COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY
SUBRECIPIENT AGREEMENT

THIS COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY SUBRECIPIENT AGREEMENT ("Agreement") is made effective as of the 14th day of December, 2015 ("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 Rye ("Subrecipient"), a municipal corporation. The foregoing Grantee and Subrecipient shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, pursuant to title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) ("HCD Act"), as amended, Grantee is authorized to administer and distribute Community Development Block Grant ("CDBG") funds in the State of New York ("State"); and

WHEREAS, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), portions of the State received major disaster declarations as a result of Hurricane Sandy; and

WHEREAS, in the aftermath of Hurricane Sandy, the United States Congress, through Public Law passed the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013), as amended (the "Act"), appropriating $16 billion, later reduced to $15.18 billion, to the U.S. Department of Housing and Urban Development ("HUD") for Community Development Block Grant Disaster Recovery ("CDBG-DR") funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure, and housing and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013 (the "Storms"), subject to the Federal statutes and regulations governing CDBG grants, as modified by exceptions and waivers previously granted and which may hereafter be granted by HUD; and,

WHEREAS, pursuant to the CDBG-DR Grant Program and Federal Register Notice (78 Fed. Reg. 14,329), published March 5, 2013, entitled *Allocations, Common Applications, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy* (as amended), the State has received an allocation of CDBG-DR funds from HUD in the amount of $1,713,960,000; and

WHEREAS, pursuant to the CDBG-DR Grant Program and Federal Register Notice (78 Fed. Reg. 69,104), entitled *Second Allocation, Waivers and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery*

Funds in Response to Hurricane Sandy (as amended), the State has received a second allocation of CDBG-DR funds from HUD in the amount of $2,097,000,000; and

WHEREAS, pursuant to the CDBG-DR Grant Program and Federal Register Notice (79 Fed. Reg. 62,182), entitled *Third Allocation, Waivers and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy* (as amended), the State has received a third allocation of CDBG-DR funds from HUD in the amount of $605,922,000 (of which $185,000,000 has been allocated towards the proposals developed through the Rebuild by Design competition);

WHEREAS, HUD requires that the State spend 80% of all CDBG-DR funds so allocated within the counties of Nassau, Rockland, Suffolk, Westchester, Bronx, Kings, New York, Queens, and Richmond; and

WHEREAS, Governor Andrew M. Cuomo established GOSR within HTFC and tasked it with administering the State's CDBG-DR program; and

WHEREAS, the City of Rye was heavily impacted by Superstorm Sandy and Hurricane Irene; and

WHEREAS, Grantee wishes to engage Subrecipient to implement projects to promote the long-term recovery and resiliency of the City of Rye; and

WHEREAS, CDBG-DR funds may be utilized by the Subrecipient to pay the non-Federal share, or "local match", required in connection with a Federal grant-in-aid program undertaken as part of CDBG-DR activities, a use that has been specifically authorized by HUD;

NOW THEREFORE, the Parties agree that the Grant Funds will be administered in accordance with the following terms and conditions:

I. SUBRECIPIENT PROGRAM

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. 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.

Design and Environmental Review Phase (Planning Amendment)

- 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.
- Thereafter, this Agreement may be amended to incorporate the proposed scope, budget, and schedule for the design phase of the proposed project, if stipulated by both parties (hereinafter referred to as the "Planning Amendment").
- Any proposed budget set forth in a Planning Amendment will clearly specify proposed funding for administrative costs, program delivery costs, and design or planning 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. Further, any proposed schedule set forth in a Planning Amendment shall provide, with reasonable specificity, a proposed schedule for the pre-design and design of the proposed project as well as a description and schedule for activities proposed to be conducted in each phase.
- Following acceptance of the Planning Amendment, Grantee shall conduct an environmental review of the proposed project pursuant to 24 CFR Part 58 and the New York State Environmental Quality Review Act ("SEQRA").
- Upon written notice from Grantee, the Subrecipient may initiate project design 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. Subrecipient herein agrees that, for purposes of SEQRA, Grantee shall serve as the lead agency for purposes of conducting the environmental review.

Project Approval

- Upon completion of all environmental review requirements, Grantee shall determine whether or not to award funding for the construction or other implementation phase of the proposed project, or an alternative or modified project identified through the environmental review process.
- Following the environmental review performed pursuant to 24 CFR Part 58 and SEQRA, and upon HUD's issuance of the authority to use grant funds for a proposed project, Grantee may approve the project.

Project Phase (Project Amendment)

- Upon approval of a project, this Agreement may be amended to incorporate the complete scope, budget, and schedule of the approved project, if stipulated by both parties (hereinafter referred to as the "Project Amendment").
- Any budget set forward in a Project Amendment will clearly specify funding for administrative costs, program delivery costs, design or planning costs, construction costs, as well as any other implementation costs. Further, any

schedule set forth in a Project Amendment shall provide, with reasonable specificity, a schedule for the pre-design, design, and construction or other implementation of the approved project as well as a description and schedule for activities proposed to be conducted in each phase.

