

MATTER NO. 12-00314

AGREEMENT

AMONG

THE LONG ISLAND POWER AUTHORITY

AND

NORTHSTAR CONSULTING GROUP, INC.

AND

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE



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This Agreement for a Comprehensive Management and Operations Audit of the Long Island Power Authority dated this 15th day of August, 2012 in the City and County of Albany, State of New York, by and among the Long Island Power Authority (hereinafter the "Authority") with its principal place of business at 333 Earle Ovington Boulevard, Suite 403, Uniondale, New York 11553 and NorthStar Consulting Group, Inc. (hereinafter the "Consultant") with its principal place of business at 900 East Main Street, Suite 104, Santa Maria, California 93454, and the New York State Department of Public Service (hereinafter the "Department"), a New York State regulatory agency, with its principal place of business at Three Empire State Plaza, Albany, New York 12223. Unless sooner terminated or renewed as provided herein, this agreement shall commence as of this 15th day of August, 2012 and terminate as of November 15, 2013.

WITNESSETH:

WHEREAS, pursuant to the Long Island Power Authority Oversight and Accountability Act, the Authority has been directed by the Department to enter into a contract with NorthStar Consulting Group, Inc. for a Comprehensive Management and Operations Audit (hereinafter the "Audit") of Long Island Power Authority as defined herein; and,

WHEREAS, the Consultant shall be required to work for, and under the direction of the Department in accordance with the Public Service Law, the Public Authorities Law, the Request for Proposal (RFP), the Consultant's Proposal, and the terms and conditions of this Agreement; and,

WHEREAS, the Consultant submitted a Proposal, in response to an RFP, dated April 24, 2012, for a Comprehensive Management and Operations Audit of Long Island Power Authority and was selected by the Department to perform this Audit on the basis of said Proposal.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereby agree as follows:

ARTICLE I – SCOPE OF WORK

A. The Consultant shall perform the Audit as described in this Agreement, and in the RFP dated April 24, 2012, the Consultant's Proposal, the specifications of the Department's *The LIPA Guide For Consultants* dated April 24, 2012 (hereinafter the "*The LIPA Guide*"), and the approved work plans for the cost set forth herein. The RFP, the Consultant's Proposal, *The LIPA Guide*, and the Final Work Plan are to be considered incorporated by reference into this Agreement.

B. Without limiting the foregoing, the parties hereto expressly agree to the following terms and conditions:

- 1) The Consultant agrees that, for a period of three (3) years from the date the Department certifies the Consultant's completion of this Audit as defined in Article V, Section C of this Agreement and upon the request of the Department, it shall provide information and advice to the Department on matters related to this Audit and it shall provide a witness or witnesses if requested to testify on matters related to this Audit, in any action to which the Department is a party. The parties agree that the Consultant shall be compensated for such work so provided at its standard per diem rate for consulting services without any surcharge, and such charges shall not exceed the amounts specified in Article VI, Section A hereof. The Consultant's obligation under this paragraph shall survive any termination of this Agreement.
- 2) So long as this Agreement is in force and for a period of two (2) years thereafter, the Authority shall not offer employment or solicit, directly or indirectly, any employee of the Consultant who has worked on this study to leave the employment of the Consultant and work for the Authority or any affiliated organization.
- 3) The Consultant agrees that the consultant team of experienced personnel identified in the attached Proposal will be organized and assigned to the study in such a manner that the Audit will be completed in a timely, competent and professional manner. Upon written notice to the Department and the Authority,

the Consultant may seek to substitute personnel with similar qualifications for those identified should any of the identified personnel terminate their employment or become unavailable due to reasons beyond Consultant's control. Changes in personnel or allocation of professional staff assigned to the project by the Consultant may be made only after a written request to the Department with a copy to the Authority, and upon the written consent of the Department (with a copy thereof sent simultaneously to the Authority).

- 4) The Consultant, its affiliated companies and all members of the consultant team agree not to perform any work for the Authority or any affiliated organization as defined in Public Service Law Section 110 without the written permission of the Department during the terms of this Agreement and not until at least two (2) years after the Department certifies the Consultant's completion of this Audit as defined in Article V, Section C of this Agreement. Furthermore, the Consultant shall ensure that no members of the consultant team will perform any work for the Authority, or any affiliated organization as defined in Public Service Law Section 110 without the written permission of the Department during the terms of this contract and not until at least two (2) years after the Department certifies the Consultant's completion of this review as defined in Article V, Section C of this Agreement.
- 5) The Consultant certifies that it, its affiliated companies, and its consultant team have disclosed all existing contracts or agreements with the Authority or its affiliates. Further, the Consultant certifies that the same parties have disclosed to the Department all work performed for the Authority or its affiliates within the past two (2) years.

ARTICLE II – CONTRACT ADMINISTRATION

The Department designates Wayne Brindley, as its Engagement Manager, and Kristee Adkins, as its Project Manager. All communications related to the Audit shall be directed to Kristee Adkins. The Authority designates Edmund Petrocelli, as its Project Manager. The

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Consultant designates Douglas Bennett, as its Engagement Director, and Carol Etter, as its Project Manager.

The above representatives shall have primary responsibility and authority on behalf of their respective parties to administer the Agreement and to agree upon procedures for coordinating the efforts of the Authority and the Consultant.

Press releases or other public statements concerning the Audit shall not be issued by the Consultant or the Authority at any time prior to the Department's approval of the Consultant's final report other than acknowledging the ongoing nature of this Audit. After the Audit, the Consultant or Authority will obtain approval from the Department prior to issuing any press releases concerning the Audit.

ARTICLE III – SCHEDULING AND COMPLETION OF WORK

The Audit shall be performed in accordance with this Agreement, the Consultant's Proposal, the RFP, the approved work plan, and the specifications of *The LIPA Guide*. The draft report of the Audit shall be completed by July 5, 2013. A final written report shall be submitted to the Department by August 2, 2013. The Consultant may also be required to make a final presentation to the Department, and when directed by the Department, to the Authority.

The Consultant agrees to conduct this Audit with promptness and diligence. The Authority and Consultant agree to make every reasonable attempt to schedule and coordinate meetings, interviews, and field trips and to provide requested documents so as to expedite prompt completion of this Audit without disruptions to its normal operations. The Consultant agrees to make every reasonable attempt to notify the Authority at least one week in advance of interviews and site visits. The Consultant shall notify the Department and the Authority immediately in writing in the event unforeseen circumstances cause, or are likely to cause delays in the performance schedule agreed to in Article VII that would require schedule adjustments. Schedule adjustments shall be granted in the event that delays are caused by the acts or omissions of the Department or the Authority and/or which are beyond the control of the Consultant.

ARTICLE IV – COMPENSATION

Subject to the limitations of this Agreement, the not to exceed price approved by the Department, and the certification by the Department in accordance with Article V, Section B herein, the Authority shall compensate the Consultant for all work and services performed by the Consultant or its consultant team under this Agreement on the following basis:

- A. The Authority shall compensate the Consultant for the necessary and reasonable time spent by each of its professional and support staff at the rates (which include out-of-pocket expenses and firm expenses) set forth in the attached Consultant's Proposal, as approved by the Department, subject to the provisions and limitations of Article VI herein. The Consultant certifies that the rates set forth therein do not exceed the current standard rates charged to its clients.
- B. The Authority shall also reimburse the Consultant the actual costs for expenses described in the approved Proposal, directly related to the review and certified as reasonable, necessary and correct by the Department. Covered expenses could include costs of materials and supplies used in the performance of the review; reproductions directly connected with the review; communications (i.e., postage, local and long distance telephone toll charges); reasonable costs of printing twenty (20) copies of the final report; the rental of equipment reasonable and necessary for the performance of the review; and necessary and economical travel and meals, including vehicle rental, while performing work on the review shall be actual and reasonable, provided however that the reimbursement of travel and meals shall be in accordance with the regulation established by the U.S. General Services Administration ("GSA") and shall not exceed applicable per diems set by the GSA for Nassau and Suffolk Counties, New York. Without limiting the foregoing, the Consultant shall take every reasonable step to ensure that the expenses for air travel are the most advantageous possible consistent with efficient scheduling, including coach seating and, where possible, discount fares. Incidental review-related costs not stated above shall require prior approval of the Department, and the Department shall notify the Authority in writing of any such additional approved costs. The parties

agree that the reasonableness of all incidental costs shall be subject to the review and approval of the Department as part of the verification process otherwise required hereby, which approval shall not be unreasonably withheld.

