

COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY
MEMORANDUM OF UNDERSTANDING

THIS COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY MEMORANDUM OF UNDERSTANDING (“MOU”) is made effective as of the 6th day of May, 2015 (“Effective Date”) among the Housing Trust Fund Corporation, a subsidiary public benefit corporation of the New York State Housing Finance Authority (“Grantee” or “HTFC”), New York State Department of Environmental Conservation (the “Agency”), an administrative agency of the State of New York and the New York State Environmental Facilities Corporation (the “Corporation”), a public benefit corporation of the State of New York. The foregoing Grantee, Agency and Corporation shall sometimes be referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, Governor Andrew M. Cuomo established the Governor’s Office of Storm Recovery (“GOSR”) within HTFC and tasked it with administering the State’s CDBG-DR program (defined below); and

WHEREAS, pursuant to title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.), as amended (“HCD Act”), 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 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; and

WHEREAS, the Agency is the recipient of capitalization grant funds from the United States Environmental Protection Agency to fund New York State's Clean Water State Revolving Fund (CWSRF Program); and

WHEREAS, the Agency has entered into a cooperative agreement with the Corporation to assist in the administration of CWSRF Program; and

WHEREAS, New York State is required to contribute state matching funds in an amount equal to at least 20 percent of the total amount of the federal capitalization grant funds for the CWSRF Program (State Match); and

WHEREAS, the Grantee determined that CDBG-DR funds may be used to support the State Match requirement for projects that are otherwise eligible to receive CDBG-DR funds pursuant to Section 105 of the Housing and Community Development Act of 1974; and

WHEREAS, Grantee requires the Agency and the Corporation to administer in accordance with the terms and conditions contained and incorporated into this MOU, directly or through subrecipients or contractors, CWSRF projects where CDBG-DR funding will be used to support the State Match requirement; and

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

I. PROGRAM

The Agency and Corporation will be responsible for requiring subrecipients to perform the activities detailed in Exhibit A, which may be amended from time to time, and is attached hereto and made a part hereof ("Program Description"). As a reimbursement-based program, tasks and deliverables contained in the 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 the Agency, the Corporation, any subrecipients and contractors against goals and performance standards as stated in the Program Description. The Agency and the Corporation will require subrecipients and/or subrecipients' contractors to perform (and document to Grantee) the entire Program Description, even if the funds provided hereunder do not cover 100% of the costs of performance. Substandard performance as reasonably determined by Grantee, in its sole discretion, will constitute noncompliance with this MOU if Agency or the Corporation fail to require any sub-recipients or contractors to take corrective action within a reasonable period of time (as determined by Grantee). If the Agency or the Corporation do not require any subrecipients or contractors to take action to correct such substandard performance within a reasonable period of time (as determined by Grantee) after being notified by Grantee in writing, Grantee may choose not to reimburse the State for noncompliant and/or unallowable work and/or take action to suspend or terminate this MOU or other actions as permitted under applicable law. Nothing in this MOU shall waive or otherwise limit the actions Grantee may take or the remedies Grantee may seek as a result of any noncompliance by the Agency or the Corporation.

Agency and the Corporation shall not engage in, nor permit any contractors, subrecipients or affiliates to engage in, any action that in any way would 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 from Grantee authorization to release funds in the form of a fully-executed and duly authorized Authority to Use Grant Funds (HUD Form 7015.16) pertaining to the particular project or program.

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 MOU shall commence as of the date the MOU is fully executed by all parties and shall end on September 30, 2019 unless otherwise mutually agreed to by the parties in writing. Any funds not utilized to complete the Program Description 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

Grantee may require a detailed budget breakdown, and the Agency or Corporation shall provide, or request from subrecipients, such supplementary budget information in a timely fashion in the form and content prescribed by Grantee. Any change to the amount of CDBG-DR Grant Funds must be approved in writing by Grantee in writing before such changes are allowed and reimbursable. The Budget is attached as Exhibit B.

IV. CDBG-DR GRANT FUNDS

It is expressly agreed and understood that the total amount to be paid by Grantee under this MOU shall not exceed \$3,175,000.00 ("Grant Funds"). The amount of CDBG-DR Grant Funds that Grantee has agreed to provide as State Match under this MOU 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.

The Agency has been awarded grant funds from the US Environmental Protection Agency under the Act. These funds will be deposited from time to time into the CWSRF administered by the Corporation and, along with the State Match provided by the CDBG-DR Grant Funds, will be used to fund Sandy relief projects consistent with the Act. In the event the Agency is awarded, granted, or provided with additional funds from any other source, which may include, in part or whole, aspects related to this MOU, the Agency shall immediately notify Grantee of such funds, the amount, the source, and the conditions for their use. The Agency further agrees to provide any additional information Grantee requests related to such funds.

V. DISBURSEMENT OF GRANT FUNDS

- a) The Corporation will be required to prepare and the Agency is required to submit a request for Grant Funds in accordance with the provisions of this MOU, 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 MOU or provided under applicable law; (iii) require and receive a full repayment or refund of all payments made under this MOU or (iv) take corrective or remedial administrative action including, without limitation, suspension or termination of the Agency and Corporation funding under this MOU.
- b) The Corporation, relying on its subrecipients or their contractors, shall certify in a sworn statement made by a senior official and the Agency will provide that statement with each request for Grant Funds. The statement will include the following language: that to the best of its knowledge based on the information available at the time and after making due inquiry: (i) all statements and representations previously made regarding this MOU 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 the Agency and/or Corporation incurring allowable costs permitted under the terms of this MOU or as otherwise pre-approved, in writing, by Grantee. The State 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 cognizant State or Federal Government authorities disallow any of the costs for which the Agency and/or Corporation seek reimbursement, the Agency shall, upon consultation with New York State Division of the Budget (“DOB”), immediately remit any funds received by the State for the unallowable costs to Grantee. The Agency may 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, after Agency is given an opportunity to consult with DOB, that the State pay any costs associated with such effort, and may require that the State 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. Because the Agency and Corporation are State entities, the Grantee has determined that the requirements of this section do not apply to actions of the Agency and Corporation.

VII. NOTICES

- a) All notices, requests, approvals, and consents of any kind made pursuant to this MOU 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 MOU shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. Communication and details concerning this MOU shall be directed to the following representatives:

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

Agency: New York State Department of Environmental Conservation
625 Broadway
Albany, New York 1233-1500
Attn: Director of Management and Budget
cc: Office of General Counsel

Corporation: New York State Environmental Facilities Corporation
625 Broadway
Albany, New York 12207-2997
Attn: President
cc: General Counsel

- b) Grantee will notify Agency and Corporation by email when one of the Grantee's consultants assigned to any project covered by this MOU have been removed or terminated for any reason. Notices under this paragraph shall be sent to the following representatives:

Agency: New York State Department of Environmental Conservation
625 Broadway
Albany, New York 1233-1500
Attn: Director of Management and Budget
Email: nancy.lussier@dec.ny.gov

Corporation: New York State Environmental Facilities Corporation
625 Broadway
Albany, New York 12207-2997
Email: timothy.burns@efc.ny.gov

VIII. GENERAL CONDITIONS

A. Compliance

The Agency and Corporation agree to comply with, and require their subrecipients and/or subrecipients' contractors 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) The Agency and the Corporation do not assume Grantee's environmental responsibilities described in 24 CFR 570.604; and
- (2) The Agency and the Corporation do 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), March 27, 2014 (79 Fed. Reg. 17,173), and October 16, 2014 (79 Fed. Reg. 62,182) such requirements, including any regulations referenced therein, shall apply.

The Agency and Corporation also agree to comply, and to require subrecipients to comply, respectively, with all other applicable Federal, State, 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 law, regulation, HUD Notice, policy or guideline was established or made effective, governing the Grant Funds provided under this MOU. Grantee will use best efforts to provide Agency and Corporation with applicable HUD regulation, notice, policy, or guidance enacted, published or otherwise established subsequent to the execution of this MOU or not otherwise addressed herein.

Wherever such laws, regulations, HUD Notices, policies and guidelines applicable to the use of the Grant Funds are referenced herein or hereinafter established, Grantee shall provide the Agency, the Corporation and their subrecipients with technical assistance as herein after defined, and Grantee acknowledges that the provision of such technical assistance is a material term of this MOU. Technical assistance is defined as training, guidance, instructions, document review as reasonably requested by the Agency or Corporation to facilitate compliance with the applicable HUD laws, regulations, notices, policies and guidelines applicable to the use of the Grant funds.