- Grantee will notify the Subrecipient in writing ("Clearance Letter") that Subrecipient may commit funds for construction and other activities necessary for project implementation. 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 prior to receiving, in writing, a Clearance Letter from Grantee.
- 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 retain an independent environmental monitor 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 independent environmental monitor must be approved in writing by Grantee prior to the commencement of any construction activities. The Subrecipient shall, by contract, ensure that the independent environmental monitor provides 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, including design work, without adhering to the proposed project schedule set forth in the Planning 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 must be conducted in a manner 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

[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.

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 (as determined by Grantee) after being notified by Grantee, 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.

II. TERM

The period of performance for all activities (with the exception of those activities required for the close out and final audit) assisted pursuant to this Agreement shall commence as of the Effective Date and shall end on September 30, 2019. Any funds not properly used by the end of the term, unless approved otherwise in writing by Grantee, promptly shall be remitted, in full and without off-set or deduction, to Grantee.

III. BUDGET

As set forth in Section I of this Agreement, for each project application, Grantee will require and the Parties shall agree upon a detailed budget breakdown. Grantee may also require additional budget information, and Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by Grantee. Any change to budgeted amounts, must be approved in writing by Grantee before such changes are allowed and reimbursable.

IV. GRANT FUNDS

It is expressly agreed and understood that the total amount to be paid by Grantee under this Agreement shall not exceed the aggregate amounts set forth in each of the applicable project applications, currently set at $0 ("Grant Funds"), which may be amended from time-to-time to incorporate project applications and budgets accepted by Grantee.

The amount of Grant Funds that Grantee has agreed to provide Subrecipient under this Agreement is expressly conditioned upon Grantee's receipt of such funds from HUD pursuant to the Act. Grantee reserves the right to reduce the Grant Funds if funding from HUD is not provided at the currently anticipated levels and/or if the actual costs for the approved activities are less than those set forth in the Budget.

In the event Subrecipient is awarded, granted, or provided with additional funds from any other source, which may include, in part or whole, aspects related to this Agreement, Subrecipient shall immediately notify Grantee of such funds, the amount, the source, and the conditions for their use. Subrecipient further agrees to provide any additional

information Grantee requests related to such funds. Subrecipient may not use such other funds to conduct construction activities or any other action that would have an environmental impact or limit the choice of reasonable alternatives until issuance of the Clearance Letter.

V. DISBURSEMENT OF GRANT FUNDS

a) Subrecipient is required to submit a request for Grant Funds in accordance with the provisions of this Agreement, program guidelines, and the program policy and procedures which are established by Grantee. No payment by Grantee of an improper, unauthorized, or unallowable request shall constitute a waiver of Grantee's right, whether before, during, or after making any payment, to: (i) challenge the validity of such payment; (ii) enforce all rights and remedies set forth in this Agreement or provided under applicable law; (iii) require and receive a full repayment or refund of all payments made under this Agreement or (iv) take corrective or remedial administrative action including, without limitation, suspension or termination of Subrecipient's funding under this Agreement.

b) Subrecipient shall certify in a statement made by a senior official with each request for Grant Funds that to the best of its knowledge based on the information available to Subrecipient at the time and after making due inquiry: (i) all statements and representations previously made regarding this Agreement are correct and complete; and (ii) the funds do not duplicate reimbursement of costs and services from any other source.

c) The use of Grant Funds is conditioned upon Subrecipient incurring allowable costs permitted under the terms of this Agreement or as otherwise pre-approved, in writing, by Grantee. Subrecipient shall not be reimbursed for any costs until all environmental conditions of 24 CFR Part 58 have been fully satisfied and Grantee has issued the environmental clearance required thereunder, unless the activity is exempt under section 58.34 or falls under a categorical exclusion listed in section 58.35(b).

d) In the event applicable State or Federal Government authorities disallow any of the costs incurred by Subrecipient, Subrecipient shall immediately remit any funds received by Subrecipient for the unallowable costs to Grantee. Subrecipient may request, and Grantee shall reasonably consider Subrecipient's request, that Grantee challenge the State or Federal determination and pursue other legal recourse to secure these funds; however, Grantee maintains the sole discretion in deciding whether to pursue such funds, may request that Subrecipient pay any costs associated with such effort, and may require that Subrecipient return the questioned funds until a final outcome is reached.

