE  
MINIMUM DISCOUNT FROM LIST  
COST STATEMENT**

for: (check those that apply)

☐ Mainframes      ☐ Mid-Ranges      ☐ PCs      ☐ Printers      ☐ Other

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

**Proposal Due Date:** \_\_\_\_\_

**Contractor/Firm Name:** \_\_\_\_\_

**Comments/Instructions:**

- 1) Only M&CLDC-approved Project Scope Changes may justify changes to the established project cost.
- 2) The M&CLDC does NOT pay "up front" (pre-pay) for services.
- 3) Published Price List must be attached to Cost Statement.

<b>Equipment Maintenance "Brief" Description</b>	<b>List Price ***** must attach list price to Cost Statement *****</b>	<b>Discount from List (%)</b>	<b>Total Cost (\$)</b>
<b>MAXIMUM SERVICES COST:</b>			
<b>ADDITIONAL COSTS: (if separate from above costs)</b>			
<b>TOTAL PROJECT COST:</b>			

**Do you guarantee that all product and services proposed to be supplied against this project definition are in compliance with the Date/Time warranty outlined herein?**

\_\_\_\_\_ **Yes**      \_\_\_\_\_ **No**



**PROJECT ABSTRACT FORM**

**Provide information regarding projects involving the same areas of expertise requested in this solicitation.**

**Contractor Firm/Name:** \_\_\_\_\_

**PROJECT ABSTRACT**

**CUSTOMER FOR WHOM SERVICES WERE PERFORMED:**

\_\_\_\_\_

**CUSTOMER ADDRESS:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PROJECT START DATE:**

\_\_\_\_\_

**PROJECT NAME:**

\_\_\_\_\_

**PROJECT COST:**

\_\_\_\_\_

**PROJECT DURATION:**

\_\_\_\_\_

**HARDWARE  
ENVIRONMENT:**

\_\_\_\_\_

**SOFTWARE  
ENVIRONMENT:**

\_\_\_\_\_

**NETWORK  
ENVIRONMENT:** \_\_\_\_\_

**PROJECT DESCRIPTION: (Please attach additional sheets as necessary)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PROJECT REFERENCES: (REQUIRED)**

**Reference:**

**CONTACT NAME:** \_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_

**Attachment 9**

**Affirmation of Understanding of and Agreement  
pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**

The New York State Finance Law §139-j(6)(b) provides that:

*Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.*

As a "Governmental Entity," the M&CLDC must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k.

\_\_\_\_\_ affirms that it understands and agrees to comply with the  
**(Name of Offeror's firm)**  
procedures of the M&CLDC relative to permissible contacts as required by State Finance Law  
§139-j (3) and §139-j (6) (b).

By: \_\_\_\_\_  
(PRINT Name of Authorized Representative)

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

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

**\*Note to Proposer:**

**Any firm submitting inaccurate or misleading information may be disqualified and reported to the Office of General Services. If specific firms continue to submit inaccurate or misleading information, such firms may be made inactive or removed from the list of eligible firms until further notice.**

## Attachment 10

### CONTRACTOR DISCLOSURE OF CONTACTS

This form must be completed and submitted with all proposals. Failure to complete and submit this form may result in a determination of non-responsiveness and disqualification of the proposal. Proposer agrees to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to the bidder/proposer pursuant to this Request for Proposals.

PROCUREMENT NAME: \_\_\_\_\_

CONTRACTOR NAME: \_\_\_\_\_

ADDRESS: Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

NAME OF PERSON SUBMITTING THIS FORM: \_\_\_\_\_ SIGNATURE OF PERSON SUBMITTING THIS FORM: \_\_\_\_\_

Has any individual or organization been retained, employed, or designated by your firm to attempt to influence the above-named procurement process?

☐ YES (If YES, complete rest of form) ☐ NO (If NO, do not complete rest of form)

The following person or organization was retained, employed or designated by or on behalf of the Bidder/Proposer to attempt to influence the procurement process:

NAME: \_\_\_\_\_

ADDRESS: Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

PLACE OF PRINCIPAL EMPLOYMENT: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

Does the above named person or organization have a financial interest in this procurement?

☐ YES ☐ NO

#### DEFINITIONS:

1. **"Attempt to influence the procurement process"** means any attempt to influence any determination of a member, officer or employee of a covered agency or authority by a person other than a member, officer or employee of a covered agency or authority with respect to:

- (a) the solicitation, evaluation or award of a procurement contract; or
- (b) the preparation of specifications or request for submissions of proposals for a procurement contract.

2. **"Contractor"** means bidder, offeror or proposer for a procurement contract and shall include any subcontractor who may be engaged in the delivery of goods, services or construction pursuant to the procurement contract.

3. **"Financial interest in the procurement" means:**

- (a) owning or exercising direct or indirect control over, or owning a financial interest of more than one percent in, a contractor or other entity that stands to gain or benefit financially from the award of a procurement contract;
- (b) receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain or benefit from a contractor or other individual or entity that stands to benefit financially from a procurement contract;
- (c) being compensated by, or being a member of, an entity or organization which is receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain from a contractor or other individual or entity that stands to benefit financially from a procurement contract;
- (d) receiving, expecting or attempting to receive any other financial gain or benefit as a result of the procurement contract;
- (e) being a relative of a person with a financial interest in the procurement, as set forth in paragraphs (a) through (d) above. For purposes of this paragraph, "relative" shall mean spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of an individual listed in paragraphs (a) through (d) of this subdivision or of the individual's spouse.

**Attachment 11**  
**Offeror Disclosure Of**  
**Prior Non-Responsibility Determinations**  
(Pursuant to Procurement Lobbying Law (SFL §139-j))

- A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please answer the following question:

- B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

\_\_\_\_\_ YES \_\_\_\_\_ NO

- C. If YES, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please provide details regarding the finding of non-responsibility:

Date of Finding of Non-responsibility: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

- D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If YES, please provide details:

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(Add Basis of Termination or Withholding (additional pages if necessary))

Address of Individual or Entity seeking to enter into the Procurement Contract:

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Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

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

**Procurement Lobbying Termination:**

The M&CLDC reserves the right to terminate this project, in accordance with New York State Finance Law §139-k, if it is found that the certification filed by the Offeror is intentionally false or intentionally incomplete. Upon such finding, the M&CLDC may exercise its termination right by providing written notification to the Offeror in accordance with the written notification terms of this Request for Proposals.