In the event a conflict arises between the provisions of this MOU and any of the foregoing, the Federal and State, and local laws, regulations, HUD Notices, policies, and guidelines shall control and this MOU 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. The Agency and Corporation further agree to utilize Grant Funds available under this MOU to supplement rather than supplant funds otherwise available.

B. Workers’ Compensation

As an agency of the State, the Agency has a policy of self-retention in lieu of external insurance policies, and shall provide Workers’ Compensation Insurance for its employees as required by the State Workers’ Compensation Law through such retained funds. The Agency will require that its subrecipients and their contractors procure and maintain appropriate Worker’s Compensation and Disability Benefits coverage as required by law.

The Corporation will maintain Workers' Compensation Insurance for its employees as required by the State Workers' Compensation Law.

C. Insurance & Bonding

The Agency, as an agency of the State, has a policy of self-retention in lieu of external insurance policies. The Agency's obligations with respect to any claims are subject to the availability of lawful appropriations thereof as required by Section 41 of State Finance Law. The potential liability of the Agency, as an agency of the State, must be determined in accordance with the provisions of the Court of Claims Act and Public Officers Law.

The Corporation shall obtain and maintain in full force and effect, Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Permit (including the tort liability of another assumed in a Permit).

For construction or facility improvement performed by the Agency, Corporation or any subrecipients or contractors, the Agency and/or Corporation shall ensure compliance with bonding requirements, including but not limited to those found at 24 CFR 85.36 or 84.48, as applicable.

D. Grantee Recognition

The Agency and/or Corporation shall ensure non-exclusive recognition of the role of HUD and Grantee in providing funding, services, and efforts through this MOU. All activities, facilities, and items utilized pursuant to this MOU shall be prominently labeled as to role of HUD and of Grantee. In addition, the Agency and/or Corporation will include a reference to the support provided herein in all publications made possible with funds made available under this MOU. See Exhibit D for general guidance for recognition of HUD and Grantee.

E. Amendments

This MOU may be amended provided that such amendments make specific reference to this MOU, comply with programmatic policies, procedures, and guidelines, are executed in writing and signed by a duly authorized representative of each Party. Such amendments shall not invalidate this MOU, nor relieve or release the Parties from their obligations under this MOU. Parties may amend this MOU to conform with applicable 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 Program Description, such modifications will be incorporated in a written amendment signed by each of the Parties.

F. Suspension or Termination

In accordance with 24 CFR 85.43 or 84.62, as applicable, Grantee may suspend or terminate this MOU if the Agency and/or Corporation materially fail to comply with any material terms of this MOU, 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;
2. Failure, for any reason except those beyond the Agency's or Corporation's control, as applicable, of the Agency or Corporation to fulfill in a timely and proper manner its obligations under this MOU;
3. Ineffective or improper use of funds provided under this MOU; or
4. Submission by the Agency or Corporation, as applicable, to Grantee of reports that are untimely, incorrect, or incomplete in any material respect.

In addition, Agency and/or Corporation may suspend or terminate this MOU if the Grantee materially fails to comply with any material terms of this MOU.

In accordance with 24 CFR 85.44 or 84.61, as applicable, this MOU may also be terminated for convenience by Grantee or the Agency, 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, upon notice to DOB, may terminate the award in its entirety.

IX. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Agency and Corporation agree 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

The Agency and Corporation 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

The Agency and Corporation 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 MOU, 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

The Agency and Corporation shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the MOU 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 MOU 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

The Agency or Corporation, as applicable, may require their subrecipients to collect applicant data in the geographic vicinity of the work pursuant to Exhibit A. 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 cognizant federal authorities, Grantee monitors, or their designees for review upon request.

4. Disclosure

The Agency and Corporation understand that data collected under this MOU 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 MOU are subject to the provisions of Article 6, "Freedom of Information Law" and 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

The Agency's and Corporation's obligations 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 MOU shall remain in effect during any period that the Agency or Corporation has control over CDBG-DR funds, including Program Income.

6. Audits & Inspections

All Agency and Corporation records with respect to any matters covered by this MOU 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 the Agency or Corporation, as applicable within 30 days after receipt by such Party. Failure of the Agency or Corporation to comply with the above audit requirements will constitute a violation of this MOU and may result in the withholding of future payments and/or termination. The Agency hereby agrees to have an annual agency audit conducted in accordance with OMB Circular A-133. All GOSR records with respect to any matters covered by this MOU shall be made available to Agency or other authorized State official.

C. Reporting and Payment Procedures

1. Program Income and Other Assets

The Agency and Corporation, if applicable, 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 MOU. 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, excluding the CWSRF, is not Program Income and shall be remitted promptly to Grantee.

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

2. Indirect Costs

Indirect costs will not be compensated for under this MOU.

3. Progress Reports

In addition to deliverables and metrics specifically referenced in Exhibit A, the Agency or Corporation, as applicable, 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 the State funds available under this MOU based upon information submitted by the Agency and/or Corporation, consistent with the 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 MOU for costs incurred by Grantee on behalf of the Agency or Corporation under this MOU in consultation with DOB. In no instance shall the costs be liquidated for payment to Grantee for technical assistance provided to the Agency and/or Corporation.

5. GOSR Reporting Obligations

The following chart summarizes some of the Agency and/or Corporation reporting obligations to GOSR. This chart is not intended to catalogue all of the reporting obligations under this MOU. Note, some of the below reports require the submission of information related to contractors and subsequent subcontractors, which the Agency and/or Corporation, with technical assistance from Grantee, 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

The Agency and/or Corporation shall not enter into any agreements with any agency or individual to assist in effectuating the activities of this MOU 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, the Agency and/or Corporation, as applicable, and with technical assistance from the Grantee, will monitor any and all subrecipient efforts on a regular basis to assure compliance. Results of monitoring efforts shall be summarized in 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

The Agency and/or Corporation shall cause all of the relevant provisions of this MOU to be included in and made a part of any subrecipient agreement executed to effectuate this MOU. Exhibit C attached herein contains all of the relevant provisions of this MOU and will be made part of any such agreements.

4. Selection Process

The Agency and the Corporation shall undertake to ensure that all subrecipients utilized to effectuate this MOU 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 subrecipient agreements shall be forwarded to Grantee along with documentation concerning the selection process.

E. Procurement/Contracting

1. General

Unless specified otherwise within this MOU, the Agency and/or Corporation shall procure all materials, property, equipment, or services under this MOU 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 the Agency or Corporation be required to comply with current Grantee policy concerning the acquisition of materials, property, equipment, or services. Agency or Corporation shall not enter into any contract for goods or services under this MOU with any entity without the written consent of Grantee prior to the execution of such contract.

2. HUD General Provisions

The Agency and/or Corporation shall include Grantee's HUD General Provisions, attached hereto as Exhibit E,¹ in any contract entered into under this MOU. The Agency and/or Corporation shall also require all contractors to flow down Grantee's HUD General Provisions to all subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

3. Records

¹ Exhibit E has been revised from GOSR's standard Exhibit E, because many of the terms and conditions contained therein are already covered by the Corporation's agreements with subrecipients and contractors.

The Agency and/or Corporation 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 the Agency and/or Corporation 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, the Agency and/or Corporation shall comply with HUD's Travel Regulations (Travel Handbook 2300.2). The Agency and/or Corporation 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 MOU 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. The State shall transfer to Grantee any CDBG-DR funds on hand and any accounts receivable attributable to the use of funds under this MOU at the time of expiration, cancellation, or termination.
2. Real property under the Agency's control that was acquired or improved, in whole or in part, with funds under this MOU 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 MOU or such longer period of time as Grantee deems appropriate. If the Agency fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Agency 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. The Agency may retain real property acquired or improved under this MOU 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 MOU is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this MOU were used to acquire the equipment). Equipment not needed by the Agency or Corporation for activities

under this MOU 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 MOU cannot be used to make loans.

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

To the extent applicable to their performance under this MOU, and as modified by the HUD Notices, the Agency and Corporation agree 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. The Agency and Corporation will require their subrecipients with Grantee assistance to 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. The Agency and Corporation also agree 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

The Agency and Corporation agree 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

The Agency and Corporation agree 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 MOU 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 MOU, the Agency and/or Corporation 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, the Agency and/or Corporation, in undertaking its obligation to carry out the Program assisted hereunder, agrees to require subrecipients to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Agency and Corporation agree 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 the Agency and Corporation with certain guidelines for compliance with that portion of the regulations in force during the term of this MOU.

B. Affirmative Action

1. Approved Plan

The Agency and Corporation agree to 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 the Agency and Corporation to assist in the formulation of such program. The Agency 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

The Agency and Corporation 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.