VI. CITIZEN PARTICIPATION REQUIREMENTS

To ensure compliance with Section 508 of the HCD Act, units of general local government ("UGLGs") applying for or receiving CDBG-DR funds from the State must provide citizens with adequate opportunity to participate in the planning, implementation, and assessment of the CDBG program. Any such UGLG must provide adequate information to citizens, obtain views and proposals of citizens, and provide opportunity to comment on the UGLG's previous community development performance.

If Subrecipient is a UGLG, it shall have a written and adopted Citizen Participation Plan that complies with the requirements set forth in the State of New York Action Plan for Community Development Block Grant Program Disaster Recovery, dated April 2013, as amended ("Action Plan"). The Action Plan and amendments thereto can be found at: http://stormrecovery.ny.gov/action-plans-and-amendments.

VII. NOTICES

All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date sent by certified mail, return receipt requested. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee: Housing Trust Fund Corporation
25 Beaver Street
New York, New York 10004
Attn: James Rubin, State Director of Storm Recovery

Subrecipient: City of Rye
1051 Boston Post Road
Rye, NY 10580
Attn: Eleanor Millitana, Assistant City Manager

VIII. GENERAL CONDITIONS

A. Compliance

Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (HUD's regulations concerning Community Development Block Grants), including any regulations referenced therein, except:

(1) Subrecipient does not assume Grantee's environmental responsibilities described in 24 CFR 570.604; and

(2) Subrecipient does not assume Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

Where waivers or alternative requirements are provided for in the applicable Federal Register Notices published by HUD ("HUD Notices"), including but not limited to those published on March 5, 2013 (78 Fed. Reg. 14,329), April 19, 2013 (78 Fed. Reg. 23,578), May 29, 2013 (78 Fed. Reg. 32,262), August 2, 2013 (78 Fed. Reg. 46,999), November 18, 2013 (78 Fed. Reg. 69,104), December 16, 2013 (78 Fed. Reg. 76,154), and March 27, 2014 (79 Fed. Reg. 17,173), such requirements, including any regulations referenced therein, shall apply.

Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, HUD Notices, policies, and guidelines, whether existing or to be established, provided the same are applied to activities occurring after the date the policy or guideline was established, governing the Grant Funds provided under this Agreement. In the event a conflict arises between the provisions of this Agreement and any of the foregoing, the Federal, State, and local laws, regulations, HUD Notices, policies, and guidelines shall control and this Agreement shall be interpreted in a manner so as to allow for the terms contained herein to remain valid and consistent with such Federal, State, and local laws, regulations, HUD Notices, policies, and guidelines. Subrecipient further agrees to utilize Grant Funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. Subrecipient shall at all times remain an "independent contractor" with respect to the efforts to be performed under this Agreement. Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as Subrecipient is an independent entity.

C. Hold Harmless

Subrecipient shall and hereby agrees to hold harmless, defend (with counsel acceptable to Grantee) and indemnify Grantee and each and all of its successors, affiliates, or assigns, and any of any of their employees, officers, directors, attorneys, consultants, agents, directors, officers, managers, and affiliates, from and against any and all damages, costs, attorneys' fees, claims, expenses, injuries, property damage, causes of action, violations of law, violations of this Agreement, and losses of any form or nature arising from or related to the conduct of Subrecipient in the performance of the efforts called for in this Agreement. This indemnity shall expressly include, but is not limited to, the obligation of Subrecipient to indemnify and reimburse Grantee for any and all attorneys' fees and other litigation or dispute resolution costs incurred or to be incurred in Grantee's enforcement of this

Agreement or any portion thereof against Subrecipient or otherwise arising in connection with Subrecipient's breach, violation, or other non-compliance with this Agreement. This clause shall survive indefinitely the termination of this Agreement for any reason.

D. Workers' Compensation

Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement unless granted an exemption by the State.

E. Insurance & Bonding

Subrecipient shall carry sufficient insurance coverage and bonding from insurers licensed to conduct business in New York State to protect all contract assets from loss due to any cause, including but not limited to, theft, fraud, and/or physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from Grantee. Grantee and the State of New York shall be named as an additional insured on all such insurance and shall meet all other insurance requirements as Grantee may impose from time to time. In addition, all insurance carriers and bonding companies shall meet minimum size and financial stability/financial rating requirements as may be imposed by Grantee from time to time. Certificates of insurance shall be provided to Grantee and full and complete copies of the policies and/or bonds shall be provided to Grantee upon its request for the same.

Notwithstanding the above, for construction or facility improvement performed by Subrecipient, Subrecipient shall, at a minimum, comply with the bonding requirements at 24 CFR 85.36 or 84.48, as applicable.