ARTICLE V – TERMS OF PAYMENT

The compensation provided for in Article IV, and as limited by Article VI, shall be paid by the Authority to the Consultant in accordance with the following terms and conditions:

A. Compensation. The Consultant will submit detailed monthly invoices to the Department and the Authority in accordance with Appendix D. Each invoice shall contain a detailed accounting of the hours worked within each task area by each employee of the Consultant for each day worked. The Consultant shall maintain detailed books, records and accounts, including without limitation, time sheets, expense vouchers, lodging and transportation receipts. Such books, records, accounts, receipts and supporting documentation related to work performed and billed hereunder shall be preserved and made available within the State of New York to the Department for audit, upon reasonable request, for a period of two (2) years following the completion of the Audit. In the event of a dispute as to any amounts invoiced, all records with respect to such amounts shall be preserved by the Consultant until the dispute is finally resolved. The provisions of Article V, Section A shall survive the termination of the contract.

B. Payment. The Department shall complete the certification review of the invoices within twenty (20) calendar days of receipt. The basis for the Department's certification shall be a finding that the fees are reasonable, necessary and correct, and billed in accordance with the provisions of this Agreement. In the event there are items contested by the Department, the uncontested balance will be certified within the above mentioned period. In reliance on the Department's certification, the Authority shall pay within twenty (20) calendar days of its receipt of the Department's written certification that amount of any invoice that has been certified for payment by the Department subject to the retention of professional fees set forth below. The Authority may request from Department, clarification and if necessary, correction of invoices prior to payment. Any and all payments by the Authority hereunder, or certifications by the Department, will be without prejudice to the Department's right to conduct a further audit and

protest or challenge at a later point in time such invoices and payments made. If examination discloses that the Authority has paid for hours which have not in fact been worked, or for services not in fact rendered in accordance with the Agreement, the Consultant shall promptly refund to the Authority an amount equal to any such excesses, plus reasonable interest.

C. Retention of Partial Payment. There shall be retained by the Authority from each invoice, three retainages until certain milestones are met. These retainages are the Work Plan Retainage five (5) percent, Draft Report Retainage ten (10) percent, and Contract Completion Retainage ten (10) percent of the charges for professional fees. At the beginning of the project, a total of twenty-five (25) percent of professional fees will be retained from each invoice. Following the Department's written approval of the work plan, the amount retained from subsequent invoices will be reduced to twenty (20) percent and the Work Plan Retainage will be authorized for payment. Following the Department's written approval of the draft audit report, the amount retained from subsequent invoices will be reduced to ten (10) percent and the Draft Report Retainage will be authorized for payment. The Department's approval of the draft report will be issued after the Consultant has completed its draft audit report and delivered it to the Department and the Authority for a factual accuracy review and any resulting revisions. Following the Department's written notice that all deliverables have been provided and all of the consultant's contractual obligations have been met, the Contract Completion Retainage will be authorized for payment. Expenses are not subject to retainage.

D. Certification. Each invoice shall contain the following certification executed by the Consultant's Project Manager: "I certify that the above charges are correct and just, are billed in accordance with the Agreement, have not previously been billed except as indicated and that payment therefore has heretofore not been received."

ARTICLE VI – COST CONTROL AND LIMITATION

A. Limits. The Consultant's compensation for professional fees and expenses shall not exceed \$1,401,834, except if modified as provided for in Article XI.

The reasonable costs for printing twenty (20) copies of the final report and providing testimony regarding the Audit, if requested by the Department, shall be included in the above limit.

B. Cost Control. The Consultant shall exercise close control over costs. The Consultant agrees to use its best efforts to perform the work under this Agreement as described in the Consultant's Proposal and other directions of the Department consistent with the RFP, and to complete the Audit within the associated compensation and time limitations (as specified in Article VII).

C. Acceptance of Final Payment as Release. The acceptance by the Consultant of final payment hereunder shall operate as a general release to the Authority and the Department of all of the Consultant's liens or claims arising in connection with this Agreement. No payment, final or otherwise, shall operate to release the Consultant from any of its obligations under this Agreement.

ARTICLE VII – WORK PLANS & REPORTS

A. Draft Work Plan. The Consultant agrees to confer with the Department in the development of a draft work plan. The draft work plan shall outline in additional detail the scope and methods to be employed by the Consultant during the course of the engagement as well as a detailed schedule (including milestones) for the remainder of the Audit.

B. Final Work Plan. The Consultant agrees to modify the draft work plan, as appropriate after giving due consideration to comments by the Department, and submit a final work plan to the Department for approval. Approval of the final work plan by the Department will authorize the Consultant to execute the tasks as stated therein.

C. General Reports. The Consultant agrees to submit all the reports described herein, in the RFP and *The LIPA Guide*.

D. Progress Reports. The Consultant agrees to submit to the Department with each monthly invoice, a written monthly progress report consisting of the following:

- 1) A narrative briefly describing progress in relation to the project schedule as contained in the final work plan and an explanation for any discrepancies between the schedule and actual progress.
- 2) A list of interviews and site visits completed in the previous month.
- 3) A monthly report of consultant-days expended by activity in each task area.

- 4) A report (log) showing documents requested, the date requested and date received.
- 5) Any emerging findings (as they are identified) that would, if adopted, improve the Authority's operations and performance.

E. Draft Report. The Consultant shall prepare a draft report as set forth in the RFP. Copies of the draft report will be provided to the Department at the Department's place of business. Upon directive by the Department, the Consultant will also provide a copy of the draft report to the Authority. Within ten (10) business days or such additional period as established by the Department after said submission, the Authority will submit to the Department and the Consultant a written statement confirming that it has reviewed the draft report for factual accuracy and describing the nature of identified factual errors, if any, and providing comments on the draft report. If necessary, the parties will meet to clarify the Consultant's report and to provide the Consultant with their comments, facts or other input. The Consultant, in consultation with the Department, shall give consideration to such comments, facts or other input in producing revised draft reports, as necessary.

F. Final Report. Upon approval of the draft report by the Department, the final report will be prepared by the Consultant and presented to the Department. The Consultant may also be required to make a final presentation to the Department, and when directed by the Department, to the Authority.

ARTICLE VIII – FORCE MAJEURE

The parties hereto shall not be considered in default in the performance of their obligations under this Agreement if said performance is prevented or delayed by any cause beyond the reasonable control of the party. Such instances, including, but not limited to, acts of God, acts of governmental authority, floods, strikes, explosions and riots, shall not relieve any party of liability if the party fails to use due diligence and take appropriate actions to remedy the situation. In the event a force majeure prevents or delays a party's performance, it shall promptly inform the other parties of same in writing.

ARTICLE IX – INSPECTION/RIGHT TO AUDIT

A. Inspection and Audit. The Department shall have the right to inspect, upon ten (10) calendar days notice, the Consultant's books and records as they relate to the Consultant's performance under this Agreement. The Consultant shall provide proper facilities for such inspections and audits and shall provide access to the work in progress. The fact that inspections or audits are made shall in no way relieve or release the Consultant from the obligation to perform and complete the Audit in accordance with this Agreement. The Consultant's obligation under this article shall be continual and shall not be affected by any Department certification for payment or by actual payment by the Authority. Any examination of the books and records or the work in progress shall be performed by the Department at its expense.