The Agency and Corporation 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 MOU. As used in this MOU, 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. The Agency and/or Corporation 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 certain HTFC-funded subrecipient agreements, memoranda of understanding, and all HTFC-funded contracts and subcontracts. HTFC values affording M/WBEs the opportunity to participate in the performance of these subrecipient agreements, memoranda of understanding, contracts and subcontracts to be awarded under this project. Accordingly, the Agency and Corporation certify that they have made and will continue to make good-faith efforts to promote and assist the participation of certified M/WBEs through the use of non-governmental subrecipients, contractors and their subcontractors at all tiers on this project, in an amount equal to twenty percent (20%) minority-owned business enterprises ("MBE") and/or women-owned business enterprises ("WBE") of the total dollar value of this project. These participation goals are applicable to this MOU as set forth in Exhibit E, Appendix III and will be monitored by HTFC.²

The Agency and Corporation shall require subrecipients, contractors, and their subcontractors at all tiers to 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

² Exhibit E has been revised from GOSR's standard Exhibit E, because many of the terms and conditions contained therein are already covered by the Agency's or Corporation's agreement with lower-tiered subrecipients and contractors.

Corporation, attached hereto at Exhibit E, Appendix III.³ In accordance with those requirements, the Agency and/or Corporation, as applicable, shall require all covered subrecipients, contractors and their subcontractors at all tiers to submit the required M/WBE documentation, including utilization plans and quarterly reports, to the Corporation. The Corporation shall provide quarterly reporting of M/WBE data in a form acceptable to HTFC, which may require the Corporation to consolidate all reports received from any subrecipients, contractors and subcontractors into a single report or several reports as reasonably requested by Grantee with copies of subrecipient, contractor and subcontractor M/WBE documentation as supporting documentation. Notwithstanding the provision of such reports and supporting documentation, the Agency and/or Corporation shall require subrecipients, contractors and their subcontractors at all tiers, to maintain copies of all reports and supporting documents as set forth in this MOU.

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

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

The Agency and/or Corporation will, in all solicitations or advertisements for employees placed by or on behalf of such party, state that it is an Equal Opportunity or Affirmative Action employer.

b. Non-Discrimination

The Agency and Corporation shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Agency and/or Corporation 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

³ Exhibit E has been revised from GOSR’s standard Exhibit E, because many of the terms and conditions contained therein are already covered by the Agency’s or Corporation’s agreement with lower-tiered subrecipients and contractors.

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.

The Agency and/or Corporation shall require subrecipients, contractors, and their subcontractors at all tiers to 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.⁴ In accordance with those requirements, the Agency and/or Corporation shall require all covered subrecipients, contractors and their subcontractors at all tiers to submit the required documentation, including an EEO policy statement, staffing plan, and quarterly reports to the Agency or Corporation as applicable. The Agency and/or Corporation shall provide quarterly reporting of EEO data in a form acceptable to HTFC, which may require such party to consolidate all reports received from lower tiered subrecipients, contractors and subcontractors into a single report or several reports as reasonably requested by Grantee, with copies of subrecipient, contractor and subcontractor EEO documentation as supporting documentation. Notwithstanding the provision of such reports and supporting documentation, the Agency and the Corporation shall require subrecipients, contractors and their subcontractors at all tiers, to maintain copies of all reports and supporting documents as set forth in this MOU.

4. Access to Records

The Agency and Corporation shall furnish and cause each of its own 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 State and Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein. All GOSR records with respect to any matters covered by this MOU shall be made available to Agency, the Corporation or other authorized State official.

5. Contract Provisions

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

⁴ Exhibit E has been revised from GOSR’s standard Exhibit E, because many of the terms and conditions contained therein are already covered by the Agency’s subrecipient’s agreement with lower-tiered subrecipients and contractors.

C. Employment Restrictions

1. Prohibited Activity

The Agency and Corporation are 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

The Agency and Corporation agree 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 MOU. The Agency and Corporation 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. The Agency and Corporation 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. The Agency and Corporation agree 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 MOU, 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 the Agency or Corporation of its obligation, if any, to require payment of the higher wage. The Agency and/or Corporation 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 MOU, shall be a condition of the Federal financial assistance provided under this MOU and binding upon Grantee, the Agency, the Corporation and any of

subrecipients, contractors, and subcontractors. Failure to fulfill these requirements shall subject Grantee, the Agency, the Corporation and any subrecipients, contractors, and subcontractors, as well as their successors and assigns, to those sanctions specified by the agreement through which Federal assistance is provided. The Agency and Corporation respectively certify and agree that no contractual or other disability exists that would prevent the Agency or Corporation from complying with these requirements.

The Agency and Corporation further agree to comply with these "Section 3" requirements with the technical assistance of the Grantee and to include the following language in all subsequent subrecipient agreements, contracts, and subcontracts executed under this MOU:

"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."

The Agency and Corporation with technical assistance from the Grantee, further agree 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.

The Agency and Corporation respectively certify and agree that no contractual or other legal incapacity exists that would prevent the Agency or Corporation from complying with these requirements.

Grantee agrees to provide Agency and Corporation and any of the Agency's or Corporation's subrecipients, contractors and subcontractors, as well as their successors and assigns, technical assistance to meet the requirements of this section and 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 MOU.

b. Notifications

The Agency and/or Corporation agree 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

The Agency and/or Corporation will cause this Section 3 clause to be included in subsequent subrecipient agreements, contracts, and subcontracts, and will take appropriate action, as directed by the Grantee, pursuant to any finding that a subrecipient, contractor, or subcontractor is in violation of regulations issued by HUD. The Agency and/or Corporation 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 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, the Agency and/or Corporation shall submit quarterly reports with the technical assistance from the Grantee along with any supporting documentation, in a form acceptable to Grantee of its Section 3 compliance efforts to Grantee, which may require the Agency and/or Corporation to consolidate all reports received from lower tiered subrecipients, contractors and subcontractors into a single report or several reports as reasonably requested by Grantee. Notwithstanding the provision of such reports and supporting documentation, the Agency and/or Corporation shall maintain copies of all reports and supporting documents as set forth in this MOU. A summary of this and certain other reporting obligations is provided at paragraph IX.C.5.

D. Conduct

1. Hatch Act

The Agency and Corporation agree that no funds provided, nor personnel employed under this MOU, 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

The Agency 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 the Agency and Corporation are subject to state and local ethics laws and regulations related to the conduct of its officers, employees or agents engaged in the award and administration of this MOU.

b. In the event the Agency and/or Corporation is not, they shall maintain written standards of conduct governing the performance of employees engaged in the award and administration of this MOU. 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, the Agency, the Corporation or any designated public agency.

3. Lobbying

The Agency and Corporation hereby respectively certify 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 MOU.

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 MOU, the Agency 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 MOU 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 MOU for any reason.

5. Religious Activities

The Agency and Corporation agree that funds provided under this MOU 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

The Agency, Corporation and Grantee 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 MOU 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), the Agency and Corporation shall assure that subrecipients and contractors for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, are required to obtain and maintain flood insurance under the National Flood Insurance Program as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Agency and Corporation agree that any construction or rehabilitation of structures containing residential units with assistance provided under this MOU 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

The Agency and Corporation agree to comply or require compliance 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 completion of the Program Description, 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

The Agency and Corporation agree to comply with and timely implement or require to be implemented 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 MOU. It is the Agency's and/or Corporation's responsibility to ensure that it has complete copies of all such documents.

XIII. ASSIGNMENT

The Agency and/or Corporation shall not assign or transfer any interest in this MOU without the prior written consent of Grantee.

XIV. SEVERABILITY

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

XV. SECTION HEADINGS AND SUBHEADINGS

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

XVI. WAIVER

Grantee's failure to act with respect to a breach by the Agency or Corporation 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 MOU 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 this MOU shall preclude either Party from seeking injunctive relief to protect its rights under this MOU.

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 MOU 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 MOU 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

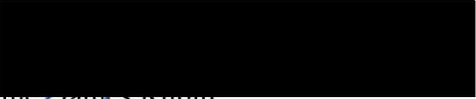
The Agency and Corporation acknowledges that funds provided through this MOU are Federal funds administered by HUD under the CDBG-DR Program (including funds that may satisfy local match or non-Federal share requirements pursuant to 42 USC § 5305(a)(9) and 24 CFR § 570.201(g)) and that all funds provided by this MOU are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged and subject to Federal regulation; however, the Agency 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 MOU for any reason.