F. Grantee Recognition

Unless otherwise directed by Grantee, Subrecipient shall ensure recognition of the role of HUD and Grantee in providing funding, services, and efforts through this Agreement. Unless otherwise directed by Grantee, all activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to role of HUD and of Grantee. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. See Exhibit D for general guidance for recognition of HUD and Grantee. Note, notwithstanding the terms of this subsection or Exhibit D, Grantee reserves the right to direct specific reasonable recognition requirements on a case-by-case basis, including by not limited, to the size and content, waiver, removal or addition of such recognition.

G. Amendments

This Agreement may be amended provided that such amendments make specific reference to this Agreement, comply with programmatic policies, procedures, and guidelines, are executed in writing and signed by a duly authorized representative of each Party, and approved by Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement. Grantee may, in its sole discretion, amend this Agreement to conform with Federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the Grant Funds or the Subrecipient Program Description, such modifications will be incorporated in a written amendment signed by the Parties.

H. Suspension or Termination

Grantee may suspend or terminate this Agreement if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, guidelines, policies or directives as may become applicable at any time, including but not limited to environmental rules and regulations;

2. Failure, for any reason except those beyond Subrecipient's control, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement; or

4. Submission by Subrecipient to Grantee of reports that are untimely, incorrect, or incomplete in any material respect.

This Agreement may also be terminated for convenience by Grantee or Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, Grantee may terminate the award in its entirety.

IX. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

Subrecipient agrees to comply with 24 CFR 85.20-26 or 84.20-28, as applicable, and to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

Subrecipient shall administer the program in conformance with OMB Circulars A-87, "Cost Principles for State, Local, and Indian Tribal Governments"; A-122, "Cost Principles for Non-profit Organizations"; or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis (if allowed).

B. Documentation and Record Keeping

1. Records to Be Maintained

Subrecipient shall maintain all records required by applicable law to be maintained, including but not limited to the Federal regulations specified in (1) 24 CFR Part 85, Subpart C or 24 CFR Part 84, Subpart C, as applicable; (2) 24 CFR 570.506; and (3) the applicable HUD Notices that are pertinent to the activities to be funded under this Agreement, as well as any additional records required by Grantee. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken;

b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program, as modified by the HUD Notices;

c. Records required to determine the eligibility of activities;

d. Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with CDBG-DR funds;

e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

f. Financial records as required by (1) 24 CFR 570.502; and (2) 24 CFR 85.20-26 or 84.20-28, as applicable;

g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then all such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Data

Subrecipient shall maintain data for efforts provided as required by Grantee. Such data may include, but is not limited to, name, racial, ethnic, and gender characteristics, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to applicable federal authorities, Grantee monitors, or their designees for review upon request.

4. Disclosure

Subrecipient understands that data collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Parties' responsibilities with respect to efforts provided under this Agreement are subject to the provisions of Article 6-A, "Personal Privacy Protection Law", of the New York State Public Officers Law, as well as all other applicable State and Federal privacy laws (e.g., the Federal Privacy Act, 5 U.S.C. § 552a).

5. Close-out

Subrecipient's obligation to Grantee shall not end until all close-out requirements are completed. Close-out activities and requirements are subject to (1) 24 CFR 85.50 or 84.71, as applicable; (2) 24 CFR 570.509; and (3) applicable HUD Notices. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of assets (including the return of all unused materials, equipment, properly addressing Program Income (as that term is defined in section VI(A)(17)(a) of the HUD Notice 78 Fed. Reg. 14,329, 14,341 (March 5, 2013, as may be amended by HUD)), balances, and accounts receivable

to Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over CDBG-DR funds, including Program Income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to Grantee, HUD, and the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments and/or termination. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Subrecipient audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income and Other Assets

Subrecipient shall report monthly all Program Income, as defined in section VI(A)(17)(a) of the HUD Notice 78 Fed. Reg. 14,329, 14,341 (March 5, 2013, as may be amended by HUD), generated by activities carried out with CDBG-DR funds made available under this Agreement. All Program Income shall be returned to Grantee, absent written authorization from Grantee to the contrary, in accordance with any procedures established by HUD and Grantee. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not Program Income and shall be remitted promptly to Grantee.

All Program assets, other than Program Income (property, equipment, etc.) shall revert to Grantee upon termination of this Agreement in accordance with applicable Federal, laws, regulations, HUD Notices, policies, and guidelines.

2. Indirect Costs

Indirect costs will not be compensated for under this Agreement.

3. Progress Reports

In addition to deliverables and metrics specifically referenced in Exhibit A, Subrecipient shall submit regular Progress Reports to Grantee in the form, content, and frequency as required by Grantee. At a minimum, Progress Reports shall be submitted no less frequently than as required by (1) 24 CFR Part 85,

Subpart C or 24 CFR Part 84, Subpart C, as applicable; (2) 24 CFR 570.507; and (3) the applicable HUD Notices.

