



REQUEST FOR QUALIFICATIONSS
Construction Management Services
(Term Contract)

ADDENDUM #1

The Broome County Land Bank Corporation received the following question via email from an interested bidder on Wednesday November 15th, 2023 and provided the following answer related to this RFQ:

1. Is there a specific format for pricing [the Land Bank is] looking for or [is the Land Bank] just requesting firm information at this time?
 - a. In part 2.4 of the RFQ, "Cost Proposal," the Land Bank is looking for either an hourly rate or a per property cost proposal. We are looking for an idea as to what we can expect to allocate in order to hire your firm. Selection will be based upon qualifications as listed in Part 3 of the RFQ. However, the Land Bank wants to know a firm's anticipated costs to ensure it either fits within our budget or we can rearrange in order to complete each project. We understand that this service is unique and costs will likely vary from property to property so final rates/costs that are negotiated may not reflect exactly what's submitted in the statement of qualifications.

The Broome County Land Bank Corporation received the following questions via email from an interested bidder on Friday, November 17th, 2023 and provided the following answers related to this RFQ:

1. Will developers/builders/contractors be taking ownership of the units from the landbank?
 - a. No, ownership will remain in Land Bank title throughout the term of the project.
2. Will a developer/builder/contractor be rehabbing/renovating just one property or will some have multiple buildings that they will be completing?
 - a. Each property will be bid separately with separate contracts to be awarded. Some properties may be bid at the same time as one another but separate contracts.
3. Are the sites only vacant buildings or will there be vacant lot in-fill construction?
 - a. Vacant residential buildings at this time.
4. Will these projects be gut-rehab or mod-rehab, or a combination?

- a. We anticipate a combination of both. We will rely heavily upon the CM to develop an appropriate scope of work for each property.
- 5. Will the completed properties be held as rental or be sold for homeownership opportunities?
 - a. Primarily homeownership opportunities.
- 6. Will the completed units have affordability restrictions?
 - a. Yes.

The Broome County Land Bank Corporation received the following questions via email from an interested bidder on Monday, November 20th, 2023 and provided the following answers related to this RFQ:

- 1. What form of agreement will be used?
 - a. For most professional services we'll look to the selected individuals or firms for their preferred engagement letter or standard contract – we'll add standardized grant language such as M/WBE participation and EEO requirements, etc. Otherwise, we have a professional services term contract that we've used in the past with A/E and Environmental Testing firms that would be applicable to this service. Please see attached PDF example.
- 2. We assume all contractor contracts will be direct with the Land bank and not part of this contract?
 - a. Correct. All procurement contracts for the properties will be between the Land Bank and the contractors. We anticipate all pre-development activities will be completed at each site before the CM is formally engaged. The Land Bank will expect that the CM assist Land Bank staff in managing the GC contracts – primarily the construction side. Land Bank staff to manage administrative functions.
- 3. When would the first construction activity start?
 - a. We will be undertaking asbestos abatement activities at two of the sites fairly soon, prior to the end of the year. We're hopeful, with the assistance of the CM, to bid GC packages for both properties early next year. Six additional properties to follow. Our RFQ allows us to procure more than one individual or firm for this service.
- 4. Is there a requirement of onsite full time supervision of the work?
 - a. No. We'll rely upon the CM to properly assess the amount of supervision and management the selected GC of each property needs. Our primary goals are to complete the projects on time and as close to budget as possible. The Land Bank will be looking to the CM primarily to keep the GC on schedule, perform regular inspections, and sign-off on draw requests from the contractor.

DEADLINE for submittal is Thursday, December 7th at 4:00 p.m.

60 Hawley Street, 5th Floor • Binghamton, NY 13901 • ph: 607.778.6001
www.broomelandbank.org

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, by and between the Broome County Land Bank Corporation, a local development corporation organized and existing under the laws of the State of New York with an office for the transaction of business at PO Box 1766, Binghamton, New York 13902 (hereinafter referred to as "Land Bank") and

_____,
having offices at _____ (hereinafter "Consultant").

WITNESSETH:

WHEREAS, the Land Bank Board of Directors, by Resolution, duly adopted on _____, a copy of which is attached hereto and made a part hereof as Exhibit "A", authorized an agreement with Consultant for professional _____ services on an "as needed" basis,

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Land Bank and the Consultant do hereby agree as follows:

I. GENERAL

A. Definitions

(1) Land Bank - As used in this Agreement, the term "Land Bank" shall refer to the Broome County Land Bank Corporation located at the Broome County Office Building, Government Plaza, Binghamton, New York.

