SECOND AMENDMENT
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY
SUBRECIPIENT AGREEMENT

THIS SECOND AMENDMENT (the "Second Amendment") to the Community Development Block Grant Disaster Recovery Subrecipient Agreement dated October 29, 2014, is entered into and made effective as of September 28, 2016 (the "Effective Date") by and between the Housing Trust Fund Corporation, operating by and through its division, the Governor's Office of Storm Recovery ("GOSR"), (collectively referred to herein as the "Grantee") and the City of New York, a municipal corporation ("Subrecipient"), acting by and through the Mayor's Office of Resiliency and Recovery ("ORR"). The foregoing Grantee and Subrecipient shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Grantee and Subrecipient entered into a Community Development Block Grant Disaster Recovery Subrecipient Agreement on October 29, 2014 (as amended from time to time, the "Agreement"), the terms of which govern Subrecipient's receipt of funds from the State of New York's Community Development Block Grant-Disaster Recovery ("CDBG-DR") program to provide certain services in support of the State of New York's recovery efforts following Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013; and

WHEREAS, Grantee and Subrecipient entered into a first amendment to the Agreement to provide additional funding and disaster recovery support in the amount of $8,260,000.00, dated April 7, 2016 (the "First Amendment"); and

WHEREAS, pursuant to the Agreement, the Parties desire to enter into this Second Amendment to assist Subrecipient with the costs associated with the disaster recovery project described herein; and

WHEREAS, Subrecipient has demonstrated an immediate need for $16,011,224.00 of CDBG-DR funds in order to implement the project bringing the total not-to exceed amount to $24,271,224.00.

NOW THEREFORE, pursuant to and in consideration of the above, and other mutual covenants and obligations herein contained, it is

STIPULATED AND AGREED as follows:

1. Section I of the Agreement is hereby struck and replaced with the following:

   Subrecipient will be responsible for performing the activities detailed in Exhibit A, which may be amended from time to time, and is hereby incorporated by reference ("Subrecipient Program Description"). In order to propose a project or projects under the Subrecipient Program Description, the Subrecipient shall submit to Grantee the project application form provided by Grantee. A separate project application form will be required for each project the Subrecipient proposes to implement under this Agreement.

2016-037242

Project applications should address the Subrecipient's housing, infrastructure, and economic recovery and revitalization needs.

Grantee's consideration and approval of project applications is based on current Grantee guidelines (hereinafter "Grantee policy"), HUD guidelines and regulations, and other applicable state and federal laws and regulations.

Project Application Acceptance and Environmental Review

- Once a project application form is accepted as complete by Grantee, Grantee will notify the Subrecipient in writing. Acceptance of the application as complete does not commit Grantee to providing any CDBG-DR or other funding to a project; provided, however, that Grantee shall reimburse Subrecipient for design costs only, regardless of whether the application is approved or rejected, as provided in the budget in the project application and accepted by GOSR, incurred to prepare the project application necessary for the environmental review of the proposed project.
- Thereafter, this Agreement may be amended to incorporate the proposed scope, budget, and schedule for all or part of the work contemplated by the proposed project, if stipulated by both parties (hereinafter referred to as an "Amendment").
- Any proposed budget set forth in an Amendment will clearly specify proposed funding for administrative costs, program delivery costs, design or planning costs, and/or construction costs. Any such amendment will clearly state that the Subrecipient shall not engage in, or in any way commit funding for, through a contract or other mechanism, construction or any other activities that could have an environmental impact or limit the choice of reasonable alternatives to the proposed project ("Restricted Activities") prior to undergoing Environmental Review and receiving a Clearance Letter (each as defined below). The schedule for a proposed project set forth in an Amendment shall provide, with reasonable specificity, a proposed schedule for the proposed project as well as a description and schedule for activities proposed to be conducted in each phase of the proposed project.
- Following execution of a proposed project's Amendment and prior to any Construction Activities, Grantee shall conduct an environmental review (the "Environmental Review") of the proposed project pursuant to 24 CFR Part 58 and the New York State Environmental Quality Review Act ("SEQRA") and shall serve as lead agency for such purposes.
- Notwithstanding the above, based on the facts and circumstances of specific projects, and subject to all requirements of 24 CFR Part 58 and SEQRA, the City and the Grantee may mutually designate in writing the City, with the express written permission from the United States Department of Housing and Urban Development, to conduct the environmental review and fully coordinate with the Grantee in all aspects of the review.
- Upon written notice from Grantee, the Subrecipient may proceed with project design not already completed for the project application which shall be closely coordinated with and informed by the Environmental Review process, including the assessment of any reasonable alternatives to the proposed project, and avoidance of any potential significant environmental impact.

Project Application Approval

- Upon completion of the Environmental Review, Grantee may (i), upon HUD's issuance of the authority to use grant funds for a proposed project, approve the proposed project application, (ii) approve an alternative or modified project identified through the Environmental Review Process and, notwithstanding anything to the contrary contained in the Agreement, unilaterally adjust the Grant Funds amount accordingly or (iii) reject the project application and, notwithstanding anything to the contrary contained in the Agreement, unilaterally reduce the Grant Funds by an amount equal to the amount otherwise allocated to construction or other implementation phase of the proposed project.

Project Phase

- Following the completion of Environmental Review and approval of the proposed project's application, Grantee will notify the Subrecipient in writing ("Clearance Letter") that Subrecipient may commit funds for Restricted Activities and other activities necessary for project implementation.
- If construction/implementation is authorized by Grantee in the Clearance Letter, Subrecipient must comply with any and all conditions or required mitigation set forth in the Environmental Review documents, and shall develop a project-specific monitoring plan to document compliance with such measures, as well as any permit requirements, or other applicable requirements of federal and state environmental laws, including worker health and safety requirements. The environmental monitoring plan must be approved in writing by Grantee prior to the commencement of any construction activities. Unless stated otherwise in the monitoring plan, the Subrecipient shall provide monthly reports to Grantee to document compliance with the requirements referenced above for the entirety of the construction phase.

The Subrecipient may not commence any work that is not necessary to complete the project application, including design work, without adhering to the proposed project schedule set forth in the corresponding Amendment as submitted to and approved by Grantee and the Subrecipient. Additionally, the Subrecipient and its design contractor shall provide any analysis or information reasonably requested by Grantee to conduct the Environmental Review for a proposed project. The Subrecipient is required to comply and cooperate with the Grantee in meeting all terms and conditions under this Agreement.