4. Payment Procedures

In accordance with the terms in Section IV above, Grantee will pay to Subrecipient funds available under this Agreement based upon information submitted by Subrecipient, consistent with the Subrecipient Program Description, the Budget, Grantee policy concerning payments, and applicable federal and state law and regulation. In addition, Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by Grantee on behalf of Subrecipient.

5. GOSR Reporting Obligations

The following chart summarizes some of the Subrecipient reporting obligations to GOSR. This chart is not intended to catalogue all of Subrecipient's reporting obligations under this Agreement. Note, some of the below reports require the submission of information related to contractors and subsequent subcontractors, which Subrecipient is responsible for collecting and providing to GOSR as required by the cited provision.

Report	Provision Citation	Frequency
Program Income Report	IX.C.1.	Monthly
Progress Report	IX.C.3.	Quarterly
M/WBE Report	XI.B.2.b.	Quarterly
EEO Report	XI.B.3.c.	Quarterly
Section 3 Report	XI.C.3.d.	Quarterly

D. Sub-granting

1. Approvals

Subrecipient shall not enter into any agreements with any agency or individual to assist in effectuating the activities of this Agreement without the written consent of Grantee prior to the execution of such agreement.

2. Monitoring

In accordance with Federal, State, and local laws, regulations, HUD Notices, program guidelines, and the policies and procedures to be issued by Grantee, Subrecipient will monitor any and all sub-subrecipient[2] efforts on a regular basis to assure compliance. Results of monitoring efforts shall be summarized in

[2] As used herein, a "sub-subrecipient" refers to all subrecipients that are lower-tiered than the Subrecipient that is a signatory to this Agreement.

written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Information detailing credible evidence of waste, fraud or abuse, shall be immediately reported to Grantee, followed by a written report within ten (10) calendar days.

3. Content

Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any sub-subrecipient agreement executed to effectuate this Agreement.

4. Selection Process

Subrecipient shall undertake to ensure that all sub-subrecipients utilized to effectuate this Agreement shall be awarded on a fair and reasonable basis in accordance with applicable Federal, State, and local laws, regulations, and HUD Notices, including the HUD Reform Act codified at 42 U.S.C. § 3537a (referred to as Section 103). Executed copies of all sub-subrecipient agreements shall be forwarded to Grantee along with documentation concerning the selection process.

E. Procurement/Contracting

1. General

Subrecipient shall not enter into any contract for goods or services with any entity without the written consent of Grantee prior to the execution of such contract. Unless specified otherwise within this Agreement, Subrecipient shall procure all materials, property, equipment, or services in accordance with the requirements of 24 CFR 85.36 or 84.40-48, as applicable, including but not limited to the need to appropriately assess the lease versus purchase alternatives. Only when Grantee's procurement policies are more stringent than those found at 24 CFR 85.36 or 84.40-48, as applicable, will Subrecipient be required to comply with current Grantee policy concerning the acquisition of materials, property, equipment, or services.

2. Supplementary Conditions

Subrecipient shall include Grantee's Supplementary Conditions, attached hereto as Exhibit E, in any contract entered into under this Agreement. Subrecipient shall also require all contractors to flowdown the Grantee's Supplementary Conditions to all subcontractors as well as the requirement to flowdown such terms to all lower-tiered subcontractors. These Supplementary Conditions include required terms for project contracts, HUD General Provisions, Participation by Minority Group Members and Women Requirements and Procedures for Contracts with Housing Trust Fund Corporation, Standard Clauses for Contracts with the Grantee and required diversity forms.

3. Records

Subrecipient shall maintain all records required by the Federal regulations specified in (1) 24 CFR Part 85, Subpart C or 24 CFR Part 84, Subpart C, as applicable; (2) 24 CFR 570.506; and (3) the applicable HUD Notices. Only when Grantee's procurement record retention standards are more stringent than Federal regulation shall Subrecipient maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein.

4. Travel

Travel costs are not allowed unless authorized by Grantee. In the event that Grantee authorizes travel, Subrecipient shall comply with HUD's Travel Regulations (Travel Handbook 2300.2). Subrecipient shall obtain prior written approval from Grantee for any travel to out of service area assignments.

F. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 85 or Part 84, as applicable, and 24 CFR Part 570 Subpart J, which include but are not limited to the following:

1. Subrecipient shall transfer to Grantee any CDBG-DR funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of $25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement or such longer period of time as Grantee deems appropriate. If Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, Subrecipient shall pay Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute Program Income to Grantee. Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period or such longer period of time as Grantee deems appropriate.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by Subrecipient for activities under this Agreement shall be (a) transferred to Grantee; or (b) retained after compensating

Grantee an amount equal to the current fair market value of the equipment less the percentage of non-CDBG-DR funds used to acquire the equipment.

G. Use of Grant Funds to Make Loans

Grant Funds under this Agreement cannot be used to make loans.