XX. ENTIRE AGREEMENT

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

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

Housing Trust Fund Corporation

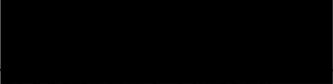
By: 
Name: James Rubin
Title: State Director of Storm Recovery

New York State Department of Environmental Conservation

B
N

Title: Director,
Division of Management & Budget Services

New York State Environmental Facilities Corporation

By: 
Name: Matthew J. Driscoll
Title: President

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

EXHIBIT A
Program Description

Project 1. Bergen Point Final Effluent Pump Station Project. The project description of the Suffolk County FEPS project in the 2015 IUP is as follows:

This project will construct a new effluent pump station at the Bergen Point WWTP that will provide resiliency and flood mitigation at the plant as more fully described in the environmental assessment dated 10/17/2011 as revised, which is hereby incorporated by reference.

**EXHIBIT B
Budget**

Project 1. Bergen Point Final Effluent Pump Station Project.

The commitment of CDBG-DR funding for this project is budgeted at a maximum of and shall not exceed \$3,175,000. The total budget for this project, including both CDBG-DR funding and other sources, is \$14,510,000. Agency shall be required to submit a detailed budget for approval prior to the expenditure of any funding pursuant to this MOU. All requests for CDBG-DR reimbursement pursuant to this MOU must comply with all CDBG-DR requirements.

The following constitutes estimates, which shall be reconciled against the detailed budget referenced in the immediately preceding paragraph, for each component of the work under Project 1. CDBG-DR funding shall be utilized to fund construction activities only, as indicated in the table immediately below. In no event shall CDBG-DR compensation exceed \$3,175,000.

	Bergen Point - Phase 1 – Final Effluent Pump Station	Funding Sources		
		County - Bond/Other	SRF - EPA	CDBG-DR
A.	Design/Engineering			
	\$	[REDACTED]		
B.	Construction Costs			
	\$	[REDACTED]		
C.	Other Costs (Bond Counsel)			
	\$	[REDACTED]		
D.	Total Cost			
	\$ 14,510,000	[REDACTED]		

EXHIBIT C
Appendices for Recipient Agreements

For the purposes of this Exhibit the following terms are defined as:

Agency: The New York State Department of Environmental Conservation,
Corporation: The New York State Environmental Facilities Corporation,
GOSR: Governor's Office of Storm Recovery,
Grantee: Housing Trust Fund Corporation and/or GOSR,
Recipient: The entity executing the Project Financing Agreement with the Corporation,
State: The State of New York.

All Recipient projects utilizing Community Development Block Grant – Disaster Relief (“CDBG-DR”) funds must comply with the following provisions:

I. PROGRAM

The Recipient shall perform (and document to the Corporation) the entire Project, even if the funds provided hereunder do not cover 100% of the costs to complete the Project. Substandard performance as reasonably determined by Grantee, in its sole discretion, will constitute noncompliance with this Agreement if Recipient fails to take corrective action within a reasonable period of time (as determined by Grantee). If the Recipient does not take action to correct such substandard performance within a reasonable period of time (as determined by Grantee) after being notified by Grantee or the Corporation in writing, the Corporation may withhold Grant funds for noncompliant and/or unallowable work and/or take action to suspend or terminate this Agreement or other actions as permitted under applicable law.

II. CDBG-DR GRANT FUNDS

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

III. DISBURSEMENT OF GRANT FUNDS

- e) The use of Grant Funds is conditioned upon the Recipient incurring allowable costs permitted under the terms of this Agreement or as otherwise pre-approved, in writing, by the Corporation. The Recipient 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).

- f) In the event cognizant State or Federal Government authorities disallow any of the costs incurred by the Recipient, the Recipient shall immediately remit any funds received by the Recipient for the unallowable costs to the Corporation. The Recipient may request that the Corporation challenge the State or Federal determination and pursue other legal recourse to secure these funds; however, the Corporation maintains the sole discretion in deciding whether to pursue such funds

IV. 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.

V. GENERAL CONDITIONS

A. Compliance

The Recipient 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:

- (3) The Recipient does not assume Grantee’s environmental responsibilities described in 24 CFR 570.604; and
- (4) The Recipient 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.

The Recipient also agrees to comply with all other applicable Federal, State, 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 law, regulation, HUD Notice, policy or guideline was established or made effective, 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 and 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. The Recipient further agrees to utilize Grant Funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Workers' Compensation

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

C. Insurance & Bonding

The Recipient 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 the Corporation. The Agency, the Corporation and the Grantee shall be named as an additional insured on all such insurance and shall meet all other insurance requirements as the Corporation 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 the Corporation from time to time. Certificates of insurance, including all necessary endorsements, shall be provided to the Corporation and full and complete copies of the policies and/or bonds shall be provided to the Corporation upon its request for the same.

For construction or facility improvement performed by the Recipients or any subrecipients or contractors, the Recipient shall ensure compliance with bonding requirements, including but not limited to those found at 24 CFR 85.36 or 84.48, as applicable.

D. Grantee Recognition

The Recipient shall ensure recognition of the role of HUD and Grantee in providing funding, services, and efforts through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to role of HUD and of Grantee. In addition, the Recipient 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.

VI. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Recipient 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

The Recipient 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

The Recipient 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 the Corporation. 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. Data

The Recipient may require their subrecipients or contractors to collect applicant data in the geographic vicinity of the work pursuant to Exhibit A. 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 cognizant federal authorities, Grantee monitors, or their designees for review upon request.

3. Disclosure

The Recipient 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).

4. Close-out

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

5. Audits & Inspections

All Recipient 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 the Recipient, as applicable within 30 days after receipt by such Party. Failure of the Recipient 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. The Recipient hereby agrees to have an annual audit conducted in accordance with OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income and Other Assets

The Recipient, if applicable, 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 the Corporation, absent written authorization 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 the Corporation.

All Program assets, other than Program Income (property, equipment, etc.) shall revert to the Corporation upon termination of this Agreement in accordance with applicable State, 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, the Recipient, as applicable, shall submit regular Progress Reports to the Corporation in the form, content, and frequency as required by the Corporation. 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. Reporting Obligations

The following chart summarizes some of the Recipient reporting obligations to the Corporation. This chart is not intended to catalogue all of the reporting obligations under this Agreement. Note, some of the below reports require the submission of information related to contractors and subsequent subcontractors, which the Recipient is responsible for collecting and providing to the Corporation 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

The Recipient 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 the Corporation 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, the Recipient, as applicable, will monitor any and all subrecipient or contractor efforts on a regular basis to assure compliance. Results of monitoring efforts shall be summarized in 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 the Corporation, followed by a written report within ten (10) calendar days.

3. Content

The Recipient shall cause **all** of the provisions of this Agreement in its entirety to be included in and made a part of any subrecipient or contractor agreement executed to effectuate this Agreement.

4. Selection Process

The Recipient shall undertake to ensure that all subrecipients or contractors 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). The Recipient understands that the Corporation shall provide all executed copies of all subrecipient or contractor agreements to Grantee along with documentation concerning the selection process.

E. Procurement/Contracting

1. General

Unless specified otherwise within this Agreement, the Recipient 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 the Grantee's, Agency's, and/or Corporation's procurement policies are more stringent than those found at 24 CFR 85.36 or 84.40-48, as applicable, will the Recipient be required to comply with current Grantee, Agency, and/or Corporation policy concerning the acquisition of materials, property, equipment, or services. The Recipient shall not enter into any contract for goods or services under this Agreement with any entity without the written consent of the Corporation prior to the execution of such contract.

2. HUD General Provisions

The Recipient shall include Grantee's Supplemental Provisions, attached hereto as Exhibit E,⁵ in any contract entered into under this Agreement. The Recipient shall also require all contractors to flow down Grantee's Supplemental Provisions to all subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

3. Records

The Recipient 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 the Corporation's procurement record retention standards are more stringent than Federal regulation shall the Recipient 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 the Corporation. In the event that the Corporation authorizes travel, the Recipient shall comply with HUD's Travel Regulations (Travel Handbook 2300.2). The Recipient shall obtain prior written approval from the Corporation 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. The Recipient shall transfer to the Corporation 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 the Recipient'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 the Corporation deems appropriate. If the Recipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Recipient, as applicable, shall pay the Corporation an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG

⁵ Exhibit E has been revised from GOSR's standard Exhibit E, because many of the terms and conditions contained therein are already covered by the Corporation's agreements with subrecipients and contractors.

funds for acquisition of, or improvement to, the property. Such payment shall constitute Program Income to the Corporation. The Recipient 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 the Corporation 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 MOU were used to acquire the equipment). Equipment not needed by the Recipient for activities under this Agreement shall be (a) transferred to the Corporation; or (b) retained after compensating the Corporation 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.