B. Subcontractor's Books and Records. The Consultant agrees to insert the substance of this Article, including this section, in all subcontracts, thereby giving the right to the Department to audit, at its expense, the books and records pertaining to any such subcontract. The books and records required of the subcontractor shall be as detailed as those required of the Consultant herein.

ARTICLE X – SUBCONTRACTING AND ASSIGNMENT

The Consultant is prohibited from assigning or subcontracting this Agreement, or any part hereof, or any monies due or to become due hereunder, without the express written consent of the Department. The Department shall consult with the Authority before consenting to any assignment or subcontract. Any assignment or subcontract made without the Department's consent shall be void. All subcontracts set forth in the Consultant's Proposal attached hereto shall incorporate the provision of this agreement and be deemed approved concurrent with approval of this contract. The Consultant certifies that all members of the consultant team including those set forth in the Consultant's Proposal are, and will be, so bound. No permitted assignment or subcontract shall release the Consultant from any obligations hereunder or affect any rights or remedies of the Department or the Authority.

ARTICLE XI – MODIFICATIONS

A. Consultant Modifications. The Consultant shall promptly notify the Department and the Authority in writing at any time it has reason to believe that the performance of the Audit

hereunder will require any deviation from the RFP, or the Work Plan and its performance schedule agreed to in Article VII, and shall recommend such modifications as it believes are necessary. The Department, after consultation with the Authority, shall grant such modifications as the Department finds necessary in the event that a delay has been caused by the acts or omissions of the Department or the Authority, or are beyond the control of the Consultant. The Department may otherwise grant such modifications in its discretion. If the Consultant believes modifications it proposes require an amendment to compensation, it shall promptly submit compensation adjustments pursuant to Section C of this Article.

B. Department Modifications. The Department may propose to the Consultant, in writing, changes to the RFP, or the Work Plan and its performance schedule agreed to in Article VII, for the Consultant's acceptance. The Consultant shall inform the Department and the Authority in writing of any such acceptance or rejection of a change proposed by the Department. If the Consultant believes modifications the Department proposes require an amendment to compensation, it shall promptly submit proposed compensation amendments pursuant to Section C of this Article.

C. Amendments to Compensation. In the event the Consultant has reason to believe that the compensation limits set forth herein will require amendment, it shall promptly notify the Department in writing and the Department shall promptly notify the Authority in writing. The Department will review all requested amendments to compensation and, after consultation with the Authority, will determine whether to grant approval of any amendments, which would then be submitted to the State Comptroller for review and approval. In the event of a disapproval, the Consultant agrees to perform the Audit in accordance with this Agreement, as modified in accordance with this Article, for the price set in Article VI.

D. Supplementation of Agreement. Any modifications or amendments made under this Article shall be included as a supplement to this Agreement.

ARTICLE XII – DISPUTES

Any disputes between the Authority and the Consultant in the performance of this Agreement shall be submitted to the Department for resolution. In the event the Authority or the Consultant desires to dispute the Department's resolution, or a Department determination made

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pursuant to Article XI, or the Department desires to dispute the Consultant's rejection of a modification proposed under Article XI, it may appeal the decision to the Chairman of the Department. Pending the outcome of any such appeal, the Authority agrees to perform all of its other, uncontested obligations hereunder pending the resolution of the dispute. The Consultant agrees to continue its work under this Agreement notwithstanding the existence of a dispute or the fact that a dispute is resolved in a manner not satisfactory to the Consultant. In the event of a dispute, the Consultant, the Authority, and the Department shall retain all legal rights, remedies and authorities otherwise available under law.

ARTICLE XIII – STANDARD OF WORK/INDEPENDENT CONTRACTOR

The Consultant shall perform the Audit in a thorough and professional manner and shall be responsible to the Department for any failure to meet that standard. The Consultant agrees that in its performance of this Agreement, it and its consultant team shall be independent contractors and neither the Consultant nor any of the persons or firms employed by it shall be deemed, for the purpose of Authority and Department liability, to be the agents, representatives or employees of the Authority or the Department.

ARTICLE XIV – USE OF INFORMATION AND CONFIDENTIALITY

A. Use of Information. Information obtained from the Authority that is not otherwise publically available may not be published, disclosed or otherwise used by the Consultant for any purpose, which is not in furtherance of the regulatory objectives required by this Agreement, without the written authorization of the Department and the Authority.

B. Confidential Information. Consultant agrees that it will execute a nondisclosure agreement with the Authority, the form of which is annexed hereto as Appendix A and shall be an integral part of this Agreement. Authority, Consultant, and Department agree to treat confidential information and data in accordance with the nondisclosure agreement. All information and data made available to the Consultant by the Authority to enable the Consultant to perform the Audit shall be made available, upon request, for review by the Department and shall be held available for inspection at the Authority's offices. Upon the Department's request to the Authority, copies of such information and data will be supplied to the Department. With respect to any such information or data requested by the Department, the Authority may request

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confidential treatment pursuant to 16 NYCRR Section 6.3, and Section 89(5) of the Public Officers Law. The Department may utilize any information or data furnished by the Authority consistent with the above provisions of this Agreement and applicable provisions of law and administrative regulations.

Prior to final payment, the Consultant will certify in writing that no copies of documents designated by the Authority as proprietary, confidential, or determined by the Department to be trade secret have been made or retained, whether by reproduction, by electronics, by photograph or by any other means.

Any consultant-generated documents including but not limited to interview summaries and consultant meeting notes used by the Consultant as supporting documentation for the report shall be regarded as confidential and shall not be subject to disclosure except to the Department, or subject to release except as may directed by the Department or otherwise be required by law. Such documents must be kept on site at the Consultant's office for no fewer than six (6) years after the completion of the report and be made available for review by the Department if requested.

All work papers including but not limited to, hardcopies of documents provided by the Authority and those provided by the Authority in electronic format supporting the report must be delivered to and maintained by the Authority for no fewer than six (6) years after the completion of the report and be made available for review by the Department if requested. Prior to final payment, the Consultant will certify in writing that no copies (paper or otherwise) of work papers remain in the possession of or under the control of the Consultant with the exception of consultant-generated documents described herein above. Notwithstanding the preceding sentence, consultant-generated documents that contain sensitive and/or secure information about the Authority's transmission and distribution system shall be delivered to the Authority to be maintained by the Authority as set forth in this paragraph. The Department shall have the right to use any of these materials in the furtherance of its regulatory responsibilities in accordance with applicable provisions of law.

Prior to acceptance of the final report, the Consultant and the Authority shall not release or disclose, other than to the Department, any draft, work papers, finding, conclusion or

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recommendation made by the Consultant, except as may be required by law. If either the Consultant, the Department or the Authority alleges a legal requirement to disclose, it must provide, where feasible, advance written notice to the other parties. The Consultant's final report may include both public and confidential portions as described herein.

The above provisions relating to confidentiality shall not apply to information which is (a) at the time of disclosure generally available to the public, or (b) contained in the Consultant's final public report after it has been released by the Department.

With certain specified exceptions, New York State's Freedom of Information Law (FOIL), Public Officers Law §§ 84-90, requires the Department, or the Authority as applicable, to provide the public with copies of agency records upon request. Agency records include all information in any format that is submitted to an agency by an agency contractor. Accordingly, Consultant is hereby advised that upon receipt the Proposal and any other information provided by Consultant becomes an agency record and is further advised that the Department, or the Authority as applicable, could, in response to a request under FOIL, be required to make copies of the proposal and other Consultant information available to the public. If Consultant desires to keep confidential any part of its proposal or any other information provided to the Department or to the Authority, Consultant must clearly identify the specific information that is claimed to be proprietary. A request for protection should be made to the Department Records Access Officer, or the Authority as applicable, setting forth the reasons therefore. Any request for confidentiality will be subject to the requirements of the New York State's Freedom of Information Law (FOIL).