X. RELOCATION, REAL PROPERTY ACQUISITION, AND ONE-FOR-ONE HOUSING REPLACEMENT

To the extent applicable to its performance under this Agreement, and as modified by the HUD Notices, Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-DR assisted project. Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

XI. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

Subrecipient agrees to comply with the New York State Human Rights Law and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. Nondiscrimination

Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCD Act are still applicable.

3. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that Grantee and the United States are beneficiaries of, and entitled to enforce, such covenants. To the extent any such sale, lease or other transfer of land shall occur, Subrecipient, in undertaking its obligation to carry out the Program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

Subrecipient agrees to comply with all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program. Grantee shall provide Subrecipient with certain guidelines for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

Subrecipient agrees that it shall be committed to carry out, pursuant to Grantee's specifications, an Affirmative Action Program in keeping with the principles as provided in Executive Order 11246 of September 24, 1965. Grantee shall provide certain Affirmative Action guidelines to Subrecipient to assist in the formulation of such program. Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Minority- and Women-Owned Businesses (M/WBE)

a. Federal Requirements

Subrecipient shall comply with the small and minority firms, women's business enterprise, and labor surplus area requirements as set forth at 24 CFR 85.36 or 84.44, as applicable.

Subrecipient 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 this Agreement.

As used in this Agreement, 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 African-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.

b. HTFC Requirements

Pursuant to New York State Executive Law Article 15-A ("Article 15-A"), HTFC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and/or women-owned business enterprises ("M/WBEs") in the performance of HTFC-funded contracts. HTFC values affording M/WBEs the opportunity to participate in the performance of the contract(s) to be awarded for this project. Accordingly, Subrecipient certifies that it has made and will continue to make good-faith efforts to promote and assist the participation of certified M/WBEs through the use of contractors and their subcontractors at all tiers on this project, in an amount equal to fifteen percent (15%) minority-owned business enterprises ("MBE") and fifteen percent (15%) women-owned business enterprises ("WBE") of the total dollar value of this project. Notwithstanding the foregoing goals, should the State of New York change such goals, Subrecipient and its contractors and their subcontractors (at all tiers) shall continuously make good-faith efforts to achieve the M/WBE goals in effect at any given time during the performance of this Agreement and their contract(s) respectively. These participation goals are applicable to this Agreement as set forth in Exhibit E, Appendix III and will be monitored by HTFC.

Subrecipient shall require that its contractors and their subcontractors at all tiers comply with the aforementioned M/WBE requirements as set forth in the Participation by Minority Group Members and Women Requirements and Procedures for Contracts with Housing Trust Fund Corporation, attached hereto at Exhibit E, Appendix III. In accordance with those requirements, Subrecipient shall require all covered contractors and their subcontractors at all tiers to submit the required M/WBE documentation, including utilization plans and quarterly reports, to Subrecipient. Subrecipient shall provide quarterly reporting of M/WBE data in a form acceptable to HTFC, with copies of contractor and subcontractor M/WBE documentation as supporting documentation. Notwithstanding the provision of such reports and supporting documentation, Subrecipient, and Subrecipient's contractors and their subcontractors at all tiers, shall maintain copies of all reports and supporting documents as set forth in this Agreement.

3. Equal Employment Opportunity ("EEO") and Non-Discrimination

a. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

b. Non-Discrimination

Subrecipient shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Subrecipient shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

c. HTFC Requirements

Pursuant to New York State Executive Law Article 15-A ("Article 15-A"), HTFC recognizes its obligation under the law to promote opportunities for the employment of minority group members and women in the performance of HTFC-funded contracts.

Subrecipient shall require that its contractors and their subcontractors at all tiers comply with the EEO requirements found in the Participation by Minority Group Members and Women Requirements and Procedures for Contracts with Housing Trust Fund Corporation, attached hereto at Exhibit E, Appendix III. In accordance with those requirements, Subrecipient shall require all covered contractors and their subcontractors at all tiers to submit the required documentation, including an EEO policy statement, staffing plan, and quarterly reports to Subrecipient. Subrecipient shall provide quarterly reporting of EEO data in a form acceptable to HTFC, with copies of contractor and subcontractor EEO documentation as supporting documentation. Notwithstanding the provision of such reports and supporting documentation, Subrecipient, and Subrecipient's contractors and their subcontractors at all tiers, shall maintain copies of all reports and supporting documents as set forth in this Agreement.