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

To the extent applicable to their performance under this Agreement, and as modified by the HUD Notices, the Recipient 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. The Recipient 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. The Recipient also agrees to comply with applicable the Corporation ordinances, resolutions, policies and/or directives concerning the displacement of persons from their residences.

VIII. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Recipient 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. 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, the Recipient 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 the Corporation 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, the Recipient, 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.

3. Section 504

The Recipient 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. The Corporation and shall provide the Recipient 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

The Recipient agrees to be committed to carry out, pursuant to the Corporation's specifications, an Affirmative Action Program in keeping with the principles as provided in Executive Order 11246 of September 24, 1965. The Corporation shall provide certain Affirmative Action guidelines to the Recipient to assist in the formulation of such program. The Recipient 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

The Recipient 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.

The Recipient 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 Afro-Americans, Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans, Asian-Americans, and American Indians. The Recipient 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 certain HTFC-funded subrecipient agreements, memoranda of understanding, and all HTFC-funded contracts and subcontracts. HTFC values affording M/WBEs the opportunity to participate in the performance of these subrecipient agreements, memoranda of understanding, contracts and subcontracts to be awarded under this project. Accordingly, the Recipient certifies that they have made and will continue to make good-faith efforts to promote and assist the participation of certified M/WBEs through the use of non-governmental subrecipients, contractors and their subcontractors at all tiers on this project, in an amount equal to twenty percent (20%) minority-owned business enterprises (“MBE”) and/or women-owned business enterprises (“WBE”) of the total dollar value of this project. These participation goals are applicable to this Agreement as set forth in Exhibit E, Appendix III and will be monitored by HTFC.⁶

The Recipient, and any subrecipients, contractors, and their subcontractors at all tiers shall 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.⁷

In accordance with those requirements, the Recipient, as applicable, shall require all covered subrecipients, contractors and their subcontractors at all tiers to submit the required M/WBE documentation, including utilization plans and quarterly reports, to the Recipient. The Recipient shall provide quarterly reporting of M/WBE data in a form acceptable to the Corporation, which may require the Recipient to consolidate all reports received from any subrecipients, contractors and subcontractors into a single report or several reports as reasonably requested by the Corporation with

⁶ Exhibit E has been revised from GOSR’s standard Exhibit E, because many of the terms and conditions contained therein are already covered by the Agency’s or Corporation’s agreement with lower-tiered subrecipients and contractors.

⁷ Exhibit E has been revised from GOSR’s standard Exhibit E, because many of the terms and conditions contained therein are already covered by the Agency’s or Corporation’s agreement with lower-tiered subrecipients and contractors.

copies of subrecipient, contractor and subcontractor M/WBE documentation as supporting documentation. Notwithstanding the provision of such reports and supporting documentation, the Recipient, and any subrecipients, 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

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

4. Access to Records

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

5. Contract Provisions

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

C. Employment Restrictions

1. Prohibited Activity

The Recipient 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

The Recipient 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. The Recipient 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. The Recipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Corporation for review upon request. The Recipient 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 the Corporation 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 the Recipient of its obligation, if any, to require payment of the higher wage. The Recipient 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 the Corporation, the Agency, the Corporation, the Recipient, and any subrecipients, contractors, and subcontractors. Failure to fulfill these requirements shall subject Grantee, the Agency, the Corporation, the Recipient and any subrecipients, contractors, and subcontractors, as well as their successors and assigns, to those sanctions specified by the agreement through which Federal assistance is provided. The Recipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Recipient further agrees to comply with these “Section 3” requirements and to include the following language in all subsequent 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.”

The Recipient further agree 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.

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

b. Notifications

The Recipient 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

The Recipient will include this Section 3 clause in subsequent subrecipient agreements, contracts, and subcontracts, and will take appropriate action, as directed by the Corporation, pursuant to any finding that a subrecipient, contractor, or subcontractor is in violation of regulations issued by HUD. The Recipient 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 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, the Recipient shall submit quarterly reports along with any supporting documentation, in a form acceptable to the Corporation of its Section 3 compliance efforts to the Corporation,

which may require the Recipient to consolidate all reports received from lower tiered subrecipients, contractors and subcontractors into a single report or several reports as reasonably requested by the Corporation. Notwithstanding the provision of such reports and supporting documentation, the Recipient 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 V.C.4.

D. Conduct

1. Hatch Act

The Recipient 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

The Recipient 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 the Recipient 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 the Recipient is not, they shall maintain written standards of conduct governing the performance of 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, the Agency, the Corporation, the Recipient or any designated public agency.

4. Copyright

If this Agreement results in any copyrightable material or inventions, Grantee, the Agency, the Corporation, 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

The Recipient 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.

IX. ENVIRONMENTAL CONDITIONS

A. Environmental Laws

The Agency, Corporation, Recipient and Grantee 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:

- 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 requirements resulting from a review or reassessment of any action funded in whole or in part under this Agreement.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Recipient shall assure that subrecipients and contractors 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

The Recipient 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

The Recipient 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

The Recipient agrees to comply with and timely implement or cause to be implemented 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 the Recipient's responsibility to ensure that it has complete copies of all such documents.

X. SUBROGATION

The Recipient acknowledges that funds provided through this Agreement are Federal funds administered by HUD under the CDBG-DR Program (including funds that may satisfy local match or non-Federal share requirements pursuant to 42 USC § 5305(a) (9) and 24 CFR § 570.201(g)) 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, the Recipient shall promptly return any and all funds to the Corporation, 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.

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”) in any work created as a result of this MOU. Note, any public information and all of the items below must be approved by HTFC in advance of publication or posting.

Such requirement does not apply to notices or documents and materials prepared relating to obtaining program or project approvals of the Corporation’s Board of Directors or the Public Authorities Control Board.

Written documents:

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

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 HTFC and GOSR logo 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 HTFC’s and GOSR’s website.

Offices open to the public providing services funded by HTFC:

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 Agency, Corporation, and a phone number for the public to call to obtain information about the project. This must be a phone number maintained by the Agency, Corporation or one of its contractors.

Completed Projects:

1. Completed projects must include permanent recognition of HTFC and GOSR. The Agency and Corporation is required to submit to HTFC and GOSR for written approval of the proposed permanent recognition. HTFC and GOSR may waive this requirement on a project by project basis.

EXHIBIT E

Appendices for Contractors and Subcontractors at all Tiers

Note: This Exhibit has been revised from GOSR's standard Exhibit E, because many of the terms and conditions contained therein are already covered by the Agency's subrecipient's agreement with lower-tiered subrecipients and contractors.

EXHIBIT E

SUPPLEMENTARY CONDITIONS FOR CONTRACTS

Pursuant to Community Development Block Grant Disaster Recovery Subrecipient Agreement

Instructions for Subrecipient

- (1) Pursuant to the Subrecipient Agreement, these Supplementary Conditions shall be incorporated into all contracts, subcontracts and lower-tiered subcontracts issued under the Subrecipient Agreement. Accordingly, Subrecipient shall:
 - a. Incorporate these Supplementary Conditions into all contracts under this Subrecipient Agreement;
 - b. Require all contractors to incorporate these Supplementary Conditions in all subcontracts; and
 - c. Require all contractors to require their subcontractors incorporate these Supplementary Conditions in all lower-tiered subcontracts.
- (2) Subrecipient shall include this package of Supplementary Conditions as part of the bid packages for all contracts, with the following information added to the Introductory Statement:
 - a. Fill in Project, Project Location, Subrecipient name and address, and Contract Number on the first page of the Introductory Statement.
 - b. Fill in Subrecipient name in the signature block on the second page of the Introductory Statement.
 - c. Attach Insurance Requirements for the Project as Attachment A to the Introductory Statement.
- (3) As part of the bidding process, Subrecipient shall collect the following from all bidders:
 - a. Introductory Statement, with bidder's name and address filled in where Contractor's name and address is required, executed by bidder. Per Instruction No. 5, Subrecipient

need not execute until a bidder is selected, whereby Subrecipient shall execute with other contract documents.

Subrecipient shall appropriately consider in its award decision the information provided in the above referenced forms as indicia of the bidders' ability to comply with related terms of the prospective contract.