As a reimbursement-based program,[1] tasks and deliverables contained in the Subrecipient Program Description, which reflects the cumulative scope of any Amendments made to this Agreement with respect to a given project, must be conducted in a manner

[1] By "reimbursement" Grantee means that typically costs must be actually incurred before the Grantee will make payment to the Subrecipient. However, this does not mean that the Subrecipient must have previously paid these costs. Rather, these costs can be passed along to Grantee in the form of an invoice(s) (or similar document) and appropriate supporting information as required by the terms of this Agreement, for payment of such invoice(s), per the payment terms of this Agreement.

satisfactory to Grantee and in compliance with applicable federal and state requirements, laws, and regulations. Grantee will monitor the performance of Subrecipient against goals and performance standards as stated in the agreed upon Subrecipient Program Description. While Grantee may consider additional costs, as they arise, Subrecipient must be prepared to perform (and document to Grantee) the entire Subrecipient Program Description, even if the funds provided hereunder do not cover 100% of the costs of performance. In the event Grantee's funds do not cover 100% of the agreed upon budget (see Section III), Subrecipient must make a showing of committed supplemental funding.

Substandard performance as reasonably determined by Grantee, in its sole discretion, will constitute noncompliance with this Agreement. If Subrecipient does not take action to correct such substandard performance within a reasonable period of time after being notified by Grantee by letter that describes the substandard performance and provides the time to cure, Grantee may choose not to reimburse Subrecipient for noncompliant and/or unallowable work and/or take action to suspend or terminate this Agreement or other actions as permitted under applicable law. Nothing in this Agreement shall waive or otherwise limit the actions Grantee may take or the remedies Grantee may seek as a result of any noncompliance by Subrecipient, including but not limited to suspending or debarring Subrecipient from future State benefits.

2. The amount of the Grant Funds, currently set at $8,260,000.00 under Section IV of the Agreement, is hereby increased by $16,011,224.00 to a total amount not to exceed $24,271,224.00.

3. Exhibit A3 to this Second Amendment is hereby appended to Exhibit A of the Agreement.

4. Exhibit B3 to this Second Amendment is hereby appended to Exhibit B of the Agreement.

5. Exhibit E of the Agreement is hereby struck out and replaced by Exhibit E, attached to this Second Amendment.

6. Except as specifically modified herein, all terms and conditions in the Agreement will remain the same, continuing in full force and effect, and apply to this Second Amendment.

IN WITNESS WHEREOF, the parties executed this Second Amendment on the day and year first above written.

City of New York

By: [redacted]
Nam[redacted]. Zarrilli
Title: Senior Director, Climate Policy and Programs
NYC Office of the Mayor

Housing Trust Fund Corporation

[redacted]

By: [redacted]
Name: Lisa Bova-Hiatt
Title: Executive Director
Governor's Office of Storm Recovery

APPROVED AS TO FORM

[redacted]

Acting Corporation Counsel for the City of New York

SEP 20 2016

EXHIBIT A3

Second Amendment Subrecipient Program Description

New Creek Bluebelt/Hylan Blvd Project

The City of New York and its implementing administrative departments, the New York City Department of Environmental Protection (NYC DEP) and Department of Transportation (NYC DOT), are requesting $11,511,224 in CDBG-DR funding to contribute to the design and construction of the "New Creek Bluebelt & Hylan Boulevard Gateway to the Bluebelt Improvements Project" (project) with three related components:

- Best management practice (BMP) drainage improvements in the New Creek Bluebelt, a watershed area on Staten Island, in the area bounded by Strobe Avenue, Seaver Avenue, Hylan Boulevard and Meadow Place.
- Streetscape improvements to a section of Hylan Boulevard on Staten Island, between Seaver Avenue and Stobe Avenue.
- Subterranean water main and storm sewer improvements within the footprint of the streetscape and BMP additions.

The total project cost estimate for all components is $23,033,026 with the City of New York contributing the additional $11,521,802 from the City's capital budget as documented in the application of the said project (see EXHIBIT B3). The $11,511,224 in CDBG-DR funding contributed by GOSR will pay for full design and construction for the BMP drainage improvements and the Hylan Boulevard streetscape improvements. New York City's contribution will fund the design and construction of the referenced water main and storm sewer improvements within the project footprint in addition to construction contingency for all phases of the project.

The purpose of this project is to implement improvements including the referenced BMPs to the New Creek Bluebelt and improvements to the referenced section of Hylan Boulevard to enhance the resiliency of an area that sustained extensive flooding during Hurricane Irene and Tropical Storm Lee. Staten Island experienced severe flooding during Hurricane Irene and Tropical Storm Lee, which both brought higher rainfall totals to the borough than Hurricane Sandy. Flooding was reported along the East Shore including several roadways within the New Creek watershed such as Hylan Boulevard and Midland Avenue. These intense precipitation events warrant increased stormwater management through implementation of the proposed BMPs, the expansion of the New Creek Bluebelt, and the proposed streetscape improvements to Hylan Boulevard. It is anticipated that the project will be bid and awarded to one construction contractor to complete both the Hylan Boulevard and New Creek Bluebelt improvements.

Descriptions of the proposed improvements to the New Creek Bluebelt and Hylan Boulevard, as the gateway to the Bluebelt, in addition to the water main and storm sewer work are included below.

New Creek Bluebelt - Proposed Improvements

The proposed construction activities will implement BMPs concerning drainage improvements and associated grading, landscaping and physical structures. The proposed project includes outfalls, culvert and weir structures, micropools, berms and soil stabilization, as well as an outlet stilling basin. The proposed main inlet will be through a new culvert under Hylan Boulevard which will convey the flows in the Main Channel. In addition, proposed local storm sewer connections will provide drainage inputs to the Main Channel and include two (2) inlets from sewers in Hylan Boulevard (located on either side of the existing New Creek culvert under Hylan Boulevard). This much needed hard drainage infrastructure will be combined with heavily landscaped, constructed wetlands to create an integrated stormwater management system.