4. Access to Records

Subrecipient shall furnish and cause each of its own sub-subrecipients, contractors, and subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by Grantee, HUD or its agent, the Comptroller General of the United States, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

5. Contract Provisions

Subrecipient will include the provisions of Paragraphs XI.A., Civil Rights, and B., Affirmative Action, in every subsequent sub-subrecipient agreement, contract, subcontract, or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own sub-subrecipients, contractors, or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.), and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Grantee for review upon request. Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of $2,000.00 for construction, renovation, or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR 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 intended to relieve Subrecipient of its obligation, if any, to require payment of the higher wage. Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon Grantee, Subrecipient, and any of Subrecipient's sub-subrecipients, contractors, and subcontractors. Failure to fulfill these requirements shall subject Grantee, Subrecipient, and any of Subrecipient's sub-subrecipients, contractors, and subcontractors, as well as their successors and assigns, to those sanctions specified by the agreement through which Federal assistance is provided. Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subsequent sub-subrecipient agreements, contracts, and subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement

of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Contracts

Subrecipient will include this Section 3 clause in subsequent sub-subrecipient agreements, contracts, and subcontracts, and will take appropriate action, pursuant to any such agreement, upon a finding that a sub-subrecipient, contractor, or subcontractor is in violation of regulations issued by HUD. Subrecipient will not subgrant or contract with any entity where it has notice or knowledge that the entity has been found in violation of regulations under 24 CFR Part 135, and will not let any sub-subrecipient agreement or contract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

d. Reporting

Irrespective of any applicable Federal reporting requirements, Subrecipient shall submit quarterly reports along with any supporting documentation, in a form acceptable to Grantee, of its Section 3 compliance efforts to Grantee. Notwithstanding the provision of such reports and supporting documentation, Subrecipient shall maintain copies of all reports and supporting documents as set forth in this Agreement. A summary of this and certain other reporting obligations is provided at paragraph IX.C.5.

D. Conduct

1. Hatch Act

Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

2. Conflict of Interest

Subrecipient agrees to abide by the provisions of 24 CFR 85.36 or 84.42-43, as applicable, and 24 CFR 570.611, which include (but are not limited to) the following:

a. It is presumed that Subrecipient is subject to state and local ethic laws and regulations related to the conduct of its officers, employees or agents engaged in the award and administration of this Agreement.

b. In the event Subrecipient is not, Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of this Agreement. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-DR assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-DR assisted activity, or with respect to the proceeds from the CDBG-DR assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or

elected or appointed official of Grantee, Subrecipient, or any designated public agency.

3. Lobbying

Subrecipient hereby certifies that:

a. To the best of its knowledge and belief, no Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 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 Agreement, Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. 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 section 1352, title 31, U.S.C. 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.

d. It has and will comply with Section 139-j and 139-k of the State Finance Law.

e. It will require that the language of paragraphs (a) through (e) 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.

4. Copyright

If this Agreement results in any copyrightable material or inventions, Grantee and/or HUD reserves 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.

5. Religious Activities

Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XII. ENVIRONMENTAL CONDITIONS

A. Environmental Laws

Subrecipient agrees to comply with, and shall retain an independent environmental monitor to document compliance, to the extent applicable, 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 or the Grantee Program, as any of the following may hereinafter be amended, superseded, replaced, or modified:

- Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951, 3 CFR, 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 CFR, 1977 Comp., p. 121);

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

- 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);

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

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

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

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

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

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

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

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

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

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

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

- Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, *et seq.*), 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

- Environmental Protection Agency (EPA) regulations at 40 CFR Part 50, as amended;

- 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;

- 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;

- 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 Part 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

- All other applicable Environmental Laws that may exist now or in the future. For the purposes of this section, "Environmental Laws" shall mean any federal, state, provincial or local law (including but not limited to statutes, rules, regulations, ordinances, directives, guidance documents or judicial or administrative interpretation thereof, or any judicial or administrative order, ruling or other such written requirement). Environmental Laws include, without limitation, any action which causes a review or reassessment of the Grantee Program.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and

maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

Subrecipient agrees that any construction or rehabilitation of structures containing residential units with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800 and 801, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement, as well as any other applicable laws or regulations relating to historic properties.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

E. Implementation of Mitigation Measures

Subrecipient agrees to comply with and timely implement any and all mitigation measures and other requirements set forth in any environmental reviews, environmental assessments, or environmental impact statements performed or to be performed in connection with, or records of decision or any similar documents, issued or to be issued in connection with, the CDBG-DR Program as may be applicable to this Agreement. It is Subrecipient's responsibility to ensure that it has complete copies of all such documents.

XIII. ASSIGNMENT

Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of Grantee.

XIV. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XV. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XVI. WAIVER

Grantee's failure to act with respect to a breach by Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XVII. CHOICE OF LAW

This Agreement shall be governed by and construed under the laws of the State of New York without giving effect to its conflict of law principles. Nothing in the Agreement shall preclude either Party from seeking injunctive relief to protect its rights under this Agreement.