- (4) Upon execution of a contract, Subrecipient shall execute and date the Introductory Statement, and Contractor shall execute the following forms (included in Part 6):
 - a. Form PROC-4 (M/WBE and EEO Policy Statement); and
 - b. Form PROC-8 (EEOC Statement).
- (5) Following execution of a contract, Contractor shall complete and submit the forms included in Part 6 pursuant to the instructions set forth on the forms. Of note:
 - a. The following form is required to be completed weekly and retained:
 - i. Form WH-374 (Federal Payroll Form) – As of September 11, 2014, this form is available at <http://www.dol.gov/whd/forms/wh347.pdf>.
 - b. The following forms have quarterly submission requirements, as set forth in their instructions (except as indicated below):
 - i. Form ADM-123 (Cumulative Payment Statement);
 - ii. Form ADM-146 (Affirmation of Income Payments to MBE/WBE); and
 - iii. Form HUD 60002 (Section 3 Summary Report) – which shall be completed quarterly notwithstanding the annual reporting requirement set forth in its instructions.
 - iv. Form ADM-136 (Monthly Employment Utilization Form).
 - c. The following form has annual submission requirements, as set forth in its instructions:
 - i. Form HUD 2516 (Contract and Subcontract Activity).
- (6) Subrecipient shall instruct all contractors to follow these instructions for all subcontracts and lower-tiered subcontracts.
- (7) Due to the funding nature of the Subrecipient Agreement, both federal and state requirements are required to be flowed down to contractors and subcontractors at all tiers as delineated in this Exhibit E. As a result:
 - a. References to any federal or state entity, such as the State of New York or HTFC, shall

be construed as follows:

- i. For contracts – references to any federal or state entity shall refer to the Subrecipient that is procuring goods and/or services under the subject contract. However, the term shall not be construed to refer to the Subrecipient in those instances where a provision relates to a right or activity that is of a governmental nature (e.g., enforcement of laws, audit rights, etc.). If the Subrecipient is a unit of governmental authority (e.g., a state, county, or local government entity), references to the federal or state entity shall be construed to encompass the governmental Subrecipient, as well as cognizant federal or state entities.
- ii. For subcontracts (at all tiers) – references to any federal or state entity shall refer to the contractor or higher-tiered subcontractor that is procuring goods and/or services under the subject contract. However, the term shall not be construed to refer to the contractor or higher-tiered subcontractor in those instances where a provision relates to a right or activity that is of a governmental nature (e.g., enforcement of laws, audit rights, etc.).

b. References to “Subrecipient” and “contractor” shall be construed as follows:

- i. For contracts – references to “Subrecipient” shall be deemed to refer to the contractor, and references to “contractor” shall be deemed to refer to the applicable subcontractor.
- ii. For subcontracts (at all tiers) – references to “Subrecipient” shall be deemed to refer to the applicable subcontractor, and references to “Contractor” shall be deemed to refer to the applicable lower-tiered subcontractor.

**Governor's Office of Storm Recovery
Supplementary Conditions for Contracts**

INTRODUCTORY STATEMENT

“Project” or “Program”: [Insert]

Project Location: [Insert]

“Subrecipient”: [Insert Name and Address]

“Contractor”: [Insert Name and Address]

Contract Number: [Insert]

“Insurance Requirements”: See Attachment A to Introductory Statement

Housing Trust Fund Corporation (“HTFC” or “Grantee”), acting through the Governor’s Office of Storm Recovery (“GOSR”) has entered into a Subrecipient Agreement with the Subrecipient for a grant of Community Development Block Grant Disaster Recovery (“CDBG-DR”) funds for purposes of the design and construction of the Project (the “Subrecipient Agreement”). This grant represents a portion of CDBG-DR funds received or to be received under the Federal CDBG-DR program administered by the U.S. Department of Housing and Urban Development (“HUD”) to fund necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure, and/or 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 (subject to the Federal statutes and regulations governing CDBG grants, as modified by exceptions and waivers previously or hereafter granted by HUD).

Subrecipient is a municipal government or other government agency, which will use its own form contracts and other project agreements for the Project. However, as a condition to receiving CDBG-DR funds for the Project, Subrecipient is required to include these Supplementary Conditions in each contract which it enters into for the applicable project and to require all contractors to include these Supplementary Conditions in every subsequent subcontract and lower-tiered subcontracts so that such provisions are binding upon each contractor, subcontractor and lower-tiered subcontractor. Among other things, as set forth more specifically below, these Supplementary Conditions (a) include GOSR requirements which may not otherwise be included in the contract; (b) define the order of precedence for the interpretation and enforcement of the various parts and provisions of the contract (including these Supplementary Conditions); and (c) add certain other provisions which GOSR deems necessary or desirable for the orderly administration and enforcement of the contract. For purposes of subcontracts, references in these Supplementary Conditions to “Subrecipient” shall be deemed to refer to Contractor, and references to “Contractor” shall be deemed to refer to the applicable subcontractor. For purposes of lower-tiered subcontracts, references in these Supplementary Conditions to “Subrecipient” shall be deemed to refer to the applicable subcontractor, and references to “Contractor” shall be deemed to refer to the applicable lower-tiered subcontractor.

Accordingly, Subrecipient and Contractor have signed below to evidence their agreement to (a) incorporate into the contract these Supplementary Conditions (which shall be deemed “Contract Documents” under the contract), (b) include these Supplementary Conditions in all subcontracts under the contract, and (c) require that all subcontractors reproduce these Supplementary Conditions in all lower-tiered subcontracts under the contract. By signing below, contractor agrees to comply with the terms and

conditions of these Supplementary Conditions and to complete and submit the forms contained herein as required under these Supplementary Conditions and the instructions on the forms. Contractor hereby certifies, affirms, stipulates, represents and warrants to all provisions contained herein requiring such certification, affirmation, stipulation, representation or warranty, as applicable.

DATE: _____

SUBRECIPIENT
[INSERT SUBRECIPIENT NAME]

By: _____
Name:
Title:

CONTRACTOR
[INSERT CONTRACTOR NAME]

By: _____
Name:
Title:

Attachment A to Introductory Statement

INSURANCE REQUIREMENTS

In addition to the insurance requirements the Subrecipient imposes on contractors and/or subcontractors in the usual course of business, commensurate with the activity at issue herein, Subrecipient shall require the following of contractors and their subcontractors performing work under this Agreement:

Contractor shall ensure that, with respect to any insurance-related obligations imposed upon Contractor and/or its subcontractors, the Housing Trust Fund Corporation (“HTFC”) shall have and enjoy each and all of the same protections, rights and benefits as the Subrecipient. Without limiting the generality of the foregoing, each and all of the insurance-related protections, rights, and benefits of the Subrecipient vis-à-vis the Contractor and/or its subcontractors shall be “flowed up” to HTFC and shall include HTFC to the same extent as the Subrecipient, including but not limited to HTFC being indemnified, defended, and held harmless by Contractor and its subcontractors, being named as an additional insured on all of Contractor’s or its subcontractor’s policies of insurance, and being provided copies of all such policies and other evidence of insurance.

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PART 5 STANDARD CLAUSES FOR CONTRACTS WITH THE HOUSING TRUST FUND CORPORATION (“HTFC STANDARD CLAUSES”)

Sets forth the HTFC standard clauses applicable to the contract and all subcontracts under the contract pursuant to the Subrecipient Agreement.

PART 6 REQUIRED DIVERSITY FORMS AND CONSTRUCTION REQUIREMENTS

- 6A – HUD Diversity Forms
- 6B – HTFC Diversity Forms
- 6C – Construction Requirements and Procedures for Contracts with HTFC

Includes standard forms required pursuant to the HUD General Provisions, HTFC M/WBE Requirements and HTFC Standard Clauses. Such forms shall be completed and submitted by Contractor as required by their instructions and the terms of these Supplementary Conditions.

PART 1

ORDER OF PRECEDENCE OF DOCUMENTS

PART 1

ORDER OF PRECEDENCE OF DOCUMENTS

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) The Instructions for Subrecipient; then
- (2) The HUD General Provisions (Part 3); then
- (3) The HTFC M/WBE Requirements (Part 4); then
- (4) The HTFC Standard Clauses (Part 5); then
- (5) The Required Contract Terms (Part 2);

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 2

**COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY SUBRECIPIENT AGREEMENT**

REQUIRED TERMS FOR CONTRACTS

PART 2

COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY SUBRECIPIENT AGREEMENT

REQUIRED TERMS FOR CONTRACTS

A. Insurance & Bonding

Contractor shall carry, and shall cause its subcontractors and sub-subcontractors to carry, the insurance coverage set forth in Attachment A - Insurance Requirements attached hereto to the Introductory Statement to these Supplementary Conditions.