ARTICLE XV - TERMINATION

The Department may terminate the Agreement immediately for cause, by written or oral notice to the Consultant. If oral notice of termination for cause is given to the Consultant, written confirmation of the basis for termination shall be provided to the Consultant and the Authority. In addition, the Department may terminate this Agreement for convenience upon fifteen (15) days written notice to the Consultant. Termination shall not relieve any party of any obligation that arose or may arise out of work performed prior to termination, or any obligation that survives this Agreement.

Upon receipt of a notice of termination for cause or convenience, the Consultant shall stop all work specified in the notice and being performed hereunder; shall place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of any non-terminated portion of the work; shall terminate all orders and subcontracts to the extent that they relate to the notice of termination, and shall take such action as the Department may direct for the protection, preservation, and disposition of property, the title to which the Department or the Authority has or may acquire under this Agreement. Upon the written consent of both the Department and the Authority, the Consultant shall assign to the Department, in a manner and to the extent directed by the Department, all right, title, and interest of the Consultant under the orders and subcontracts so terminated.

If terminated for convenience, the Authority shall, subject to the Department's approval, settle or pay all reasonable claims arising from terminated orders and subcontracts. The Authority shall, subject to the Department's approval, pay the Consultant all reasonable fees and expenses which are reimbursable under this Agreement and not paid prior to the effective date of the notice of termination. If terminated for convenience, the Authority shall also pay to the Consultant upon certification by the Department any reasonable costs attributable to the cancellation of this Agreement. The Consultant shall make every reasonable effort to keep such costs and expenses to a minimum. After receipt of the Department's notice of termination for convenience, the Consultant shall submit its termination settlement claim promptly but in no event later than ninety (90) days from the effective date of termination. The Consultant shall not be entitled, in any event, to be paid monies in respect to costs, whether direct or indirect, fees, lost profits or otherwise for work not actually performed prior to the effective date of termination.

All subcontracts and agreements that the Consultant enters into to accomplish the work under the terms of this Agreement shall obligate such subcontractors to comply with the provisions set forth above.

ARTICLE XVI – INDEMNIFICATION

The Consultant hereby agrees to defend, indemnify and hold harmless the Authority, its agents, employees, officers, directors, successors and assigns, the Department and the Public

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Service Commission (Commission), against all liabilities, claims, damages, causes of action, judgments, costs and expenses, including reasonable attorney's fees, arising out of or in any way resulting from the performance of Consultant or the consultant team under this Agreement, including but not limited to personal injury or property damage, including injury or damage to the person or property of the Department, the Authority or the Consultant, its agents, employees, consultants, or subcontractors, and caused in whole or in part by any negligent or wrongful act or omission or due to statutory liability of the Consultant, its agents, employees, consultants, or subcontractors, and whether or not such negligent or wrongful act or omission or statutory liability of the Consultant, its agents, employees, consultants, or subcontractors results in whole or in part from any act or omission by Authority or the Department. Notwithstanding the foregoing, the Consultant is not required to indemnify or hold harmless the Authority, the Department, or any third party for the Authority or the Department, for the Authority's, Department's or third party's negligent or wrongful acts or omissions.

Notwithstanding the foregoing, Consultant remains liable, without monetary limitation, for direct damages for personal injury, death, or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of Consultant, its officers, employees, or agents.

The Consultant, at its own expense, shall maintain liability insurance covering injury to or death of persons (\$2,000,000 general aggregate, \$1,000,000 per occurrence combined single limit), damage to property (\$2,000,000 general aggregate, \$1,000,000 each occurrence combined single limit), automobile (\$1,000,000 per occurrence single limit) and contractual liability, to insure the risks assumed by the Consultant under this Agreement, and workers' compensation insurance in accordance with the statutory requirements of the State of New York. The Authority, the Department, and the Commission shall be additional named insured's under the above liability policies and the Consultant shall furnish each with a certificate of insurance.

The obligations of the Consultant under this Article survive the termination of this Agreement.

ARTICLE XVII – COMPLIANCE WITH LAW

The Consultant shall familiarize itself and comply with all applicable laws, ordinances, rules and regulations of all federal, state and municipal governments or the legally constituted agencies thereof.

The provisions set forth in Appendix C relate to requirements imposed by New York State law and policies. These provisions are hereby deemed incorporated in this Agreement at this place. To the extent of any conflict between any other provision of this Agreement and Appendix C, Appendix C shall control. The Contractor shall comply with such terms and conditions during the Term.

ARTICLE XVIII – NOTICES

All written notices and other communications between the parties shall be sufficient in all respects if sent via first class mail, respectively, to:

Edmund Petrocelli, Director of Project Management
Long Island Power Authority
333 Earle Ovington Boulevard Suite 403
Uniondale, New York 11553

Douglas Bennett, Engagement Director
NorthStar Consulting Group, Inc.
900 East Main Street, Suite 104
Santa Maria, California 93454

Kristee Adkins, Project Manager
New York State Department of Public Service
3 Empire State Plaza
Albany, New York 12223

Each party may, upon written notice, change the name of the person and/or the address to which such notices may be directed. Communication by e-mail may be sufficient as agreed to by the parties.

ARTICLE XIX – INTEGRATION

This Agreement and the documents referenced herein constitute the entire Agreement between the parties. No changes, alterations, or modifications shall be effective unless in writing, signed by the duly authorized representatives of the parties and approved as provided in

Article XI, herein and approved by the New York State Comptroller and Attorney General in accordance with Appendix C annexed hereto.

ARTICLE XX – AUTHORITY FURNISHED FACILITIES

The Authority shall furnish, as reasonably needed and free of charge, suitable working space, file facilities, computer, high speed internet access, printer, fax machine, photo copying machine and telephone facilities to the Consultant at the offices of the Authority or its Service Provider. While in or on the Authority's or Service Provider's property, the Consultant agrees to: a) abide by the Authority's or Service Provider's operating and safety rules and procedures, b) plan, arrange and conduct its work such that, to the extent possible, there will be minimum interference with or interruption of the continuous operation of the Authority's or Service Provider's business, and c) maintain the Authority's or Service Provider's working and office areas in a neat and professional manner.

ARTICLE XXI – COLLUSIVE BIDDING

The Consultant certifies that:

A. The prices in its Proposal attached hereto were arrived at independently without collusion, consultation, communications or agreement with any bidder or with any competitor for the purpose of restricting competition.

B. Unless otherwise required by law, the prices so quoted and which form part of this Agreement were not based on prices quoted by any other bidder or competitor and were not disclosed by the Consultant to any other bidder, directly or indirectly, prior to the opening of bids.

C. No attempt was made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

ARTICLE XXII – GRATUITIES

The Consultant, on behalf of itself and its consultant team, subcontractors, agents, servants and employees, warrants that no gratuity, payment, gift, service or item of value has been or will be offered to the Authority or Department employee or to any family member or designee, associate or agent of the Authority or Department employee. The tendering of any such gratuity, payment, gift, service or item of value to the Authority or Department employee or

to any other family member or other designee, associate or agent of the Authority or Department employee, is an act of default and shall give rise to an immediate right of termination of this Agreement by the Department. In addition, the Consultant will be liable to the Authority or Department for any damages, direct, indirect or consequential, as a result of the tendering of any such gratuity, payment, gift, service or item of value to the Authority or Department employee or to any other family member or other designee, associate or agent of the Authority or Department employee, whether such tendering is caused by the Authority, its subcontractors, agents, servants or employees.

The Authority, on behalf of itself and its subcontractors, agents, servants and employees, warrants that no gratuity, payment, gift, service or item of value has been or will be offered to the Consultant or its consultant team, subcontractors, agents, servants and employees, or any family member or designee, associate or agent of the Consultant. The tendering of any such gratuity, payment, gift, service or item of value to the Consultant or its consultant team, subcontractors, agents, servants and employees, or any family member or designee, associate or agent of the Consultant, is an act of default and shall give rise to an immediate right of termination by the Department of this Agreement. In addition, the Authority will be liable to the Department for any damages, direct, indirect or consequential, as a result of the tendering of any such gratuity, payment, gift, service or item of value to the Consultant or its consultant team, subcontractors, agents, servants and employees, or any family member or designee, associate or agent of the Consultant, whether such tendering is caused by the Consultant or its consultant team, subcontractors, agents, servants and employees, or any family member or designee, associate or agent of the Consultant.