The Parties consent to and agree that any and all disputes arising out of or relating in any way to the Agreement shall be subject to the exclusive jurisdiction of the state courts or Federal District Courts of New York. The Parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

XVIII. COMPLIANCE WITH LAW

It is the intention and understanding of the Parties hereto that each and every provision of law required to be inserted in this Agreement should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or

is not inserted in correct form, then this Agreement shall forthwith, upon the application of any Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of any Party.

XIX. SUBROGATION

Subrecipient acknowledges that funds provided through this Agreement are Federal funds administered by HUD under the CDBG-DR Program and that all funds provided by this Agreement are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged and subject to Federal regulation, however, Subrecipient shall promptly return any and all funds to Grantee, which are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compensable, no matter the cause. This clause shall survive indefinitely the termination of this Agreement for any reason.

XX. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the Parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written among the Parties with respect to this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of the parties.

H[redacted]

By[redacted]
Name: ~~James Rubin~~ Lisa Bova-Hiatt
Title: State Director of Storm Recovery

City of Rye

B[redacted]
Name: Marcus Serrano
Title: City Manager

This contract has been approved by Grantee's Counsel as to form and its Treasurer as to fiscal sufficiency.

EXHIBIT A
Subrecipient Program Description

EXHIBIT B
Budget

EXHIBIT C
Designation of Depository

EXHIBIT D
HUD and Grantee Recognition

Please find below guidelines for recognition of HUD, Housing Trust Fund Corporation ("HTFC"), and the Governor's Office of Storm Recovery ("GOSR") (collectively referred to herein as the "Grantee") in any work done as a result of this subrecipient agreement. Note, any public information and all of the items below must be approved by the Grantee in advance of publication or posting. Note: The following serve as general guidelines, Grantee reserves the right to direct specific reasonable recognition requirements on a case-by-case basis, including by not limited to the size and content, waiver, removal or addition of such recognition.

Written documents:

All written documents must include the following language, unless otherwise specified in writing by the Grantee:

1. "This [program/project] is made possible by a grant from the Housing Trust Fund Corporation, which is funded through Community Development Block Grants from the U.S. Department of Housing and Urban Development."

2. Written documents should also include the Grantee logo(s) and the name of the Governor.

Internet information and e-mail information:

1. Internet information must include all of the items required for written documentation and a link to the Grantee's website(s).

Offices open to the public providing services funded by the Grantee:

1. All offices must include a sign including all of the items required for written documentation.

Construction Signs:

1. All construction signs must include a sign including all of the items required for written documentation.

2. All construction signs must also include the name of the project, an expected end date for the project, the name of the subrecipient, and a phone number for the public to call to obtain information about the project. This must be a phone number maintained by the subrecipient or one of its subcontractors.

Completed Projects:

1. All completed projects must include permanent recognition of the Grantee. The subrecipient is required to submit to the Grantee for written approval of the proposed permanent recognition.

EXHIBIT E
Appendices for Contractors and Subcontractors at all Tiers

EXHIBIT E

SUPPLEMENTARY CONDITIONS FOR CONTRACTS

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": _____

For purposes of contractual arrangements below those that are between the Subrecipient and the Contractor, as defined above, references in these Supplementary Conditions to "Subrecipient" shall be deemed to also 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 the aforementioned 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 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 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 and the recipient 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 defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). 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.

<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 24 C.F.R. § 85.36 or 24 C.F.R. § 84.44 as applicable. 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. AGE DISCRIMINATION ACT OF 1975. 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. NONDISCRIMINATION (Applicable 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).

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, as revised by Executive Order 13279 of December 12, 2002. 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 shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, 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.

B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

C. 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 or national origin.

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 by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, 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 the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting 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 non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as 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. Contractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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 (As required by applicable thresholds).</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).

Irrespective of any applicable federal reporting requirements, 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. DAVIS-BACON ACT AND OTHER LABOR COMPLIANCE (Applicable to construction contracts exceeding $2,000 when required by federal program legislation). 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.

ENVIRONMENTAL PROVISIONS

30. ENERGY EFFICIENCY. 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. 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*.), 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. The Subrecipient, Governor's Office of Storm Recovery ("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 or domestic violence victim status. 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. 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. Providing both bodily injury (including death) and property damage insurance with a limit not less than Two Million Dollars ($2,000,000) in the aggregate and One Million Dollars ($1,000,000) per occurrence. 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.

   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.

   e. Excess Liability Insurance. Not less than Eight Million Dollars ($8,000,000) in the aggregate and per occurrence or per claim. This insurance shall be excess of the insurance in items (a), (b) and (c) above and shall be written on an occurrence and follow form basis. New York State, the New York State Housing Trust Fund Corporation, and the Subrecipient shall each be named as an additional insured for excess coverage with respect to the type of coverage set forth in item 1 above.

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, but not for item e; 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.