(2) Date of Execution - As used in this Agreement, the term "Date of Execution" shall refer to the date of execution of this Agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.

(3) "Consultant" - As used in this Agreement, the term "Consultant" shall refer to _____.

(4) Exhibit "A" - The term "Exhibit 'A'" as used in this Agreement shall refer to the Resolution adopted by the Land Bank Board of Directors on _____. Such Resolution is attached hereto and made a part hereof.

(5) Exhibit "B" - The term "Exhibit 'B'" as used in this Agreement shall refer to the Proposal submitted by the Consultant. Such Exhibit "B" is attached hereto and incorporated herein. Should there be any inconsistency between this Agreement and Exhibit "B", the terms of this Agreement shall govern.

(6) Exhibit "C" - The term "Exhibit 'C'" as used in this Agreement shall refer to the "Contract Insurance Specifications". Such Exhibit "C" is attached hereto and made a part hereof.

(7) Project - As used in this Agreement, the term "Project" shall refer to professional _____ services on an "as needed" basis.

B. Captions

The titles or captions of articles and paragraphs of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof or of the Agreement or in any way affect the Agreement.

C. Nomenclature

Materials, equipment, methodologies or other work described in words which have a well-known, technical or trade meaning shall be interpreted as having such meaning in connection with this Agreement.

D. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid, and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

In the event of any conflict between any part or parts of the Consultant's Proposal attached hereto, marked Exhibit "B", and the terms and conditions of this Agreement, it is understood and agreed that the terms and conditions of this Agreement shall control.

E. Successors and Assigns

This Agreement shall bind the successors, assigns, and representatives of the parties hereto. The Consultant shall not assign any right or interest in this Agreement or delegate, sublet or transfer any obligation hereunder without the written permission of the Land Bank and any attempted assignment or delegation without written permission shall be wholly void and totally

ineffective for all purposes.

In case of the death or disability of one or more but not all of the principals and/or partners of the Consultant the rights and duties of the Consultant shall, at the election of the Land Bank, devolve upon the survivor or survivors of them who shall be obligated.

F. Invalid Provisions

If any term or provision of this Agreement or the application thereof to any agency, person, firm or corporation or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement, or the application of such terms or provisions to agencies, persons, firms or corporations or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

G. Notices

Any written notice required hereunder shall be deemed properly given, delivered and service thereof completed when said notice is deposited in any Post Office or Post Office Box in a post-paid envelope properly addressed or when said notice is sent by telegram or when said notice is delivered in person to the party to whom it is addressed or their authorized representatives, the addresses of the Land Bank and the Consultant set forth in the beginning of this Agreement shall be deemed the place to which written notice to them shall be directed; provided, however, that any such party or parties may by written notice to the others given pursuant to this paragraph designate a different address to which notices to it shall be directed or designate the name and address of another person, firm or corporation to whom notices to it may be directed.

II. RESPONSIBILITY OF THE CONSULTANT

A. The Consultant shall be responsible for the quality, technical accuracy, timely completion, and the coordination of all plans, studies, designs, drawings, specifications, reports and other services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its plans, studies, designs, drawings, specifications, reports and other services.

The plans, drawings, specifications, reports, renderings, models and other documents prepared and furnished by the Consultant shall become the property of the Land Bank.

B. The Consultant shall perform such services as may be necessary to accomplish the

work required to be performed under this Agreement, in accordance with this Agreement and applicable Land Bank requirements in effect on the date of execution of this Agreement. All documents including drawings and specifications prepared by the Consultant pursuant to this Agreement are instruments of service in respect of the project. These documents, excluding "as-built" drawings and specifications, are not intended or represented to be suitable for use or reuse by the Land Bank or others on extensions of the project or on any other project. Any reuse for other than that specific purpose intended will be at the Land Bank's sole risk and without liability or legal exposure to Consultant. Consultant shall not be responsible for any claims, damages, losses and expenses including attorneys' fees arising out of or resulting from any unauthorized reuse or purpose.

