

APPENDIX A1
MEMBER ITEM PROGRAM

- 1) *PROGRAM WORK PLAN; COOPERATION.* The Contractor shall perform member item activities (the “Member Item Activities”) described in the plan annexed as Appendix D (the “Program Work Plan” within the neighborhood/area as more fully described in the annexed Appendix A2 (the “Neighborhood/Area”). This Agreement does not grant or delegate to the Contractor any exclusive right to conduct the Member Item Activities within the Neighborhood/Area. The State may designate other organizations to perform Member Item Activities in the Neighborhood/Area, and the Contractor shall communicate with and be receptive to the programs and proposals of such other organizations within the Neighborhood/Area.

- 2) *DISBURSEMENT OF MEMBER ITEM FUNDS.* State may, upon written request by the Contractor, elect to make quarterly payments. Such request for quarterly payment must be made at least forty-five (45) days prior to the first day of the quarter for which such quarterly payment is requested. For the purposes of this paragraph, “quarter” shall mean each succeeding three month period following the first day of the month in which this Agreement commences. Contractor may request quarterly payment for any quarter following the first quarter. No quarterly payment shall be due unless the State determines that substantial progress has been made toward completion of the Member Item Activities and approves such request. If the State approves the request for quarterly payment, Contractor will be so informed in writing at least fifteen (15) days prior to the first day of the quarter for which quarterly payment is requested and quarterly payment will be due on the first day of the quarter for which such quarterly payment is requested. If the nature of the Member Item Activities requires advance payment, the State may elect to release funds in that manner. Such advance payment shall be due on the 15th day of the month in which this Agreement commences.

- 3) *ELIGIBLE COSTS.* The Contractor may use the Member Item Funds only for costs authorized by the Budget (Appendix B).

- 4) *ADDITIONAL FUNDS.* The Contractor shall make best efforts to secure:
 - A) Funds in addition to the Member Item Funds from all available sources to pay for the Member Item Activities, and

 - B) Services to be rendered to the Contractor without consideration payable by Contractor for the performance of the Member Item Activities.

5) *REPRESENTATION AND WARRANTIES.* The Contractor represents and warrants that:

- 1) The occupants of any building owned by the Contractor containing housing accommodations are adequately represented, and
- 2) The Contractor is in compliance and will comply with the Conflict of Interest Provisions found in 9NYCRR §2601.3 and 9 NYCRR §2811.3 as amended from time to time.

6) *NO COMMITMENTS BEYOND CONTRACT PERIOD.* The Contractor shall not enter into any contract, lease or other agreement in which the terms or effect shall commit the use of the Member Item Funds for a period of time in excess of the Period of this Agreement, unless the Contractor obtains the prior written consent of the State.

7) *REPORTS.* Contractor shall keep a copy of the Annual Audit or Cost Certification on file in your office for review by New York State Homes and Community Renewal, Office of Community Renewal (OCR). If you are completing an Audit, you must submit to the OCR the Opinion Letter and Management Letter (if any). This must include a review of the Member Item Program covering all years of the contract term.

8) *INSURANCE.*

A) During the Period of this Agreement, the Contractor shall maintain and keep in force the following insurance policies with an insurer duly licensed to transact business in the State of New York:

(i) Comprehensive Liability Insurance, with a minimum of liability of \$500,000 combined with single limit (bodily injury and property damage) containing the following coverage:

- (a) Premises and Operations
- (b) Independent Contractors
- (c) Contractual Liability
- (d) Products – Completed Operations
- (e) Liability for Owned Automobiles, if the Contractor owns motor vehicles
- (f) Employers Non-Ownership, including Hired Vehicles

(ii) Fire and Casualty Insurance for real or personal property owned by the Contractor.

(iii) Worker's Compensation and Disability Benefits Insurance.

(iv) a fidelity bond of dishonesty Insurance, in a form acceptable to the State, naming the State as loss payee and with a limit of liability in an amount equal to the largest disbursement under this Agreement and bonds each position authorized by the Contractor to receive, handle or disburse the Member Item Funds (the "Bond").

B) The State of New York and New York State Homes and Community Renewal, Office of Community Renewal shall be named as additional insured under the Contractor's policy of Comprehensive Liability Insurance. The Contract shall keep on file at the organization's office certificates for all policies of insurance referred to in Subparagraph (A) or this Paragraph 8, together with evidence of the payment of premiums thereon, within thirty (30) days of the effective date of this Agreement. Each of said policies shall also provide that the insurer will give the State at least 30 days prior written notice of the cancellation of said policy.

9) *BREACH OF CONTRACT/TERMINATION.*

1) The State may allow the Contractor to cure any breach or non-performance under the Contract.

2) The State shall, within fifteen (15) days after receiving notice of cure from the Contractor in the manner and with the time limit specified by the State, or in the event that the Contractor fails to give such notice, within fifteen (15) days after the expiration of any time limit for the giving of such notice, give notice to the Contractor stating whether the non-performance or breach by the Contractor has been cured or remedied to the satisfaction of the State and, if not, what action (which may include, without limitation, termination of this Agreement) the State intends to take as a result of such failure to cure or remedy.

10) *RENEGOTIATION.* Notwithstanding anything to the contrary contained in this Contract, the State in its sole discretion may amend, modify or renegotiate this Agreement, from time to time during its period, in light of the Contractor's actual performance or new or changed conditions. If the Contractor refuses to agree to any amendment, modification or renegotiation proposed by the State, the State may terminate this Agreement and the Contractor shall remain liable to the State for any funds not expended under the terms of this Contract.

11) *PERFORMANCE REVIEW*. The State will review the Contractor in such manner and at such times as the State shall determine for the purpose, among other things, of ascertaining the quality and quantity of the activities performed by the Contractor, their compliance with the provisions of this Agreement, and the financial integrity and efficiency to the Contractor.

12) *POLICIES AND PROCEDURES*. The Contract agrees to comply with the Policies and Procedures regarding the Member Item Program of OCR, as amended from time to time, which are hereby incorporated herein and made part hereof.

13) *NON-LIABILITY*. Nothing in this Agreement or otherwise shall impose any liability or duty whatsoever on the State.

14) *NOTICE OF INVESTIGATION OR DEFAULT*. The Contractor shall notify the State within ten (10) calendar days after obtaining knowledge of:

- 1) The commencement of any investigation or audit of its activities by any governmental agency;
- 2) The alleged default by the Contractor under any mortgage, deed of trust, security agreement, loan agreement or credit instrument, whether executed in connection with the Project or otherwise, or;
- 3) Any alleged breach by the Contractor of the terms of any agreement, credit agreement, lease or other instrument executed in connection with the Project. Contractor shall insure that, in the event of any alleged default under any of such instruments, the mortgagee, secured party, lender or lessor, as the case may be, shall simultaneously send to the State a copy of any notice of such alleged default sent to the Contractor, and shall give the State a reasonable opportunity to cure such alleged default sent to the Contractor, and shall give the State a reasonable opportunity to cure such alleged default.

15) *CONTRACTS*. All contracts entered into by the Contractor for legal, accounting, architectural, technical, professional, consulting or other services which are to be paid for in whole or in part, with Member Item Funds shall be arms-length transactions and shall be retained by the Contractor at its place of business throughout the term of such contract.