ARTICLE XXIII – ETHICAL CONDUCT

The Consultant and its consultant team, subcontractors, agents, servants and employees shall conduct themselves in accordance with the highest business, professional and ethical standards.

ARTICLE XXIV- CONFLICTING DOCUMENTS

To the extent that any other document referenced herein or attached hereto conflicts with this Agreement, any dispute will be resolved by giving precedence and control to the documents in the following order: (1) Appendix C, (2) this Agreement, (3) the Approved Work Plan, (4) the Consultant's Proposal, (5) the RFP, and (6) *the LIPA Guide*.

ARTICLE XXV - LIMITATION OF AGREEMENT

Except as expressly provided herein, this Agreement shall not constitute a waiver by the Authority, the Department or the Commission of any statutory or other legal rights, obligations or duties to which the parties may otherwise be entitled or by which they may be bound.

ARTICLE XXVI - EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

The Consultant shall comply with all federal, state, and municipal laws and regulations relating to discrimination against employees or applicants for employment based on race, creed, sex, sexual orientation, color or national origin, including but not limited to federal and New York State regulations. In addition, Consultant shall comply with the provisions of Appendix E relating to Minority- and Women-owned Business Enterprises (M/WBE) Regulations.

The Consultant agrees to fully comply with the provisions of all laws, rules and regulations and policies referenced in the preceding paragraph and any amendments thereto. In addition, all subcontracts and agreements that are entered into by the Consultant under this Agreement shall obligate such subcontractor to comply with the provisions set forth above. The Consultant and all subcontractors shall, upon request, submit to the Department and the Authority such compliance reports as may be reasonably required by the Department or the Authority to show that the Consultant and each of its subcontractors have complied with these foregoing provisions.

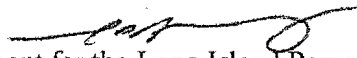
The Department or the Authority may take appropriate action as a result of any breach of the foregoing, including, but not limited to, immediate termination.

ARTICLE XXVII - SITUS/BINDING EFFECT

This Agreement may be executed in counterpart originals and shall be deemed to have been executed in the City and County of Albany, State of New York. It shall, in all respects, be construed and governed in accordance with the laws of the State of New York and shall be binding upon the parties hereto, their successors and assigns when their respective counterpart has been executed.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

Long Island Power Authority

BY: 
as agent for the Long Island Power
Authority
TITLE: CHIEF OPERATING OFFICER
DATE: August 15, 2012

NorthStar Consulting Group, Inc.

BY: Douglas Bennett, Engagement Director
as agent for NorthStar Consulting Group, Inc.
TITLE: Managing Director
DATE:

State of New York
Department of Public Service

BY: Judith Regan
as agent for the New York State Department of
Public Service
TITLE: Administrative officer
Office of Administration – Administrative
Management
DATE:





STATE OF
COUNTY OF

(the Authority)

On the 15th day of August 2012 in the year Two Thousand Twelve before me, the undersigned, a Notary Public in and for said State, personally appeared Michael Hervey, 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 signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

Jacqueline Hardy
Notary Public

STATE OF NEW YORK
COUNTY OF

Jacqueline Hardy
Notary Public State of New York
No.02HA6265069 (the Consultant)
Qualified in Nassau County
Commission Expires July 09, 2016

On the _____ day of _____ in the year Two Thousand Twelve 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 signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

Notary Public

STATE OF NEW YORK
COUNTY OF ALBANY

(the Department)

On the _____ day of _____ in the year Two Thousand Twelve 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 signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

Notary Public



ARTICLE XXVII – SITUS/BINDING EFFECT

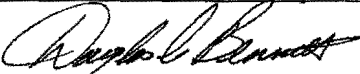
This Agreement may be executed in counterpart originals and shall be deemed to have been executed in the City and County of Albany, State of New York. It shall, in all respects, be construed and governed in accordance with the laws of the State of New York and shall be binding upon the parties hereto, their successors and assigns when their respective counterpart has been executed.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

Long Island Power Authority

BY: _____, Engagement
Director as agent for the Long Island Power
Authority
TITLE: _____
DATE:

NorthStar Consulting Group, Inc.


BY: Douglas Bennett, Engagement Director
as agent for NorthStar Consulting Group, Inc.
TITLE: Managing Director
DATE: *8-7-2012*

State of New York
Department of Public Service

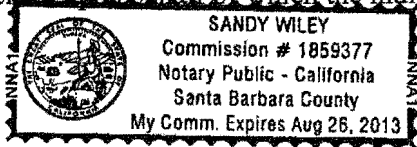
BY: Wayne Brindley, Engagement Director
as agent for the New York Department of Public
Service
TITLE: Deputy Director
Office of Accounting & Finance
DATE:



STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

(the Authority)

On the 7th day of AUGUST in the year Two Thousand Twelve before me, the undersigned, a Notary Public in and for said State, personally appeared DOUGLAS A. BENNEY, 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 signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the document.



Sandy Wiley
Notary Public

STATE OF NEW YORK
COUNTY OF

(the Consultant)

On the ___ day of _____ in the year Two Thousand Twelve 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 signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the document.

Notary Public

STATE OF NEW YORK
COUNTY OF ALBANY

(the Department)

On the ___ day of _____ in the year Two Thousand Twelve 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 signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the document.

Notary Public



ARTICLE XXVII – SITUS/BINDING EFFECT

This Agreement may be executed in counterpart originals and shall be deemed to have been executed in the City and County of Albany, State of New York. It shall, in all respects, be construed and governed in accordance with the laws of the State of New York and shall be binding upon the parties hereto, their successors and assigns when their respective counterpart has been executed.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

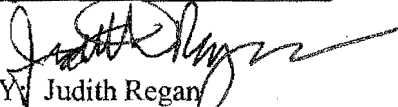
Long Island Power Authority

BY:
as agent for the Long Island Power
Authority
TITLE:
DATE:

NorthStar Consulting Group, Inc.

BY: Douglas Bennett, Engagement Director
as agent for NorthStar Consulting Group, Inc.
TITLE: Managing Director
DATE:

State of New York
Department of Public Service


BY: Judith Regan
as agent for the New York State Department of
Public Service
TITLE: Administrative officer
Office of Administration – Administrative
Management
DATE: 8/15/12



STATE OF
COUNTY OF

(the Authority)

On the _____ day of _____ in the year Two Thousand Twelve 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 signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

Notary Public

STATE OF NEW YORK
COUNTY OF

(the Consultant)

On the _____ day of _____ in the year Two Thousand Twelve 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 signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

Notary Public

STATE OF NEW YORK
COUNTY OF ALBANY

(the Department)

On the 15th day of August in the year Two Thousand Twelve before me, the undersigned, a Notary Public in and for said State, personally appeared Judith Regan, 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 signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

Carol Elizabeth Coyne
Notary Public

CAROL ELIZABETH COYNE
Notary Public, State of New York
Qual. in Rensselaer Co. No. 02C04940511
Commission Expires July 18, 20 14



NONDISCLOSURE AGREEMENT

NONDISCLOSURE AGREEMENT, dated as of _____, 2012, by and between the Long Island Power Authority (the "Authority") and NorthStar Consulting Group, Inc. (the "Consultant").