C. Approval by the Land Bank of plans, studies, designs, specifications, reports, and incidental work furnished hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy of its work. The Land Bank's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

D. The Consultant shall be and remain liable in accordance with applicable law for all damages to the Land Bank to the extent caused by the Consultant's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the Land Bank, Land Bank-furnished data or any third party employed by the Land Bank to provide said services to the Consultant. The Consultant shall not be responsible for any time delays in the project caused by circumstances beyond the Consultant's control.

E. In the event the bids of all qualified, responsible and reliable bidders for the construction of the project which is the subject of this Agreement are in excess of the project budget established as of the date the Land Bank advertises for construction bids, the Consultant, to the extent necessary in the judgment of the Land Bank, shall revise all or part of the drawings, specifications, or other work prepared by the Consultant to the extent necessary to bring the cost of the project within the project budget. Said services shall be performed on a time and materials basis in accordance with the attached Schedule of Fees. However, in the event the construction bids significantly exceed the project budget and the excess bid prices are a result of consultant's

negligence in the preparation of the design plans or bid specifications, Consultant shall revise, correct or modify that portion of the work with no additional cost to the Land Bank.

F. Consultant shall render professional assistance to the Land Bank in any claims, proceedings, actions, arbitration or litigation arising out of Consultant's services except where the respective interests of the Land Bank and the Consultant shall conflict.

III. LAND BANK RESPONSIBILITY

The Land Bank shall:

- A. Provide full information as to its requirements for this project.
- B. Assist the Consultant by placing at its disposal all available information pertaining to the project including previous reports and any other data relative to the completion of the project.
- C. Furnish the Consultant, as appropriate, property boundary, right of way, topographic and utility surveys and any other similar reports which it may have in its possession.
- D. Guarantee access to any appropriate properties for any studies which the Consultant deems necessary.
- E. Designate, in writing, the person to act as the Land Bank's representative with respect to work to be performed under this Agreement.
- F. Give prompt written notice to the Consultant whenever the Land Bank observes or otherwise becomes aware of any defect in the project.

IV. ADMINISTRATION

A. Claims and Disputes

(1) If the Consultant claims (i) that any work it has been ordered to do is outside the scope of services, or (ii) that it has performed or is going to perform outside the scope of services, or (iii) that any action or omission of the Land Bank is contrary to the terms and provisions of this Agreement, it shall, within five (5) working days after being ordered to perform the work claimed by it to be revised work, or within five (5) working days after the act or omission to act by the Land Bank complained of, request consultation with the Executive Director of the Land Bank regarding such complaint. Within five (5) working days after receipt of such request the said Executive Director shall meet with the Consultant for the purpose of negotiating, in good faith, changes, if any be required, in the scope of services or compensation, or other resolution of Contractor's complaint. If, as a result of such consultation the Consultant and the Executive

Director agree to changes in the scope of services or compensation required under this Agreement, such changes shall be made in accordance with Paragraph B of this Article. In the event that the Consultant and the Executive Director are unable to agree on any changes in the scope of services or compensation required under this Agreement, or such other resolution of Consultant's complaint as may be mutually acceptable to the parties, Consultant shall:

- (a) Promptly comply with such order;
- (b) File with the Land Bank, within thirty (30) working days after being ordered to perform the work claimed by it to be revised work or within thirty (30) working days after commencing performance of the revised work, whichever date shall be earlier, or within thirty (30) working days after the said action or omission on the part of the Land Bank occurred, a written notice of the basis of its claim and request a determination thereof;
- (c) File with the Land Bank, within thirty (30) working days after said alleged revised work was required to be performed or said alleged revised work was commenced, whichever date shall be earlier, or said alleged action or omission by the Land Bank occurred, a verified detailed statement, with documentary evidence, of the items and basis of its claim;
- (d) Produce for the Land Bank's examination, upon notice from the Land Bank, all its books of account, bills, invoices, payrolls, subcontracts, time books, progress records, daily reports, bank deposit books, bank statements, checkbooks and canceled checks, showing all of its actions and transactions in connection with or relating to or arising by reason of his claim, and submit itself and persons in its employ and in its subcontractor's employ, if appropriate, for examination under oath by any person designated by the Land Bank to investigate any claims made against the Land Bank under this Agreement, such examination to be made at the offices of the Land Bank; and
- (e) Proceed diligently, pending and subsequent to the determination of the Land Bank with respect to any such disputed matter, with the performance of this Agreement and in accordance with all instructions of the Land Bank.

(2) The Consultant's failure to comply with any or all parts of Subparagraph (1) of this Paragraph shall be deemed to be:

- (a) A conclusive and binding determination on its part that said order, work, action or omission does not involve revised work and it is not contrary to the terms and provisions of this

Agreement; and

(b) A waiver by the Consultant of all claims for additional compensation or damages as a result of said order, work, action or omission. The provisions of Subparagraph (1) of this Paragraph are for the purpose of enabling the Land Bank to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any work, change its plans, mitigate or remedy the effects or circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expenses or circumstances as they occur. Compliance with such provisions is essential whether or not the Land Bank is aware of the circumstances of any work or other circumstances which might constitute a basis for a claim and whether or not the Land Bank has indicated it will consider a claim in connection therewith.

(3) No person has power to waive or modify any of the foregoing provisions and in any action against the Land Bank to recover the sum certified by the Land Bank to be due under or by reason of this Agreement, the Consultant must allege in its complaint and prove at trial compliance with the provisions of this section.

(4) Nothing contained in this section shall in any way affect the Land Bank's right to obtain an examination before trial or a discovery and inspection in any action that might be instituted by or against the Land Bank.

B. Revision of Scope of Work

(1) The Land Bank may, at any time, by written order, make changes within the general scope of this Agreement and the services for work to be performed. If such changes cause an increase or decrease in the Consultant's cost of, or time required for, performance of any services under this Agreement, whether or not changed by any order, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. Any claim of the Consultant for adjustment under this clause must be asserted in writing in accordance with Paragraphs A of this Article, and subject to Article VII, Paragraph C below.

(2) No services for which an additional compensation will be charged by the Consultant shall be furnished without the written authorization of the Land Bank.

C. Acceptability of Work

The Land Bank Executive Director shall, in all cases, determine the amount, quality, acceptability, and fitness of the work being performed hereunder and shall determine every

question which may arise relative to the fulfillment of this Agreement on the part of the Consultant and the Land Bank Executive Director's decision shall be final, conclusive, and binding upon the Consultant, except that if such decision is arbitrary or capricious, the Consultant may have such decision reviewed by a competent court of jurisdiction within the State of New York.

D. Orders for Change, Revision, Termination and Compensation

All orders to the Consultant directing changes in the project, revisions within the scope of services, termination of the project, regular payments upon the project, and payments representing increases or decreases in compensation due to changes, revisions or termination shall be made by the Land Bank through its duly authorized Executive Director.

E. Supervision

Supervision of the progress of this work shall be conducted by the Land Bank through its duly authorized representative of the Executive Director. It is understood and agreed that any act required to be undertaken or done by the under the terms of this agreement may be undertaken or done by his duly authorized representative.

V. SCOPE OF SERVICES

The services to be rendered under this Agreement shall include all of those professional services necessary for _____ services on an "as needed" basis.

All work on this project and all phases of such work shall be performed in accordance with the detailed description of such phases and work as contained in the "Proposal" of the Consultant attached to this Agreement as Exhibit "B". All statements and conditions stated in that Proposal shall apply and be part of this Agreement, provided, however, that in the event of any conflict between any part or parts of said Proposal and the terms and conditions of this Agreement, it is understood and agreed that the terms and conditions of this Agreement shall control.

VI. TIME OF PERFORMANCE

A. Term

The term of this agreement shall be from _____ through _____ with a possible one-year extension.