NYC DEP identified the proposed activities as high priorities since the proposed improvements will function as detention ponds for upstream flows, which when installed will store water in man-made wetlands during the peak of the storm and slowly release afterwards thereby allowing for a reduction to the potential for downstream localized flooding.

The total cost for design and construction of these improvements, including contingency, is estimated as $9,735,912 using a combination of NYC Capital and CDBG-DR funds as noted in Exhibit B3.

Hylan Boulevard Gateway to the Bluebelt - Proposed Improvements

The proposed improvements to Hylan Boulevard between Seaver Avenue and Stobe Avenue on Staten Island are intended to compliment the improvements to the New Creek Bluebelt described above. Hylan Boulevard is one of the key economic and transportation corridors on Staten Island. The arterial provides a direct link from the Staten Island expressway on the northeast end to the southern portion of the island. Currently, this area of Hylan Boulevard suffers from regular traffic congestion during precipitation events and is not currently laid out in a way to maximize pedestrian safety or the efficient and safe egress of vehicular traffic. The proposed improvements will ensure that pedestrian and vehicular traffic can move through this area during a major precipitation event.

The specific scope will reconstruct the roadway, rebuild ADA-compliant sidewalks with distinctive material and steel face curbs on both sides of Hylan Boulevard. The project will also install upgraded pedestrian ramps, permanently fixed benches, permanently fixed trash receptacles, and pedestrian fencing in the median along Hylan Boulevard as a protective feature to mitigate the risk of pedestrians crossing this busy traffic corridor outside of a crosswalk area. When completed, the proposed improvements will complement the improvements to the New Creek Bluebelt by creating a visual gateway to the Bluebelt area.

The total cost for design and construction of these improvements, including contingency, is estimated as $4,022,061 using CDBG-DR funds as noted in Exhibit B3.

Subterranean Water Main and Storm Sewer – Proposed Improvements

In addition to the proposed BMP and streetscape improvements, the project will involve water main and storm sewer improvements to support the streetscape and BMP installations within the project footprint.

The total cost for design and construction of these improvements, including contingency, is estimated as $9,275,053, inclusive of construction contingency, using NYC Capital as noted in Exhibit B2.

Key Deliverables

The key deliverables for this work will include:

- Full design drawings and specifications for the Hylan Boulevard streetscape improvements, along with related sewer and water connections.
- Construction of BMP drainage improvements to the New Creek Bluebelt.
- Construction of Hylan Boulevard streetscape improvements.

Project Schedule

CDBG-DR PROGRAM TIME SCHEDULE **APPLICANT NAME:** New Creek Bluebelt & Hyland Boulevard Gateway to the Bluebelt Improvements

MILESTONES	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Quarter 9	Quarter 10	Quarter 11	Quarter 12
Activity: Public Facilities												
a. Environmental Review	→→→	→→→	→→→	→→→	→→→	→|						
b. A/E Design (includes Procurement)	→→→	→→→	→→→	→→→	→→→	→→→	→→→	→→→	→→→	→→→	→→→	→→→|

MILESTONES	Quarter 13	Quarter 14	Quarter 15	Quarter 16	Quarter 17	Quarter 18	Quarter 19	Quarter 20	Quarter 21	Quarter 22	Quarter 23	Quarter 24
Activity: Public Facilities												
c. Bid/Contract Award	→→→	→→→	→→|									
d. Construction			→	→→→	→→→	→→→	→→→	→→→	→→→	→→→	→→→|	
e. Closeout												→→→|

Provide the following dates: *ERR Complete Date: 1/15/17 Acquisition/Closing: N/A
*Required Construction Start Date: 7/26/19 Design Complete: 11/28/18

No construction activities or property acquisitions are authorized until the Subrecipient receives a Clearance Letter (as defined in the Agreement) following Environmental Review.

Downtown Far Rockaway Urban Design and Streetscape Reconstruction Project

The City of New York is requesting $4,500,000.00 in CDBG-DR funding to contribute to the "Downtown Far Rockaway Urban Design and Streetscape Reconstruction Project." The NYC Department of Transportation (DOT) will function as the implementing agency on behalf of the City of New York. Accordingly, DOT will work closely with the Mayor's Office of Recovery and Resiliency and be the agency responsible for ensuring compliance with the various CDBG-DR regulations in the implementation of the proposed project. The total cost of the DOT improvements is estimated at $19,228,060 and includes funding from multiple sources as detailed below. The New York State CDBG-DR funding will be limited to construction only while other committed funding, including an allocation of CDBG-DR funding from New York City, will be utilized for design, engineering and remaining project elements.

In coordination with the NYC Department of Environmental Protection (DEP), DOT will also be completing a full street reconstruction and storm sewer installation on Mott Avenue from Redfern Avenue to Beach 18th Street including geometric changes, sidewalk reconstruction and pedestrian improvements.

An additional $6,027,100 in funding provided by New York City will be utilized under the same contract to complete the storm sewer installation work within the limits of DEP work identified on the Project Site Map. The proposed DEP activities involve sewer work on the following segments:

- Redfern Avenue from Mott Avenue to Hassock Street
- Mott Avenue from Redfern Avenue to Beach 18th Street
- Beach 20th Street from Mott Avenue to Cornaga Avenue
- Beach 19th Street from Mott Avenue to Cornaga Avenue

The proposed DOT activities involve the construction of urban design, streetscape and open space improvements on the following segments:

- Mott Avenue from Redfern Avenue to Beach 18th Street,
- Central Avenue from Foam Place to Mott Avenue,
- Beach 19th and 20th Streets from Mott Avenue to Cornaga Avenue,
- Beach 21st Street from Mott Avenue to the edge of the Beach 20th Street Plaza, and
- Beach 22nd Street from Mott Avenue and along the elevated MTA structure.

This scope will also include a shared street/raised intersection at the entrance to the MTA A-Train stop on Beach 22nd Street which leads into a new pedestrian connection and raingarden on the north edge of the City Parking/Bus Terminal site. The project will also pursue and install, in conjunction with DEP, storm sewer installation, green infrastructure improvements throughout the project limits. Consistent with the Street Design Manual, the project will install amenities including CityBenches, WalkNYC Wayfinding and sidewalk plantings that promote neighborhood identity and support the overall recovery of the community.