WITNESSETH:

WHEREAS, the New York State Department of Public Service will undertake a comprehensive and regular management and operations audit of the Authority ("Audit"); and

WHEREAS, this Nondisclosure Agreement ("Nondisclosure Agreement") has been annexed to and made a part of the agreement among the Authority, the Consultant, and the Department, dated as of _____, 2012 ("Audit Agreement"); and

WHEREAS, Consultant has been retained at the direction of the Department to conduct the Audit in accordance with the pertinent terms and conditions within the RFP and within the Proposal; and

WHEREAS, the Authority confirmed that it would cooperate with both the spirit and letter of the Audit in recognition of the public interest; and

WHEREAS, it is contemplated that, in the course of conducting the Audit the Consultant will request that the Authority provide, disclose, or make available information or material including information or material which may contain trade secrets, may relate to physical or cyber security or may be proprietary or otherwise confidential in nature (hereafter referred to as "Confidential Information"); and

WHEREAS, the Authority desires to evidence its commitment to cooperate in providing or making available to Consultant such information or material as Consultant may reasonably request in furtherance of the Audit and the parties desire to provide by this Nondisclosure Agreement for the protection of all of the information and material provided to Consultant by the Authority.

NOW THEREFORE, in consideration of the mutual agreements and promises and covenants contained herein, and of the mutual benefits to be gained by the performance thereof and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. The Authority agrees to furnish, or where acceptable to Consultant to make available for inspection Confidential Information reasonably required by Consultant to discharge its study responsibilities on the terms and conditions set forth in this Nondisclosure Agreement. Such information that is made available for review and inspection by Consultant will be by prearranged appointment at the Authority's offices, during the regular business hours of the Authority. The Authority shall not impose unreasonable times or locations for reviewing data. The Authority may designate information that it provides to Consultant as Confidential Information, such designated Confidential Information will be limited to information that is not otherwise publically available and that contains trade secrets, may relate to physical or cyber security or may be proprietary or otherwise confidential in nature and pursuant to 16 NYCRR Section 6-1.3, and Section 89(5) of the Public Officers Law (POL) may be accorded confidential treatment ("Confidential Information"). The Authority will affix a stamp or otherwise identify the information as Confidential Information.

2. Except as provided in paragraph 3 below, an electronic copy, or a hard copy if an electronic copy is impractical, of items designated by the Authority as Confidential Information will be provided for Consultant's master file, and the Consultant may provide an electronic copy or hard copy, as applicable, to Consultant's requesting contractors, provided they have signed the Acknowledgment (Appendix B). Upon request of the Authority, the Consultant

will sign a list provided by the Authority enumerating all items designated by the Authority as Confidential Information and acknowledging that such copies have been received. No other or further duplication of the copies shall be made by the Consultant, but Consultant and Consultant's contractors may each load the electronic copy of Confidential Information on one computer hard drive for purposes of viewing such information. Consultant may take notes regarding such Confidential Information as may be necessary in connection with Consultant's Review. Such notes shall be treated the same as the confidential, proprietary, or trade secret information from which the notes were made.

3. The Authority shall take reasonable and necessary steps to ensure that any Confidential Information of such a highly sensitive nature that disclosure of such information would expose the Authority or any of its affiliates to an unreasonable risk of harm in accordance with POL Sections 86(5) or 87(2)(f) does not leave its premises. This in no way should be interpreted to mean that the Consultant may not access such documents or other information. The Authority will make appropriate and efficient alternative arrangements to allow the Consultant access to this information. The Authority shall clearly mark the information "Confidential Information – Not To Be Removed From Authority's Premises," and shall maintain a current list of such information to which Authority has given Consultant access, which shall be signed by the Consultant to acknowledge its disclosure by the Authority to the Consultant.

4. All Confidential Information made available or disclosed to the Consultant by Authority by any of its directors, officers, agents or employees or by any of its affiliates or independent contractors or their directors, officers, agents or employees in connection with or related to the Audit shall be considered confidential, shall be held in strictest confidence, shall be used only for the purpose of performing the Audit, and shall not without the prior written consent of Authority be distributed, disclosed, or disseminated in any way except to Consultant's employees, its subcontractors or their employees with a definable need to know or use such information. In addition, before any employee of Consultant or any employee of Consultant's consultant team receives or has access to Confidential Information, each such employee shall sign a form (Appendix B) acknowledging that his or her possession and use of the information is

subject to this Nondisclosure Agreement. All original forms shall be delivered from the Consultant to the Authority.

5. Consultant shall take particular care to safeguard the proprietary nature of information, including all information described in paragraphs 1, 2 3, and 4 above, and shall notify its employees, or any subcontractors and their employees, by instruction or by appropriate legend on information of the nondisclosure requirement of this Nondisclosure Agreement.

6. Consultant recognizes that the information, described in paragraphs 1, 2, 3 and 4, above, which is furnished hereunder, may contain unique, valuable, and special business information or trade secrets of Authority and acknowledges and understands that: (a) many operational or planning documents are prepared strictly for the internal use of Authority; and disclosure of the content could jeopardize the security of Authority operations; (b) disclosure or compromise of such material would have a negative effect on the ability of Authority management to freely produce written planning documents; (c) there is competition in the Authority business; (d) information relating to such competitive endeavors may have been developed at significant expense and be original and confidential to Authority; and (e) disclosure of any Information may cause irreparable harm to Authority, with respect to both ongoing and future business operations. Accordingly, it is expressly acknowledged and agreed that the remedy at law for any breach of the covenants contained in this Nondisclosure Agreement may be inadequate. In recognition of that concern, Consultant agrees that Authority shall be entitled to injunctive relief, without bond, upon the finding by a court of competent jurisdiction of a breach of any of the provisions of this Nondisclosure Agreement by Consultant, which relief shall be in addition to, and not in derogation of, any other remedies that may be available to Authority as a result of any such breach.

7. This Nondisclosure Agreement shall become effective as of the effective date of the Audit Agreement. The obligation to protect Information, including all information described in paragraphs 2, 3 and 4, above, shall survive the conclusion or termination of the Audit or of any proceedings related thereto.

8. In furtherance of protecting Confidential Information furnished pursuant to the Audit, all requests by Consultants for information shall be directed solely to:

Long Island Power Authority
 333 Earle Ovington Boulevard Suite 403
 Uniondale, New York 11553
 Phone: () -
 E-mail: _____

9. Upon the conclusion of the Audit and the acceptance by the Department of the Consultant's Final Report of the Audit, Consultant shall promptly return to Authority all Authority-designated Confidential Information provided to it, including any and all copies thereof, and any and all notes in the Consultant's possession containing such information, and certify in writing that it has done so. In lieu of return of notes containing such information, Consultant may destroy such notes and certify in writing that it has done so.

10. Any consultants employed, retained or affiliated by Consultant in connection with the Audit shall be similarly required to evidence their concurrence to the terms and conditions of this Nondisclosure Agreement prior to the disclosure to such subcontractors of any such Confidential Information. Such concurrence shall be in writing on the attached form (Appendix B).

11. Notwithstanding the above, disclosure of Confidential Information to the Department, is governed by the Audit Agreement.

* * * * *

This Nondisclosure Agreement has been executed by officers who represent that they are duly authorized to sign on behalf of their company and bind the company to the provisions of this Nondisclosure Agreement.

the Authority
 SIGNATURE: _____
 TYPED NAME: _____
 TITLE: _____
 DATE: _____

the Consultant
 SIGNATURE: _____
 TYPED NAME: _____
 TITLE: _____
 DATE: _____

ACKNOWLEDGEMENT

I affirm that I have read the Nondisclosure Agreement dated as of _____, 2012, between NorthStar Consulting Group, Inc. and the Long Island Power Authority in connection with the Comprehensive Management and Operations Audit of the Long Island Power Authority directed by the New York State Department of Public Service, and I agree to comply with and be bound by the terms of that Nondisclosure Agreement.

Signature

Name

Title

Employer or Firm

Address

Address

Telephone Number

Dated: _____

STANDARD CLAUSES FOR LIPA CONTRACTS

For the purposes of this Appendix C, the Long Island Power Authority and its operating subsidiary the Long Island Lighting Company d/b/a LIPA are hereinafter referred to as “LIPA.”