B. Best Efforts

The Consultant acknowledges that the services to be performed are essential to the effective operation of the Land Bank, and that, therefore, the Consultant will exercise its best efforts to

complete the services called for under this Agreement in the minimum time possible, and within the time specified in such work orders as may be issued by the Land Bank to the Consultant. In the event that the Consultant for good cause shown cannot complete the services for a particular task or phase within the time agreed to, the Consultant shall make a written request to the Land Bank, in accordance with Paragraph D below.

C. Notice of Conditions Causing Delay

(1) Within five (5) working days after the commencement of any condition which is causing or may cause delay in completion, the Consultant shall notify the Land Bank in writing of the effect, if any, of such condition upon the time progress schedule, and shall state why and in what respects, if any, the condition is causing or may cause such delay.

(2) Failure to strictly comply with this requirement may, in the discretion of the Land Bank, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension, or other condition.

D. Extension of Time

(1) An extension or extensions of time for the completion of the work may be granted by the Land Bank subject to the provisions of this section, but only upon written application therefor by the Consultant to the Land Bank.

(2) An application for an extension of time shall set forth in detail the source and nature of each alleged cause of delay in the completion of the work, the date upon which each such cause of delay began, ended, or will end, and the number of days delay attributable to each of such causes. Such application shall be submitted prior to completion of the work.

(3) If such an application is made, the Consultant shall be entitled to an extension of time for delay and completion of the work caused solely:

- (a) By the acts or omissions of the Land Bank, its officers, agents or employees; or
- (b) By unforeseeable supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, Acts of God or the public enemy, war or other national emergency making performance temporarily impossible, illegal, or strikes or labor disputes).

(4) The Consultant shall, however, be entitled to an extension of time for such causes only for the number of calendar days of delay which the Land Bank may determine to be due solely to such causes, and then only if the Consultant shall have strictly complied with all the

requirements of this Paragraph and Paragraph D above. The Land Bank shall make such determination within thirty (30) calendar days after receipt of the Consultant's application for an extension of time; provided, however, said application complies with the requirements of this Paragraph.

(5) The Consultant shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as determined by the Land Bank, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault, or omission of the Consultant or of its subcontractor, if any, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

(6) The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Land Bank.

E. Delay Claims

Consultant represents and warrants that the provisions herein contained for extension of time are fair and adequate and that Consultant has had an opportunity to make provision for any and all delays within the contemplation of the parties. Accordingly, it is understood and agreed that Consultant shall not have or assert any claim for damages, or prosecute any suit, action, cause of action, arbitration claim or other proceeding against the Land Bank for such damages arising from any delay or hindrance in the completion of the work called for in this Agreement due to any act or omission on the part of the Land Bank, its agents, servants and employees, or otherwise.

VII. SCHEDULE OF PAYMENTS

A. Amount of Compensation

For the faithful performance of the work of this Agreement and its acceptance by the Land Bank, the Land Bank shall pay to the Consultant an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) per the rates attached as Exhibit "A" to the above-referenced resolution. This fee includes, but is not limited to, compensation for professional, technical and non-technical personnel time, equipment, materials, insurance, travel expenses, overhead and any other expenses, including reimbursable expenses, which the Consultant incurs during the performance of said work.

B. Method of Payment

(1). Payment shall be made in the following manner: The Consultant shall, upon completion of a project, submit to the Land Bank a requisition for payment, and the Consultant shall compute the value thereof based on the Consultant's personnel costs computed at the Consultant's hourly rates as stated in Exhibit "B", (including the Consultant's standard multiplier for overhead), plus reasonable and necessary expenses incurred. Expenses for which a payment may be requisitioned shall include: test materials, photocopying and computer time when away from Consultant's office, travel by Consultant's officers and employees and fees paid to subcontractors. The quantity of work done and the value thereof as indicated in the requisition for payment shall be subject to verification by the Land Bank. Upon verification by the Land Bank of the quantity of work done and the value thereof, the Land Bank shall pay to the Consultant 100% of all monies due.