The proposed project is eligible for CDBG-DR funding based on compliance with Section 105(a)(2), "Public Facilities and Improvements" of the Housing and Community Development Act (HCDA), which states, "the acquisition, construction, reconstruction, or installation

(including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements" are CDBG-DR eligible activities. The project would be an improvement to public infrastructure.

Key Deliverables

The key deliverables for this work will include:

- The creation of a public plaza at Mott Avenue and Central Avenues
- Street and sidewalk paving, installation of amenities and street furniture
- Installation of planted median and green infrastructure improvements

Project Schedule

CDBG-DR PROGRAM TIME SCHEDULE												APPLICANT NAME: City of New York
MILESTONES	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Quarter 9	Quarter 10	Quarter 11	Quarter 12
Activity: Public Facilities/Improvements	→→	→→	→→									
	→	→	|									
a. Environmental Review	→→	→→	→→	→→	→|							
	→	→	|	→		→→	→→	→→	→→	→→	→→	
					→→	→	→	→	→	→	→|	→|
b. Design/Engineering												
c. Procurement												
d. Construction												
e. Closeout												

Provide the following dates:*ERR Complete Date: August 31, 2016
Acquisition/Closing: Not Applicable *Required Project Start Date: February 1, 2017
Design Complete: August 31, 2016 *Project End Date: September 30, 2018

No construction activities or property acquisitions are authorized until the Subrecipient receives a Clearance Letter (as defined in the Agreement) following Environmental Review.

EXHIBIT B3

Second Amendment Budget

Budget for New Creek Bluebelt/Hylan Blvd Project

***The following is an estimated project budget and breakdown by funding source.**

Project Budget

Hylan Blvd Streetscape Project (from Seaver to Stobe Avenues)						
Scope Item	**Design/Engineering**	**Construction Management**	**Construction**	**Construction Contingency**	**Total**	**Funding Source**
Hylan Blvd Streetscape	$ 581,223	$ 418,480	$ 2,324,891	$697,467	$ 4,022,061	CDBG-DR
New Creek Bluebelt Construction						
Scope Item	**Design/Engineering**	**Construction Management**	**Construction**	**Construction Contingency**	**Total**	**Funding Source**
New Creek Bluebelt BMPs NC 13 and 14			$ 5,991,330	$1,497,833	$ 7,489,163	CDBG-DR
CM/Design Fees	$1,123,374.50	$1,123,374.50			$2,246,749.00	NYC Capital
Sewer and Water Main Work						
Scope Item	**Design/Engineering**	**Construction Management**	**Construction**	**Construction Contingency**	**Total**	
Sewer Work	$1,003,636	$1,003,636	$ 5,352,725	$1,338,181	$ 8,698,178	NYC Capital
Water Main Work	$66,562.50	$66,562.50	$ 355,000	$88,750	$ 576,875	NYC Capital
Grand Total:					**$23,033,026**	

Total CDBG-DR Budget: $11,511,224.00*

*Though the line items above are estimates, the total CDBG-DR budget for the Hylan Blvd. Streetscape Project and the New Creek Bluebelt Construction shall not exceed $11,511,224.00.

Budget for Downtown Far Rockaway Urban Design and Streetscape Reconstruction Project

PROJECT BUDGET

Downtown Far Rockaway Urban Design and Streetscape Reconstruction Project:	
Sawcutting existing pavement, maintenance of site, traffic signals	$1,044,800.00
Street reconstruction work	$3,288,100.00
Sidewalk work (sidewalk reconstruction, bus shelter rehab, new railings, etc.)	$2,077,000.00
Stormwater green streets (advanced bioswale and landscaping)	$150,000.00
Mott Ave. plaza work (raingarden, drinking fountain, bollards, etc.)	$770,400.00
Beach 22nd/21st Plaza work (rain garden, permeable paving, drinking fountain, lighting, seating	$1,500,000.00
Mobilization	$719,000.00
Protection of traffic during construction	$719,000.00
Engineer's field office during construction	$108,000.00
Subtotal (hard costs):	$10,376,300.00
Contingency:	$3,897,840.00
Subtotal Construction Costs:	$14,274,140.00
Escalation to 2017 (inflation projections):	$819,700.00
NYC Force Account Labor:	$476,060.00
Total - Construction Costs:	$15,569,900.00
Engineering and Design Costs	$1,702,460.00
Supervision, Construction Management	$1,955,700.00
Grand Total - Far Rockaway Urban Design and Streetscape Reconstruction Project:	**$19,228,060.00**
NYC DEP Sewer Project:	**$6,027,100.00**
GRAND TOTAL - NYC DOT, NYS CDBG-DR and DEP Project Costs:	**$25,255,160.00**

FUNDING SOURCE MATRIX				
FUNDING SOURCE	**DESIGN**	**CONSTRUCTION**	**SUPERVISION**	**TOTAL**
DOT Downtown Far Rockaway Urban Design and Streetscape Reconstruction Project				
City Funds (Mayoral)	$0.00	$4,229,140.00	$1,090,860.00	$5,320,000.00
City Funds (Reso A)	$230,460.00	$205,600.00	$0.00	$436,060.00
Federal (Earmark)	$1,472,000.00	$0.00	$0.00	$1,472,000.00
NYC CDBG-DR	$0.00	$6,635,160.00	$864,840.00	$7,500,000.00
NYS CDBG-DR	$0.00	$4,500,000.00	$0.00	$4,500,000.00
Total	**$1,702,460.00**	**$15,569,900.00**	**$1,955,700.00**	**$19,228,060.00**
DEP Sewer Project				
City Funds	**$133,900.00**	**$5,695,800.00**	**$197,400.00**	**$6,027,100.00**
COST ESTIMATE SUMMARY				
Total	**$1,836,360.00**	**$21,265,700.00**	**$2,153,100.00**	**$25,255,160.00**

Total CDBG-DR Budget: $4,500,000.00*

*Though the line item amounts above are estimates, the total CDBG-DR budget for the Downtown Far Rockaway Urban Design and Streetscape Reconstruction Project shall not exceed $4,500,000.