B. Civil Rights

1. Compliance

Contractor 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

Contractor 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

The Subrecipient 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 the Subrecipient Agreement, Contractor shall cause or shall 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 that any such sale, lease or other transfer of land shall occur, Contractor, 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

Contractor 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. Subrecipient shall provide Contractor with certain guidelines for compliance with that portion of the regulations in force during the term of the contract.

C. Affirmative Action

1. Approved Plan

Contractor agrees that it shall be committed to carry out, pursuant to Subrecipient's specifications, an Affirmative Action Program in keeping with the principles as provided in Executive Order 11246 of September 24, 1965. Subrecipient shall provide certain Affirmative Action guidelines to Contractor to assist in the formulation of such program. Contractor 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. Reserved

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 certain HTFC-funded subrecipient agreements, and all HTFC-funded contracts and subcontracts. HTFC values affording M/WBEs the opportunity to participate in the performance of these subrecipient agreements, contracts and subcontracts to be awarded under this project. Accordingly, Contractor 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 non-governmental sub-subrecipients, contractors and their subcontractors at all tiers on this project, in an amount equal to twenty percent (20%) in the aggregate of minority-owned business enterprises ("MBE") and women-owned business enterprises ("WBE") of the total dollar value of this project. This participation goal is applicable to the contract as set forth in Part 4 of these Supplementary Conditions and will be monitored by HTFC.

Contractor and its subcontractors at all tiers shall 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 as Part 4 of these Supplementary Conditions, and in the New York State Environmental Facilities Corporation's (EFC) NY State Revolving Fund MWBE / EEO / DBRA Bid Packet for Construction Contracts effective October 1, 2014 (the "EFC Bid Packet"). In accordance with those requirements, Contractor shall submit and shall require all covered subcontractors at all tiers to submit the required M/WBE documentation, including utilization plans and quarterly reports, as required in the EFC Bid Packet, and EFC shall provide such documentation to Subrecipient on a quarterly

basis.

3. Reserved

4. Retention

Contractor shall retain all records pertinent to these Required Terms for a period of six (6) 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 Subrecipient 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.

5. Access to Records

Contractor shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by Subrecipient, 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.

D. Employment Restrictions

1. Labor Standards

Contractor 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. Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Subrecipient and Grantee for review upon request. If Contractor is engaged under a contract in excess of \$2,000.00 for construction, renovation, or repair work financed in whole or in part with assistance provided under the Subrecipient Agreement, 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 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 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.

2. **“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 the contract, shall be a condition of the Federal financial assistance provided under the Subrecipient Agreement and binding upon Grantee, Subrecipient, Contractor, and any of Contractor’s subcontractors and lower-tiered subcontractors. Failure to fulfill these requirements shall subject Grantee, Subrecipient, Contractor, and any of Contractor’s subcontractors and lower-tiered subcontractors, as well as their successors and assigns, to those sanctions specified by the agreement through which Federal assistance is provided. Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Contractor further agrees to comply with these “Section 3” requirements and to include the following language in all subsequent contracts and subcontracts executed under the contract:

“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.”

Contractor 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.

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

b. Notifications

Contractor 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

Contractor will take appropriate action, pursuant to any such agreement, upon a finding that a subcontractor or lower-tiered subcontractor is in violation of regulations issued by HUD. Contractor will not subcontract 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 subcontract 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, 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 Required Terms.

PART 3

HUD GENERAL PROVISIONS

PART 3

HUD GENERAL 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”).

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 State reserves its right 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 State. The Contractor shall cooperate with all State 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. ACCESS TO RECORDS

The State, the U.S. Department of Housing and Urban Development, 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.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least six (6) years following the date of final payment and close-out of all pending matters related to this contract.

7. RESERVED

8. 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 CFR 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

9. 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).

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, 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.

11. 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.

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), 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.

13. 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.

14. 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.

15. CONFLICTS OF INTEREST

The Contractor shall notify the State 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 State is able to assess such actual or potential conflict. The Contractor shall provide the State any additional information necessary for the State to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the State, 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.

16. SUBCONTRACTING

When subcontracting, the Contractor shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a *brand name* product instead of allowing an *equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

The Contractor represents to the State 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 HUD General 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.

17. 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 State.

18. INDEMNIFICATION

The Contractor shall indemnify, defend, and hold harmless the State and its 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.

19. 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; Title 18 U.S.C. § 874; and Title 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.

20. 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.

21. RESERVED

22. 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 State 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 State, become the State'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 State for damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the State from the Contractor is determined.

23. TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000)

The State 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 State as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

24. SECTION 503 OF THE REHABILITATION ACT OF 1973
(Applicable to contracts exceeding \$10,000)

The Contractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers With Disabilities

- I. 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:
 - i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;

- vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;
 - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the contractor including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.
2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 3. 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.
 4. 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).
 5. 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.
 6. 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. RESERVED

26. CERTIFICATION OF NONSEGREGATED FACILITIES
(Applicable to construction contracts exceeding \$10,000)

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 24 CFR 85.36 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 equal opportunity 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 equal opportunity 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).

27. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS
(Applicable to contracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, 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. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (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 paragraph (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.

28. RESERVED

29. 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:

- (1) *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.
- (2) *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.
- (3) *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.

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

(As required by applicable thresholds)

- 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, availability of apprenticeship and training positions, the qualifications for each; and 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).

PART 4

**PARTICIPATION BY MINORITY GROUP MEMBERS
AND WOMEN**

**REQUIREMENTS AND PROCEDURES
FOR CONTRACTS WITH
HOUSING TRUST FUND CORPORATION**

PART 4

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN

REQUIREMENTS AND PROCEDURES FOR CONTRACTS WITH HOUSING TRUST FUND CORPORATION

I. General Provisions

The Corporation is required to implement the provisions of New York State ("State") Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value: (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

II. Contract Goals

For purposes of this procurement, the Corporation hereby establishes an overall cumulative goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation (based on the current availability of qualified Minority-Owned Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE")).

III. Equal Employment Opportunity (EEO)

- A. In addition to EFC's EEO requirements, Contractor shall comply with the following provisions of Article 15-A:
1. The Contractor shall submit an EEO policy statement (Form PROC-8) to the Corporation within seventy two (72) hours after the date of the notice by Corporation to award the Contract to the Contractor.

IV. Minority and Women-Owned Business Enterprises ("MWBE")

- A. The Contractor shall comply with all MWBE requirements set forth in the New York State Environmental Facilities Corporation's ("EFC") NY State Revolving Fund MWBE / EEO / DBRA Bid Packet for Construction Contracts effective October 1, 2014 (the "EFC Bid Packet"), provided that the MWBE participation goals shall be as set forth in Section II above, and further provided that such MWBE requirements shall apply to contracts at the values set forth in Section I above. In addition to the documentation required from Contractor pursuant to the EFC Bid Package (which EFC shall submit to HTFC on a quarterly basis), Contractor shall submit the M/WBE and EEO Policy Statement (PROC-4) to HTFC upon execution of this Contract, and Contractor shall submit the following forms to New York State Homes and Community Renewal on a quarterly basis: Cumulative Payment Statement (Form ADM-123), Affirmation of Income Payments to MBE/WBE (Form ADM-146) and Monthly Employment Utilization Form (Form ADM-136).

PART 5

**STANDARD CLAUSES FOR CONTRACTS
WITH THE HOUSING TRUST FUND CORPORATION**

PART 5

STANDARD CLAUSES FOR CONTRACTS WITH THE HOUSING TRUST FUND CORPORATION

Housing Trust Fund Corporation
38-40 State Street, Albany, New York 12207

New York State Finance Agency, State of New York Mortgage Agency
New York State Affordable Housing Corporation, State of New York Municipal Bond
Bank Agency, and Tobacco Settlement Financing Corporation
641 Lexington Avenue, New York, New York 10022, (212) 688-4000

May, 2014

STANDARD CLAUSES FOR AGENCY CONTRACTS

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 (the word "Contractor" herein refers to any party other than the State of New York ("State"), whether a contractor, licenser, licensee, lessor, lessee or any other party):

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 Agency or Agencies 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 Agency or Agencies involved in this Contract 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 Agency or Agencies 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 Agencies' Senior Vice President and Counsel, in writing, that said records should not be disclosed; (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 Agency's or Agencies' right to discovery in any pending or future litigation.

2. **CONFLICTS OF INTEREST.** The Contractor shall not accept any engagement in conflict with the Agency's or Agencies' interest in the subject matter of this Contract.

The Servicer shall not offer to any employee, member or director of the Agency or Agencies' any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

3. **SUBCONSULTANTS.** The Contractor shall not employ, contract with, or use the services of any consultant for the work of this Contract (except such third parties which may be used by the Contractor in the normal course of business, such as couriers, imaging services, etc.) without obtaining the prior written approval of the Agency or Agencies.