(2) The Consultant shall submit billings for reimbursable expenses incurred. The Consultant shall supply the Land Bank with complete details of all reimbursable expenses. Upon verification by the Land Bank of the value of the reimbursable expenses, the Land Bank shall pay to the Consultant 100% of all monies due.

(3) Final payment for all services for which payment is made by lump sum fee shall be made upon completion of services, provided no lawful or proper direction given by the Land Bank or its representatives regarding said services remains uncomplied with. Prior to final payment for said services, or prior settlement upon termination of this Agreement, and as a condition precedent thereto, the Consultant shall execute and deliver to the Land Bank a release of all claims against the Land Bank arising under and by virtue of this Agreement, other than such claims, if any, as may be specifically reserved by the Consultant from the operation of the release in stated amounts to be set forth therein.

C. Appropriations Clause

It is understood and agreed that the Land Bank shall be obligated to pay to the Consultant the compensation herein provided only to the extent that a lawful appropriation has been made for such purpose by resolution of the Broome County Land Bank Board of Directors. It is further understood and agreed that Consultant shall have no claim, right, action or cause of action for specific performance or for damages by reason of the failure of the said Broome County Land

Bank Board of Directors to make an appropriation to carry out the purposes of this Agreement.

D. Value of Revisions of Work

(1) The amount by which the Agreement consideration is to be increased or decreased by any revision shall be determined by the Land Bank by one or more of the following methods:

(a) By accepting an amount agreed upon by the parties; or

(b) By estimating the fair and reasonable cost of (1) labor, including all wages, required wage supplements and insurance required by law (Workers' Compensation, Social Security, Disability, Unemployment, etc.) employed pursuant to the work; (2) reasonable and necessary technical subcontractors;

(c) By determining the actual cost of the revision in the same manner as in the above Subdivision "b" except that actual costs of the Consultant shall be utilized in lieu of estimated costs, the Land Bank shall have the option to utilize this method, provided it notifies the Consultant of its intent to do so prior to the time the Consultant commences performance of such revision.

(2) Irrespective of the method used or to be used by the Land Bank in determining the value of a revision, the Consultant within thirty (30) working days after a request for the same, must submit to the Land Bank a detailed breakdown of the Consultant's estimate of the value of the revision.

(3) Unless otherwise specifically provided for in a revision, the compensation specified therein for revised work includes full payment for both the revised work covered thereby and for any damage or expense caused the Consultant by any delays to other work to be done under this Contract resulting from or on account of said revised work, and the Consultant waives all rights to any other compensation for said revised work, damage or expense.

E. Limitation of Actions

(1) No action or proceeding shall lie or be maintained by the Consultant or anyone claiming under or through the Consultant against the Land Bank upon any claim arising out of or based upon this Agreement or any breach hereof or by reason of any act or omission or requirement of the Land Bank or its officers, agents, servants or employees, unless:

(a) Such action or proceeding is instituted in a court of competent jurisdiction in the State of New York; and

(b) The Consultant or the person claiming under or through it shall have strictly complied

with all requirements relating to the giving of notices and information with respect to such claim; and

(c) Such action or proceeding shall be commenced within one (1) year after the submission to the Land Bank of the final application for payment or, if the claim is based upon monies retained for any period after the date of the final application for payment, such action is commenced within six (6) months after such monies become due and payable under the terms of this Agreement; or

(d) If this Agreement is terminated or the Consultant declared in default by the Land Bank, such action is commenced within six (6) months after the date of such termination or declaration of default by the Land Bank.

(2) Notwithstanding anything in the laws of the State of New York to the contrary, the Consultant or anyone claiming under or through the Consultant, shall not be entitled to any additional time to begin anew any other action if an action commenced within the times herein specified be dismissed or discontinued for any reason whatsoever.

(3) No Estoppel or Waiver

(a) The Land Bank shall not be precluded or estopped by an inspection, acceptance, application for payment, final or otherwise, issued or made under this Agreement or otherwise issued or made by it, or any officer, agent or employee of the Land Bank, from showing at any time the true amount and character of the work performed, or from showing that any such inspection, acceptance, application or payment or payments is incorrect, or was improperly issued or made; and the Land Bank shall not be precluded or estopped, notwithstanding any such inspection, acceptance, application for payment or payments, from recovering from the Consultant any damages which it may sustain by reason of any monies which may be paid to it or for its account in excess of those to which it is lawfully entitled.