TOTAL AMENDMENT BUDGET: $16,011,224.00

EXHIBIT E

Supplementary Conditions for Contracts

EXHIBIT E

SUPPLEMENTARY CONDITIONS FOR CONTRACTS

Rev. 3/8/16

DEFINITIONS

"GOSR": Governor's Office of Storm Recovery and its successors and assigns, as well as the Housing Trust Fund Corporation and its successors and assigns, and its parent entities and their successors and assigns.

"Subrecipient": _____

"Contractor": _____

When these Supplementary Conditions are attached to any lower tier contract (e.g., a contract between Contractor (as defined above) and any subcontractor, or between Contractor's direct or indirect subcontractors), references herein to "Subrecipient" shall be deemed to refer to the party seeking products and/or services, and references to "Contractor" shall be deemed to refer to the party providing products and/or services, and references to the "Agreement" or "Contract" or "contract" shall be deemed to refer to the agreement between such subcontracting parties.

ORDER OF PRECEDENCE

In the event of a conflict between the terms of these Supplementary Conditions and the terms of the remainder of the contract (including any other attachments thereto and amendments thereof), the terms of these Supplementary Conditions shall control.

In the event of a conflict among the requirements found in these Supplementary Conditions, which conflict would make it impossible to comply with all of the requirements set forth herein, the provisions shall be applied with the following priority:

(1) Part I: Required Federal Provisions; then
(2) Part II: Required State Provisions;

and the remaining requirements shall be interpreted in a manner so as to allow for the terms contained therein to remain valid and consistent with such superseding provisions. If any provision of these Supplementary Conditions relates to a matter embraced by another provision(s) of these Supplementary Conditions, but is not in conflict therewith, all such provisions shall apply. Any question as to which requirements control in a particular instance which cannot be resolved by Contractor and Subrecipient shall be submitted in writing (indicating the issue and the applicable provisions) by Subrecipient to GOSR, which shall decide the applicable question.

PART I: REQUIRED FEDERAL PROVISIONS

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development ("HUD").

GENERAL CONDITIONS

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

2. STATUTORY AND REGULATORY COMPLIANCE. Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

3. BREACH OF CONTRACT TERMS. The Subrecipient and GOSR reserve their rights to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4. REPORTING REQUIREMENTS. The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Subrecipient and GOSR. The Contractor shall cooperate with all Subrecipient and GOSR efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 2 CFR Part 200 and 24 C.F.R. § 570.507.

5. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government, GOSR, and the Subrecipient in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

6. DEBARMENT, SUSPENSION, AND INELIGIBILITY. The Contractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 C.F.R. Part 2424. The Contractor shall notify the Subrecipient and GOSR should it or any of its subcontractors become debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 C.F.R. Part 2424.

7. CONFLICTS OF INTEREST. The Contractor shall notify the Subrecipient as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as described in 2 CFR Part 200). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the Subrecipient is able to assess such actual or potential conflict. The Contractor shall provide the Subrecipient any additional information necessary for the Subrecipient to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the Subrecipient, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict. If requested by GOSR, Contractor shall sign a certification affirming that it has no conflict of interest arising from performance of work on a specific task.

8. SUBCONTRACTING. The Contractor represents to the Subrecipient that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these Required Federal Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

9. ASSIGNABILITY. The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Subrecipient.

10. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the Subrecipient, GOSR, and their agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor in the performance of the services called for in this contract.

11. TERMINATION FOR CAUSE (Applicable to contracts exceeding $10,000). If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Subrecipient shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Subrecipient, become the Subrecipient's property and the Contractor

shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Subrecipient for damages sustained by the Subrecipient by virtue of any breach of the contract by the Contractor, and the Subrecipient may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Subrecipient from the Contractor is determined.

12. TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding $10,000). The Subrecipient may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the Subrecipient as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

13. LOBBYING (Applicable to contracts exceeding $100,000). The Contractor certifies, to the best of his or her knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

14. BONDING REQUIREMENTS (Applicable to construction and facility improvement contracts exceeding $100,000). The Contractor shall comply with New York State bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements:

A. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

15. <u>ACCESS TO RECORDS.</u> The Subrecipient, GOSR, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Contractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

16. <u>MAINTENANCE/RETENTION OF RECORDS.</u> All records connected with this contract will be maintained in a central location and will be maintained for a period of at least four (4) years following the date of final payment and close-out of all pending matters related to this contract, provided that Section 1 of the Required State Provisions herein is also satisfied.

<u>CIVIL RIGHTS AND DIVERSITY PROVISIONS</u>

17. <u>SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.</u> The Contractor will comply with the small and minority firms, women's business enterprise, and labor surplus area requirements as set forth at 2 CFR Part 200. Contractor will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of the contract. As used in these Required Federal Provisions, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

The Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

18. TITLES VI AND VIII OF THE CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 11063. The Contractor shall comply with the provisions of Titles VI and VIII of the Civil Rights Act of 1964 and with Executive Order 11063. No person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. No person shall, on the grounds of race, color, religion, sex, or national origin, be discriminated against in the sale, rental, or financing of dwellings. To the extent that any such sale, lease or other transfer of land shall occur, Contractor, in undertaking its obligation to carry out the Program assisted hereunder, will not itself so discriminate.

19. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

20. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990. The Contractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations, and with the Americans with Disabilities Act of 1990 (42 U.S.C. § 126), as amended, and any applicable regulations

The Contractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance from HUD.

21. <u>AGE DISCRIMINATION ACT OF 1975.</u> The Contractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

22. <u>NONDISCRIMINATION.</u>

The Contractor shall comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. § 570.607. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act of 1974 are still applicable. The Contractor shall comply with all other federal statutory and constitutional non-discrimination provisions. During the performance of this contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation

conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

With respect to construction contracts and subcontracts exceeding $10,000, The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967; Executive Order 11478 of August 8, 1969; Executive Order 12107 of December 28, 1978; Executive Order 12086 of October 5, 1978; and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). Subrecipient shall include the following Specifications, which are required pursuant to 41 CFR 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal

Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of $10,000. (Federal Notice Required by 41 CFR 60-4.3)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan.

Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each Construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment

area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially

disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

23. <u>CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding $10,000).</u> The Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the nondiscrimination clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the nondiscrimination clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

24. <u>SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding $10,000).</u> The Contractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

    1. Recruitment, advertising, and job application procedures;
    2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
    3. Rates of pay or any other form of compensation and changes in compensation;
    4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
    5. Leaves of absence, sick leave, or any other leave;
    6. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
    7. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

8. Activities sponsored by the Contractor including social or recreational programs; and
9. Any other term, condition, or privilege of employment.