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 LIPA, whether a contractor, consultant, licensor, licensee, lessor, lessee or other party):

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

COMPTROLLER’S APPROVAL. In accordance with Section 112 of the New York State Finance Law (the “State Finance Law”), this Agreement shall not be valid, effective or binding upon LIPA until it has been approved by the State Comptroller and filed in his office.

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

NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other New York State and Federal statutory and constitutional non-discrimination provisions, Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Furthermore, in accordance with Article 220-e of the New York Labor Law, and to the extent that this Agreement 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, national origin, sexual orientation, genetic predisposition or carrier status; (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 for the performance of work under this Agreement.

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

Department in accordance with the Labor Law and shall comply with all requirements set forth in Article 8 or Article 9 of the Labor Law whichever Article applies.

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

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

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

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

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

EQUAL EMPLOYMENT FOR MINORITIES AND WOMEN. In accordance with Section 312 of the New York Executive Law: (i) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and shall 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; (ii) at the request of LIPA, 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, marital status, sexual orientation, genetic predisposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of Contractor’s obligations herein; and (iii) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Contractor shall include the provisions of (i), (ii) and (iii) above, in every subcontract over twenty-five thousand dollars (\$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 Contractor.

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. It is the policy of the Authority to provide Minority and Women-Owned Business Enterprises (M/WBEs) the greatest practicable opportunity to participate in the Authority's contracting activity for the procurement of goods and services. To effectuate this policy, Contractor shall comply with the provisions of this Appendix C and the provisions of Article 15-A of the New York Executive Law. The Contractor will employ good faith efforts to achieve the below-stated M/WBE Goals set for this contract, and will cooperate in any efforts of the Authority, or any government agency which may have jurisdiction, to monitor and assist Contractor's compliance with the Authority's M/WBE program.

Minority-Owned Business Enterprise (MBE) Subcontracting Goal ____%

Women-Owned Business Enterprise (WBE) Subcontracting Goal ____%

Waivers shall only be considered in accordance with the provisions of Article 15-A of the Executive Law.

To help in complying, Contractor may inspect the current New York State Certification Directory of Minority and Women Owned Businesses, prepared for use by state agencies and contractors in complying with Executive law Article 15-A, (the Directory) at the same location where the Authority's bid document or request for proposals may be obtained or inspected and also at the Authority's office at

333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553. In addition, printed or electronic copies of the Directory may be purchased from the New York State Department of Economic Development, Minority and Women's Business Division.

If requested, Contractor shall submit within ten (10) days of such request, a complete Utilization Plan, which shall include identification of the M/WBEs which the Contractor intends to use; the dollar amount of business with each such M/WBE; the Contract Scope of Work which the Contractor intends to have performed by such M/WBEs; and the commencement and end dates of such performance. The Authority will review the plan and, within twenty (20) days of its receipt, issue a written acceptance of the plan or comments on deficiencies in the plan.

The Contractor shall include in each Subcontract, in such a manner that the provisions will be binding upon each Subcontractor, all of the provisions herein including those requiring Subcontractors to make a good faith effort to solicit participation by M/WBEs.

If requested, the Contractor shall submit monthly compliance reports regarding its M/WBE utilization activity. Reports are due on the first business day of each month, beginning thirty (30) days after Contract award.

The Contractor shall not use the requirements of this section to discriminate against any qualified company or group of companies.

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

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

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

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

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

OMNIBUS PROCUREMENT ACT OF 1992. 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
One Commerce Plaza
Albany, New York 12245.

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

NYS Department of Economic Development
Minority and Women's Business Development Division
One Commerce Plaza
Albany, New York 12245

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

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

RECIPROCITY AND SANCTIONS PROVISIONS. Contractor is hereby notified that if its principal place of business is located in a state that penalizes New York State vendors, and if the goods or services it offers are substantially produced or performed outside New York State, the Omnibus Procurement Act

1994 amendments (Chapter 684, Laws of 1994) require that Contractor be denied contracts which it would otherwise obtain.

PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), LIPA shall not purchase any apparel from any Contractor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) Contractor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with LIPA), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

CONTRACTOR AFFIRMATION OF COMPLIANCE AND CERTIFICATION OF DISCLOSURE. Contractor affirms that it understands and agrees to comply with the procedures of the Governmental Entity relative to permissible contacts as required by the State Finance Law § 139-j (3) and § 139-j (6)(b). Furthermore, Contractor certifies that the information disclosed pursuant to State Finance Law § 139-k (5) is complete true and accurate.

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

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

NON-PUBLIC PERSONAL INFORMATION. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

**Non-Collusive Bidding Certification
Required by Section 2878 of the Public Authorities Law**

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

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

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

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

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

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

Subscribed to under penalty of perjury under the laws of the State of New York, this 7th day of AUGUST, 2012 as the act and deed of said corporation of partnership.

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

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

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

NAMES

LEGAL RESIDENCE

DOUGLAS A. BENNETT
President

965 DUNN RIDGE DRIVE
SANTA MARIA, CA 93455

DOUGLAS A. BENNETT
Secretary

DOUGLAS A. BENNETT
Treasurer

President

Secretary

Treasurer

Identifying Data:

Potential Consultant: DOUGLAS A. BENNETT

Street Address: 900 EAST MAIN STREET #104

City and State: SANTA MARIA, CA 93454

Telephone: (805) 925-0663 Title: MANAGING DIRECTOR

DOUGLAS A. BENNETT
If applicable, Responsible Corporate Officer Name

MANAGING DIRECTOR
Title


Signature

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

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____
(Name)

By _____
(Name)

Title

Title

Street Address

Street Address

City and State

City and State

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes ___ or No X

If yes:

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

Yes ___ or No ___



Signature

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

NOBLEMAN CONSULTING GROUP, INC.

Address:

*900 EAST MAIN STREET SUITE #104
SANTA MARIA, CA 93454*

Name and Title of Person Submitting this Form:

DOUGLAS A. BENNETT - MANAGING DIRECTOR

Contract Procurement Number:

MATTER NO. 12-00314

Date:

8-7-2012

1. 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? (Please circle):

(No)

Yes

2. If yes, was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j? (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If yes, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility: _____

5. Has any Governmental Entity or other 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? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

Offerer certifies that all information provided to the Long Island Power Authority with respect to State Finance Law § 139-k in complete, true and accurate.

By: *Randy L. Bennett*
Signature

Date: 8-7-2012

CONTINGENT FEE CERTIFICATION

In accordance with section F.2 of Article II of the Long Island Power Authority "Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts" (the "Guidelines"), Proposer, by submission of this proposal certifies the following with respect to the payment of contingent fees:

- (1) Proposer has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Long Island Power Authority contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and
- (2) Proposer will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Long Island Power Authority.

FAILURE TO PROVIDE THIS CERTIFICATION WILL BE GROUNDS FOR DISQUALIFICATION IN THE PROCUREMENT PROCESS.