(b) Neither the acceptance of all or any part of the work covered by this Agreement, nor any payment therefor, nor any order or application for payment issued under this Agreement or by the Land Bank, nor any permission or direction to continue with the performance of this Agreement before or after its specified completion date, nor any performance by the Land Bank of any of the Consultant's duties or obligations, nor any aid lent to the Consultant by the Land Bank in its performance of such duties or obligations, nor any delay or omission by the Land Bank to exercise

a right or remedy accruing to it under the terms of this Agreement or existing at law or in equity or by statute or otherwise, nor any other thing done or omitted to be done by the Land Bank, its officers, agents, or employees, shall be deemed to be a release to the Consultant or its sureties, if any, from any obligations, liabilities, or undertakings in connection with this Agreement or a waiver of any provision of this Agreement or of any rights or remedies to which the Land Bank may be entitled because of any breach thereof, excepting only a written instrument expressly providing for such release or waiver. No termination, revision or annulment hereof, in whole or as to any part of this Agreement, because of any breach hereof, shall be deemed a waiver of any money damages to which the Land Bank may be entitled because of such breach. No waiver by the Land Bank of any breach of this Agreement shall be deemed to be a waiver of any other or any subsequent breach.

VIII. TERMINATION

A. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party: Provided, that no such termination may be effected unless the other party is given (1) not less than seven (7) calendar days written notice (delivered by certified or registered mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

B. This Agreement may be terminated in whole or in part in writing by the Land Bank for its convenience: Provided, that such termination is for good cause and that the Consultant is given (1) not less than seven (7) calendar days written notice (delivered by certified or registered mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. It is understood and agreed that the failure of the Broome County Land Bank Board of Directors to make a lawful appropriation for the purposes provided herein shall be construed as termination of this Agreement for the convenience of the Land Bank.

C. If termination for default is effected by the Land Bank, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profits on unperformed services or other work; and (2) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs occasioned to the Land Bank by reason of the Consultant's default. If termination for default is

effected by the Consultant, or if termination for convenience is effected by the Land Bank, the equitable adjustment shall include a reasonable profit for services for other work performed. The equitable adjustment for any termination shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Consultant relating to commitments which have become firm prior to the termination.

D. Upon termination pursuant to Paragraph A or B above, the Land Bank may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work taken over by the Land Bank for completion will be completed at the Land Bank's risk, and the Land Bank will hold harmless the Consultant from all claims and damages arising out of improper use of the Consultant's work.

E. If, after termination for failure of the Consultant to fulfill contractual obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the Land Bank. In such event, adjustment for the price provided for in this Agreement shall be made as provided in Paragraph C of this article.

F. The Land Bank may postpone, delay, suspend, or abandon all or part of the project: Provided, that no such postponement, delay, suspension or abandonment may be effected unless the Land Bank gives the Consultant (1) not less than seven (7) calendar days written notice (delivered by certified or registered mail, return receipt requested) of its intention, and (2) an opportunity for consultation with the Land Bank prior to postponement, delay, suspension or abandonment. If such postponement, delay, suspension or abandonment is effected by the Land Bank after commencement of the Consultant's performance of services hereunder, an equitable adjustment in the price provided for in this Agreement shall be made as if the Agreement had been terminated by the Land Bank for its convenience. If, after a substantial lapse of time, the Land Bank directs the resumption of performance of services by the Consultant, the Consultant if it is caused to do extra work which it would not have otherwise had to do, will be entitled to an equitable adjustment to be made in accordance with Paragraph D of Article VII of this Agreement.

G. Upon receipt of a notice pursuant to Paragraphs A, B, or F above, the Consultant shall (1) promptly discontinue all services effected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Land Bank all data, plans, studies, drawings, specifications,

reports, estimates, summaries and such other information as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.