B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

E. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

F. The Contractor will include the provisions of this clause in every subcontract or purchase order in excess of $10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. <u>SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (Applicable to contracts exceeding $100,000 in value for housing construction, rehabilitation, or other public construction).</u>

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, the availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled: (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Irrespective of any applicable federal reporting requirements as noted in the statutory language above or otherwise, Contractor shall submit quarterly reports along with any supporting documentation, in a form acceptable to Subrecipient, of its Section 3 compliance efforts to Subrecipient. Contractor may be required to consolidate all reports received from subcontractors and lower-tiered subcontractors into a single report or several reports as reasonably requested by Subrecipient. Notwithstanding the provision of such reports and supporting documentation, Contractor shall maintain copies of all reports and supporting documents as set forth in these Supplementary Conditions.

26. FAIR HOUSING ACT. Contractor shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Contractor shall comply with the provisions of the Equal Opportunity in Housing Act, which prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with federal funds.

LABOR PROVISIONS

27. COPELAND "ANTI-KICKBACK" ACT (Applicable to all construction or repair contracts). Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874; and 40 U.S.C. § 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

28. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Applicable to construction contracts exceeding $2,000 and contracts exceeding $2,500 that involve the employment of mechanics or laborers). The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations

issued pursuant to that act and with other applicable federal laws and regulations pertaining to labor standards.

29. <u>DAVIS-BACON ACT AND OTHER LABOR COMPLIANCE (Applicable to construction contracts exceeding $2,000 when required by federal program legislation).</u> The Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. Part 5), and all other applicable federal, state, and local laws and regulations pertaining to labor standards insofar as they apply to the performance of this agreement. In addition, Contractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12586.pdf.

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the Federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis Bacon Act. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Subrecipient and GOSR for review upon request.

If Contractor is engaged under a contract in excess of $2,000 for construction, renovation, or repair work financed in whole or in part with assistance provided by GOSR, Contractor agrees, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, to comply and to cause all subcontractors engaged under such contracts to comply with federal requirements adopted by GOSR pertaining to such contracts and with the applicable requirements of the Department of Labor under 29 C.F.R. Parts 1, 3, 5, and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is to relieve Contractor of its obligation, if any, to require payment of the higher wage. Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

<u>ENVIRONMENTAL PROVISIONS</u>

30. <u>ENERGY EFFICIENCY.</u> The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

31. <u>SOLID WASTE DISPOSAL.</u> Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable,

consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

32. CERTIFICATION OF COMPLIANCE WITH ENVIRONMENTAL LAWS.

The Contractor and all subcontractors agree to comply with the following requirements (and their state and/or local counterparts or analogues, if any) insofar as they apply to the performance of this Agreement as any of the following may hereinafter be amended, superseded, replaced, or modified:

A. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951, 3 C.F.R., 1977 Comp., p. 117, as interpreted at 24 C.F.R. Part 55), and Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961, 3 C.F.R., 1977 Comp., p. 121);

B. Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 *et seq*.);

C. Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq*., and 21 U.S.C. § 349, as amended), and EPA regulations for Sole Source Aquifers (40 C.F.R. Part 149);

D. Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq*.);

E. Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. § 1271 *et seq*.);

F. Clean Air Act, as amended (42 U.S.C. § 7401 *et seq*.);

G. EPA regulations for Determining Conformity of Federal Actions to State or Federal Implementation Plans (40 C.F.R. Parts 6, 51, and 93);

H. Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201 *et seq*.), and USDA regulations at 7 C.F.R. Part 658;

I. HUD criteria and standards at 24 C.F.R. Part 51;

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Feb. 11, 1994 (59 FR 7629, 3 C.F.R., 1994 Comp. p. 859);

K. Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001-4128);

L. National Flood Insurance Reform Act of 1994 (42 U.S.C. § 5154a);

M. Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. § 3501);

N. Runway Clear Zone regulations (24 C.F.R. Part 51);

O. Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, *et seq*.), commonly known as the Clean Water Act, and all regulations and guidelines issued thereunder;

P. Environmental Protection Agency ("EPA") regulations at 40 C.F.R Part 50, as amended;

Q. HUD regulations at 24 C.F.R. Part 51, Subpart B, and New York State and local laws, regulations, and ordinances related to noise abatement and control, as applicable;

R. HUD regulations at 24 C.F.R. Part 51 Subpart C regarding siting of projects near hazardous operations handling conventional fuels or chemicals of an explosive or flammable nature;

S. HUD and EPA regulations related to asbestos-containing material and lead-based paint, including but not limited to Part 56 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York Department of Labor (12 NYCRR 56), the National Emission Standard for Asbestos (40 C.F.R. § 61.145), the National Emission Standard for Asbestos (40 C.F.R. § 61.150), and 24 C.F.R. Part 35 Subparts B, H, and J; and

T. All other applicable environmental laws that may exist now or in the future.

Further, Contractor shall abide by any conditions or requirements set forth in any environmental review performed pursuant to 24 C.F.R. Part 58, which are HUD's regulations for Responsible Entities implementing the National Environmental Policy Act.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the Subrecipient, the following:

A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. Part 32 or on the List of Violating Facilities issued by the EPA pursuant to 40 C.F.R. Part 15, as amended.

B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.

D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

PART II: REQUIRED STATE PROVISIONS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract") agree to be bound by the following clauses which are hereby made a part of the Contract.

1. ACCOUNTING RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance of work done for the Subrecipient under this Contract (hereinafter, collectively, "the Records") consistent with generally accepted bookkeeping practices. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter, provided that Section 16 of the Required Federal Provisions herein is also satisfied. The Subrecipient, GOSR, and any person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Subrecipient and GOSR shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Subrecipient and GOSR, 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 Subrecipient's or GOSR's right to discovery in any pending or future litigation.

2. NON-ASSIGNABILITY. This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent in writing of the Subrecipient and GOSR, and any attempts to assign the Contract without such written consent are null and void. However, this Contract shall be binding upon and inure to the benefit of the Subrecipient and GOSR, and their successors and assigns.