VIOLATION OF EITHER (1) OR (2) OF THIS CERTIFICATION SHALL RESULT IN:

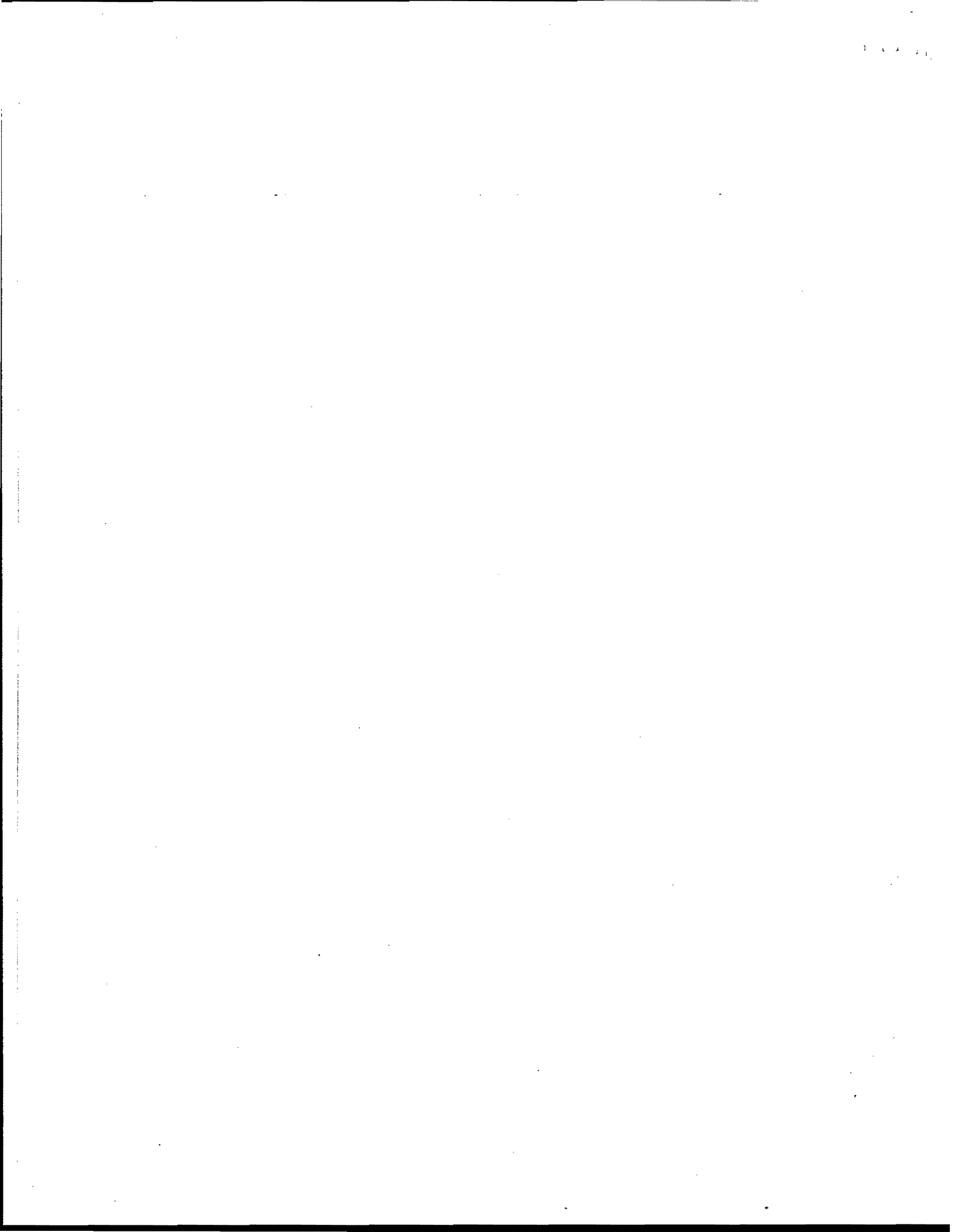
- (i) disqualification of Proposer from the procurement process; and
- (ii) prohibition of the Proposer from being awarded any contract for a period of three years from the commencement of the procurement process.

Certified as of the 7th day of AUGUST, 2012.

NOEMA INC CONSULTING GROUP, INC.
Name of person, firm or corporation

By DOUGLAS A. BENNETT - MANAGING DIRECTOR
(Name and Title)

Douglas A. Bennett



Sample Invoice

Consultant Name and Address

Date

Project Manager

Dear XXXXX:

This constitutes our invoice for professional fees and expenses incurred during XXXXX on the XXXXX Audit.

<u>Staff</u>	<u>Days</u>	<u>Rate</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
Consultant 1	7.0	\$xx.xx	\$xx.xx	\$ xxx.xx	\$ x,xxx.xx
Consultant 2	8.0	xx.xx	xx.xx	xxx.xx	x,xxx.xx
Consultant 3	2.5	xx.xx	xx.xx	xxx.xx	x,xxx.xx
Consultant 4	9.0	xx.xx	xx.xx	xxx.xx	x,xxx.xx
Consultant 5	<u>5.0</u>	xx.xx	xx.xx	<u>xxx.xx</u>	<u>x,xxx.xx</u>
Subtotal	36.5			\$x,xxx.xx	\$xx,xxx.xx

Firm Expenses

Supplies	\$ xxx.xx
Telephone	xx.xx
Secretarial/Office Support	<u>xx.xx</u>
Subtotal	\$ xxx.xx

Invoice Total \$xx,xxx.xx

I certify that the above charges are correct and just and have not been previously billed, except as indicated, and that payment therefore has not been previously received by XXXXXX.

Very truly yours,

Responsible officer

**ARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT
TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

I. General Provisions

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

II. Contract Goals

- A.** For purposes of this procurement, the [AGENCY] hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“M/WBEs”) participation, XX% for Minority-Owned Business Enterprises (“MBE”) participation and XX% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B.** For purposes of providing meaningful participation by M/WBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified M/BWEs found at the following internet address:
<http://www.esd.ny.gov/mwbe.html>

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

- C. Where M/WBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the [AGENCY] for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the M/WBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the [AGENCY] within seventy two (72) hours after the date of the notice by [AGENCY] to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the [AGENCY] may provide the Contractor or Subcontractor a model statement (see Form ____ – Minority- and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Contractor’s EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. 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.

- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form ____ - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form _____ - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the [AGENCY] of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic**

violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A.** The Contractor represents and warrants that Contractor has submitted an M/WBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- B.** Contractor agrees to use such M/WBE Utilization Plan for the performance of M/WBEs on the Contract pursuant to the prescribed M/WBE goals set forth in Section III-A of this Appendix.
- C.** Contractor further agrees that a failure to submit and/or use such M/WBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, [AGENCY] shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

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

VI. Quarterly M/WBE Contractor Compliance Report

Contractor is required to submit a Quarterly M/WBE Contractor Compliance Report (Form _____) to the [AGENCY] by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the M/WBE goals of the Contract.

VII. Liquidated Damages – M/WBE Participation

- A.** Where [AGENCY] determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is

found to have willfully and intentionally failed to comply with the M/WBE participation goals, Contractor shall be obligated to pay to the [AGENCY] liquidated damages.

- B.** Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1.** All sums identified for payment to M/WBEs had the Contractor achieved the contractual M/WBE goals; and
 - 2.** All sums actually paid to M/WBEs for work performed or materials supplied under the Contract.

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

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, DOUGLAS A. BENALICH, the (awardee/contractor) NORTHSTAR CONSULTING GROUP, INC. agree to adopt the following policies with respect to the project being developed or services rendered at 900 EAST MAIN ST. #104 SANTA MARIA, CA 93454.

- | | |
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| <p>M/WBE This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:</p> <ol style="list-style-type: none"> (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBES or WBEs, including solicitations to M/WBE contractor associations. (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly. (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs. (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation. (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals. (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation. | <p>EEO (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.</p> <p>(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.</p> <p>(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.</p> <p>(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.</p> <p>(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract</p> |
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Agreed to this 7th day of AUGUST, 2012

By *Douglas A. Bennett*

Print: DOUGLAS A. BENNETT Title: MANAGING DIRECTOR

DOUGLAS A. BENNETT is designated as the Minority-owned Business Enterprise Liaison
(Name of Designated Liaison)

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

M/WBE Contract Goals

20 % Minority and Women's Business Enterprise Participation

 % Minority Business Enterprise Participation

 % Women's Business Enterprise Participation

EEO Contract Goals

 % Minority Labor Force Participation

 % Female Labor Force Participation

DOUGLAS A. BENNETT *Douglas A. Bennett*
(Authorized Representative)

Title: MANAGING DIRECTOR

Date: 8-7-2012