H. In the event that after commencement of work by the Consultant, it is discovered or determined by a qualified industrial hygienist employed by the Land Bank that the project site or any improvements thereon contain asbestos in an amount greater than that permitted by the then existing and applicable federal, state and municipal standards, guidelines and restrictions governing such project location and any and all improvements thereon, the Consultant may suspend work requiring its presence at the project site. The Consultant shall immediately notify the Land Bank of such suspension. Upon receipt of said notice, the Land Bank may direct the Consultant to suspend all work, regardless of whether the presence of the Consultant at the project site is required for said services. Said suspension of services, whether in whole or in part, shall continue until such time that it is determined by a qualified industrial hygienist employed by the Land Bank that the project site and any and all improvements thereon contain asbestos in an amount no greater than that permitted by then existing and applicable federal, state and municipal standards, guidelines and restrictions governing such project locations in any and all improvements thereon. The cost of testing for the presence of asbestos shall be borne by the Land Bank. The Land Bank shall undertake to employ a qualified industrial hygienist.

A suspension under the provisions of this subparagraph shall be grounds for and entitlement to an extension of time only for the number of calendar days of delay which the Land Bank may determine to be due solely to such cause.

If such suspension continues for a period in excess of 180 days, the Consultant may, at its option, deem the Agreement to have been terminated by the Land Bank for its convenience and, an equitable adjustment in the price provided for in this Agreement shall be made as if the Agreement had been terminated by the Land Bank for its convenience. If such suspension continues for a period of ninety (90) days or less, the Consultant's sole remedy shall be for an extension of time pursuant to this Agreement. If, after a suspension exceeding ninety (90) days, the Land Bank directs the resumption of performance of services by the Consultant, the Consultant, if it is caused to do extra work which it would not have otherwise had to do will be entitled to an equitable adjustment to be made in accordance with paragraph C of Article VII of this Agreement.

IX. PROVISIONS REQUIRED BY LAW

Each and every provision required by law to be inserted in the Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein and in the event any such provision is not inserted or is not correctly inserted, then, upon the application of either party, this Agreement shall forthwith be physically amended to make such insertion or correction.

X. INSURANCE

Acceptance and execution of this Agreement by the Land Bank is expressly conditioned upon compliance by the Consultant with the insurance requirements attached hereto as Exhibit “C”.

XI. ATTORNEY'S FEES

The Consultant shall be responsible for and will pay to the Land Bank all reasonable fees and attorney's fees in the event that:

A. The Consultant breaches its duty to defend the Land Bank as set forth in Article XI herein;

B. The Consultant brings an action against the Land Bank for an alleged breach of this Agreement and the Consultant fails to prevail in a litigation; or

C. The Land Bank brings an action against the Consultant for an alleged breach of the Agreement and the Land Bank prevails in the litigation.

XII. COPYRIGHTS AND PATENTS

The Consultant shall defend actions or claims charging infringement of any copyright or patent by reason of the use of adoption of any plans, studies, designs, drawings or specifications supplied by it and shall hold harmless the Land Bank from any loss or damages resulting therefrom.

XIII. AUDIT; ACCESS TO RECORDS

The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles and practices consistently applied and in effect on the date of execution of this Agreement.

XIV. CONTINGENT ON APPROVALS

The parties agree that the implementation of this contract shall be contingent upon appropriate and/or necessary approvals from appropriate offices of the State of New York and/or

the United States Government, and shall be subject to the applicable orders, rules and regulations of said agency(ies).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the

day and year first above written.

BROOME COUNTY LAND BANK CORPORATION

By _____
AARON M. MARTIN
Chairman, Board of Directors

By_____

Title_____

STATE OF NEW YORK):
COUNTY OF BROOME):

On this _____ day of _____ in the year _____, before me,
the undersigned, a notary public in and for said state, personally appeared Aaron M. Martin
personally known to me or proved to me on the basis of satisfactory evidence to be the individual
whose name is subscribed to the within instrument and acknowledged to me that he executed the
same in his capacity, and that by his signature on the instrument, the individual, or the person
upon behalf of which the individual acted, executed the instrument..

Notary Public

STATE OF NEW YORK):
COUNTY OF _____):

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

Notary Public