3. INDEMNITY. The Contractor shall indemnify and hold New York State and the Housing Trust Fund Corporation and their employees, officers, Members and Directors (collectively, the "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.

4. NON-DISCRIMINATION. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status, domestic violence victim status, pregnancy, religious practice, presence of a service animal, or criminal conviction. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section

239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of $50 per person per day for any violation of Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

If directed to do so by the State Commissioner of Human Rights ("Commissioner"), the Contractor will send to each labor union to which the Contractor is bound a notice provided by the Commissioner advising of this provision. The Contractor will keep posted in conspicuous places notices of the Commissioner regarding laws against discrimination. The Contractor will state in all advertisements for employees that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

If the Contractor has fifteen or more employees, it is an unlawful employment practice for the Contractor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title, and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

If the Contractor has fifteen or more employees, the Contractor: (1) will make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (2) will preserve such records for such periods as the Equal Employment Opportunity Commission ("EEOC") shall prescribe by regulation; (3) will make such reports therefrom as the EEOC shall prescribe by regulation or order; (4) must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will comply with all non-discriminatory employment practices, will furnish all information deemed necessary by the Commissioner, and will permit the Commissioner access to its records to ascertain compliance. The Contractor will bind all subcontractors hired to perform services in connection with this Contract to the requirements of this section, take such

action for enforcement as the Commissioner may direct, and notify the Commissioner if such action results in litigation. This Contract may be terminated by Subrecipient upon the Commissioner's finding of non-compliance with this section, and the Contractor may be declared ineligible for future contracts with an agency of the state or a public authority until the Contractor satisfies the Commissioner of compliance.

5. <u>EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.</u> In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby the Agency or Agencies, is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Agency or Agencies, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

A. The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Subrecipient's contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

C. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of A through C above in every subcontract. Section 312 does not apply to: (i) work, goods or services unrelated to this Contract; or (ii) employment outside New York State. Subrecipient and GOSR shall consider compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Subrecipient and GOSR shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, Subrecipient and GOSR shall waive the applicability of Section 312 to the extent of such duplication or conflict.

Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

6. OPPORTUNITIES FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the New York State Minority and Women-Owned Business Enterprises Directory of Certified Firms in order to promote Subrecipient's obligation to make good-faith efforts to promote and assist the participation of certified M/WBEs through the use of contractors and their subcontractors in an amount equal to fifteen percent (15%) minority-owned business enterprises ("MBE") and fifteen percent (15%) women-owned business enterprises ("WBE").

Contractor agrees to be bound by the provisions of Section 316 of Article 15-A of the Executive Law, which pertain to enforcement of Article 15-A.

7. PROPRIETARY INFORMATION. All memoranda, analyses, spreadsheets and other pertinent documents or writings, including reports and financial statements developed or prepared by, or for, the Contractor in connection with the performance of this Contract are "Proprietary Information" and shall be, and remain, the property of the Subrecipient. All original documents constituting Proprietary Information shall be delivered to the Subrecipient by the Contractor, or any subcontractor, or any other person possessing them, upon the termination of this Contract or upon the earlier request of the Subrecipient, except that the Contractor may retain copies for its files. Proprietary Information may not be utilized, disclosed or otherwise made available to other persons by the Contractor without the prior written approval of the Subrecipient. The provisions of this section shall be in addition to, and not in derogation of, any duty imposed upon the Contractor by any law, regulation or rule governing professional conduct respecting confidentiality.

8. COPYRIGHT. If this Agreement results in any copyrightable material or inventions, the Subrecipient, GOSR, and/or HUD reserve the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes. This clause shall survive indefinitely the termination of this Agreement for any reason.

9. ENVIRONMENTAL LAWS. Contractor shall comply with any and all applicable New York State and local environmental laws, including all permits and approvals issued thereunder. Additionally, Contractor shall comply with any and all conditions or requirements set forth in an environmental review performed pursuant to the State Environmental Quality Review Act.

10. SECTION HEADINGS. The caption of sections in this Contract are inserted solely for convenience of reference and are not intended to define, limit, or describe the scope of this Contract or any provision hereof or to otherwise affect this Contract in any way. The section headings shall not be considered in any way in construing this Contract.

11. COUNTERPARTS. This Contract may be executed in any number of counterparts. Each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

12. GOVERNING LAW. This Contract has been executed and delivered in, and shall be construed and enforced in accordance with the laws of, the State of New York. In the event of conflict between New York State law and federal laws and regulations, the latter shall prevail.

13. WORKERS' COMPENSATION. This Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

16. NON-COLLUSIVE BIDDING CERTIFICATION. If this Contract was awarded based upon the submission of a bid or proposal, the Contractor affirms, under penalty of perjury, that the prices in its bid or proposal were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor.

17. LOBBYING REFORM LAW DISCLOSURE. If the procurement of the goods or services provided herein were applicable to Lobbying Reform Law Disclosure as pursuant to State Finance Law §§139-j and 139-k, the Subrecipient reserves the right to terminate this Contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Subrecipient may exercise their termination right by providing written notification to the Contractor.

18. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York

State Finance Law), and shall permit independent monitoring of compliance with such principles.

19. GENERAL RESPONSIBILITY LANGUAGE. The Contractor shall at all times during Contract term remain responsible. The Contractor agrees, if requested by Subrecipient or GOSR, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

For purposes of this Agreement, Contractor responsibility generally means that the Contractor has the integrity to justify the award of public dollars and the capacity to perform the requirements of this Contract fully. In connection herewith, to the extent that the Subrecipient may make certain determinations with respect to Contractor responsibility, wherein the Subrecipient determines whether it has reasonable assurances that a Contractor is responsible, is an important part of the procurement process, promoting fairness in contracting, mitigating contract issues, and protecting the Contractor and the Subrecipient against failed contracts. In making such a responsibility determination, the Subrecipient shall evaluate the Contractor's responsibility with respect to four factors: (i) financial and organizational capacity; (ii) legal authority to do business in New York State; (iii) integrity; and (iv) previous performance.

20. SUSPENSION OF WORK (for Non-Responsibility). The Subrecipient reserves the right to suspend any or all activities under this Contract, at any time, when the Subrecipient discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Subrecipient issues a written notice authorizing a resumption of performance under the Contract.

21. TERMINATION (for Non-Responsibility). Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Subrecipient staff, the Contract may be terminated by the Subrecipient at the Contractor's expense where the Contractor is determined by the Subrecipient to be non-responsible. In such event, the Subrecipient may complete the contractual requirements in any manner they deem advisable and pursue available legal or equitable remedies for breach.

22. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the Subrecipient.

During the term of the Contract, should the Subrecipient receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Subrecipient will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Subrecipient shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The Subrecipient reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

PART III: INSURANCE

A. Unless otherwise directed by GOSR, Contractor shall procure and maintain without interruption, at its sole cost and expense, during the term of this Agreement (or any extensions thereof) and for a period of two years thereafter, insurance of the type, and with limits and deductibles, as follows:

a. Commercial General Liability Insurance and Excess Liability Insurance. Providing both bodily injury (including death) and property damage insurance with limits in the aggregate and per occurrence in accordance with the following table:

Construction Contract Value	Commercial General Liability in combination with Excess (Umbrella) Liability	
	Each Occurrence	General Aggregate
< $10M	$2,000,000	$2,000,000
>$10M - $50M	$5,000,000	$5,000,000
>$50M	$10,000,000	$10,000,000

Such insurance is to be written on an occurrence basis with defense outside of limits. New York State, the New York State Housing Trust Fund Corporation, and the Subrecipient shall each be named as an additional insured. The minimum required level of insurance may be provided through a combination of commercial general liability and umbrella and/or excess liability policies.

b. Automobile Liability and Property Damage Insurance. In an amount not less than One Million Dollars ($1,000,000) combined single limit for both Bodily Injury and Property Damage.

c. Professional Liability. If the Contractor is engaged in providing professional services under this Agreement, professional errors and omissions coverage with a limit not less than Two Million Dollars ($2,000,000) in the aggregate and One Million Dollars ($1,000,000) per occurrence. If the Contractor is not engaged in providing professional services under this Agreement, this professional errors and omissions coverage is not required.

d. Worker's Compensation. Covering workers' compensation and employers' liability and disability benefits as required by the State of New York.

B. In addition to the foregoing, Contractor and any subcontractors shall procure and maintain any and all insurance which is required by any applicable current or future law, rule, regulation, ordinance, permit, license, order or other legal requirement.

C. All insurance shall be primary and non-contributory and shall waive subrogation against GOSR and the Subrecipient and all of either of their former, current, or future officers, directors, and employees. No deductible of more than $50,000 shall be permitted without

advance written approval by GOSR, which GOSR may withhold, condition or deny in its sole and exclusive discretion.

D. The Contractor shall provide Certificates of Insurance to GOSR and the Subrecipient prior to the commencement of work and shall provide full and complete copies of the actual policies and all endorsements upon request. Subcontractors under this Agreement shall be required to maintain insurance meeting all of the requirements set forth in Section A above for items a-d; however Contractor shall require subcontractors to maintain greater limits and/or other or additional insurance coverages if greater limits and/or other or additional insurance coverages are (a) generally imposed by the Contractor given its normal course of business for subcontracts for similar work or services to those being provided by the subcontractor at issue; or (b) reasonable and customary in the industry for similar work or services to those anticipated hereunder.

E. If the above insurance requirements are potentially excessive because they exceed the type and/or amount of insurance which is reasonable and customary for similar work or services in the same general geographic area, Contractor shall, within fifteen (15) calendar days of the execution of this Agreement, provide written notice of the same to GOSR, along with a written summary of the type and amount of insurance Contractor believes is reasonable and customary for similar work or services in the same general geographic area. GOSR may, in GOSR's sole and exclusive discretion, but is under no obligation to, waive, decrease, or otherwise alter or amend the insurance requirements in light of this notice. However, notwithstanding anything to the contrary herein, nothing in this paragraph requires or shall be deemed to require GOSR to waive, decrease, alter or amend, in whole or in part, any insurance requirements as a result of the foregoing notice from Contractor or for any other reason, and no waiver, decrease, alteration or amendment shall be made except as approved in advance and in writing by GOSR.

F. If the above insurance requirements are potentially inadequate because they do not meet or exceed the type and/or amount of insurance which is reasonable and customary for similar work or services in the same general geographic area, Contractor shall, within fifteen (15) calendar days of the execution of this Agreement, provide written notice of the same to GOSR, along with a written summary of the type and amount of insurance Contractor believes is reasonable and customary for similar work or services in the same general geographic area. GOSR may, in GOSR's sole and exclusive discretion, but is under no obligation to increase, supplement, expand, or otherwise alter or amend the insurance requirements in light of this notice. However, notwithstanding anything to the contrary herein, nothing in this paragraph requires or shall be deemed to require GOSR to increase, supplement, expand, or otherwise alter or amend, in whole or in part, any insurance requirements as a result of the foregoing notice from Contractor or for any other reason, and no increase, supplement, expansion or other alteration or amendment shall be made except in an amendment to this Agreement, as approved in advance and in writing by GOSR.

PART IV: REPORTING

Elation Systems, Inc. is a provider of cloud-based diversity and labor compliance reporting and management services. The Governor's Office of Storm Recovery (GOSR) has adopted this web-based compliance management system to help all of its Contractors, Subrecipients, and Subrecipient's Contractors receiving federal funds to adhere to Labor Compliance (Davis-Bacon), Minority and Women Owned Business (MWBE) and Section 3 reporting requirements.

Contractors, Subrecipients, and Subrecipient's Contractors must comply with instructions from GOSR on how and when to meet all reporting requirements, and how to utilize Elation to satisfy those requirements.

To this end, all Contractors, Subrecipients, and Subrecipient's Contractors must register with Elation Systems and attend an online training on the use of this tool. GOSR offers a series of virtual training events. GOSR requires all parties receiving federal funds through GOSR programs to use the Elation Systems application to make reporting requirements easier, faster and simpler to complete.

Prior to participating in training, it is necessary to create an Elation account. An account may be created at https://www.elationsys.com/app/Registration/.

Questions related to reporting requirements should be directed to GOSR's Monitoring and Compliance team at stormrecovery.dl.gosr-monitoring&compliance@stormrecovery.ny.gov.