4. **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 Agency or Agencies and any attempts to assign the Contract without the Agency or Agencies' written consent are null and void. However, this Contract shall be binding upon and inure to the benefit of the Agency or Agencies and its successors and assigns.

5. **INDEMNITY.** The Contractor shall indemnify and hold the Agency or Agencies 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.

6. **RESERVED.**

7. **RESERVED.**

8. **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 Agency or Agencies. All original documents constituting Proprietary Information shall be delivered to the Agency or Agencies 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 Agency or Agencies, 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 Agencies' Senior Vice President and Counsel. 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.

9. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices submitted for payment for the sale of goods or services or the lease of real or personal property to the Agency or Agencies must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Agency or Agencies is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by Agency or Agencies to purchase the goods or services or lease the real or personal property covered by this Contract or lease. The information is maintained by Disbursement Manager at the Agency or Agencies, 641 Lexington Avenue, New York, New York 10022, under the name "Vendor Federal Social Security and Federal Employee Identification Numbers."

10. CONTRACTUAL RELATIONSHIP. It is expressly understood that the relationship between the Agency or Agencies and the Contractor is an independent contractual relationship and neither the Contractor, its employees, nor its subcontractors shall be considered employees of the Agency or Agencies for any purpose. In addition, the Contractor shall execute the Certificate of Interest attached hereto as Exhibit A and incorporated herein.

Please refer to the following link on the Agency's web site to view each of the Agency's Prompt Payment Policies at <http://www.nysocr.org/Agencies/ITFC/Publications/PromptPaymentsReport2012.pdf> or <http://www.nysocr.org/AboutUs/Procurement/ContractInformation.htm>.

11. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the Contractor and the Agency or Agencies with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Part, the terms of this Part shall control.

12. MODIFICATION. Waiver, discharge, amendment, supplement, extension or other modification of this Contract shall be subject to prior approval by the Agency or Agencies and may be effected only by an instrument in writing signed by the parties to this Contract.

13. 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.

14. 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.

15. 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.

16. NOTICES. All notices and other communications given hereunder shall not be effective for any purpose whatsoever unless in writing and delivered by hand or mailed by United States first class registered or certified mail, return receipt requested. Notice shall be deemed to have been given, if delivered by hand, when actually received by the party being notified, or, if mailed, when addressed: (a) if to the Contractor, to the attention of the Contractor's authorized signatory of this Contract at the address specified for the Contractor on page one of this Contract, or at such other address as to which the Contractor shall have notified the Agency or Agencies, and (b) if to the Agency or Agencies, to the attention of the Senior Vice President and Counsel, at the address for the Agency or Agencies on page one this Contract, or at such other address of which the Agency or Agencies shall have notified the Contractor.

17. SEVERABILITY. All rights, powers and remedies provided herein may be exercised only to the extent that they do not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Contract invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision or term of this Contract or any portion of a provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and this Contract shall be construed as if such invalid, illegal or unenforceable provision or part thereof had not been contained herein.

18. 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.

19. 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.

20. 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 Agency's or Agencies' receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Agency or Agencies, in writing, of each and every change of address to which service of process can be made. Service of process by the Agency or Agencies 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.

21. 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. The Contractor further affirms that, at the time the Contractor submitted its bid or proposal, an authorized and responsible person executed and delivered a non-collusive bidding certification to the Agency or Agencies on the Contractor's behalf.

22. 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 Agency or Agencies reserves the right to terminate this Contract in the event it is found that the certification filed by the Offeror/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Agency or Agencies may exercise their termination right by providing written notification to the Contractor.

23. 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.

24. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100 Fax: 518-292-5884
Email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, New York 10017
Telephone: 212-803-2424
Email: <https://nynewnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or Contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts.

25. GENERAL RESPONSIBILITY LANGUAGE. The Contractor shall at all times during Contract term remain responsible. The Contractor agrees, if requested by the Agencies, 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 Agencies may make certain determinations with respect to Contractor responsibility, wherein the Agencies determine 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 Agencies against failed contracts. In making such a responsibility determination, the Agencies 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.

26. SUSPENSION OF WORK (for Non-Responsibility). The Agencies reserve the right to suspend any or all activities under this Contract, at any time, when the Agency 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 Agencies issue a written notice authorizing a resumption of performance under the Contract.

27. TERMINATION (for Non-Responsibility). Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency staff, the Contract may be terminated by

the Agencies at the Contractor's expense where the Contractor is determined by the Agencies to be non-responsible. In such event, the Agencies may complete the contractual requirements in any manner they deem advisable and pursue available legal or equitable remedies for breach.

28. 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 Agency.

During the term of the Contract, should the Agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Agency 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 Agency 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 Agency 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 6

REQUIRED DIVERSITY FORMS AND CONSTRUCTION REQUIREMENTS

The following forms shall be completed and submitted by Contractor as required by the instructions set forth on the forms. Of note:

- (1) As part of the bidding process, Subrecipient shall collect the following forms from all bidders:
 - a. Introductory Statement, with bidder's name and address filled in where Contractor's name and address is required, executed by bidder.

Subrecipient shall appropriately consider in its award decision the information provided in the above referenced forms as indicia of the bidders' ability to comply with related terms of the prospective contract.

- (2) Upon execution of a contract, Contractor shall execute the following forms:

- a. Form PROC-4 (M/WBE and EEO Policy Statement); and
- b. Form PROC-8 (EEOC Statement).

(3) Following execution of a contract, Contractor shall complete and submit the following forms.
Of note:

- a. The following form is required to be completed weekly and retained:
 - i. Form WH-374 (Federal Payroll Form) – As of September 11, 2014, this form is available at <http://www.dol.gov/whd/forms/wh347.pdf>.
- b. The following forms have quarterly submission requirements, as set forth in their instructions (except as indicated below):
 - i. Form ADM-123 (Cumulative Payment Statement);
 - ii. Form ADM-146 (Affirmation of Income Payments to MBE/WBE); and
 - iii. Form HUD 60002 (Section 3 Summary Report) – which shall be completed quarterly notwithstanding the annual reporting requirement set forth in its instructions.
 - iv. Form ADM-136 (Monthly Employment Utilization Form).
- c. The following form has annual submission requirements, as set forth in its instructions:
 - i. Form HUD 2516 (Contract and Subcontract Activity).

PART 6A. HUD Diversity Forms

This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of \$10,000 or more under the following programs: Community Development Block Grants (entitlement and small cities), Urban Development Action Grants, Housing Development Grants, Multifamily Insured and Noninsured, Public and Indian Housing Authorities, and contracts entered into by recipients of CDBG rehabilitation assistance.

Contracts/subcontracts of less than \$10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.

This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60002 to report employment and training opportunities data. Form HUD-2516 is to be

completed for public and Indian housing and most community development programs. Form HUD-60002 is to be completed by all other HUD programs including State administered community development programs covered under Section 3.

A Section 3 contractor/subcontractor is a business concern that provides economic opportunities to low- and very low-income residents of the metropolitan area (or nonmetropolitan county), including a business concern that is 51 percent or more owned by low- or very low-income residents, employs a substantial number of low- or very low-income residents, or provides subcontracting or business development opportunities to businesses owned by low- or very low-income residents. Low- and very low-income residents include participants in Youthbuild programs established under Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act.

The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. Low-income persons mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary

may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families. Very low-income persons means low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.

Complete item 7h only once for each contractor/subcontractor on each semi-annual report.

Enter the prime contractor's ID in item 7f for all contracts and subcontracts. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

Community Development Programs

1. **Grantee:** Enter the name of the unit of government submitting this report.
3. **Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data
- 7a. **Grant Number:** Enter the HUD Community Development Block Grant identification Number (with dashes). For example B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number
- 7b. **Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract
- 7c. **Type of Trade:** Enter the numeric codes which best indicates the contractor's/ subcontractor's service. If subcontractor ID number is provided in 7f, the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities
- 7d. **Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic/gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor
- 7e. **Woman Owned Business:** Enter Yes or No
- 7f. **Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded
- 7g. **Section 3 Contractor:** Enter Yes or No
- 7h. **Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided
- 7i. **Section 3 Contractor:** Enter Yes or No.

firm receiving contract/subcontract activity only one time on each report for each firm

Multifamily Housing Programs

1. **Grantee/Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report
3. **Contact Person:** Same as item 3 under CPD Programs
4. **Reporting Period:** Check only one period
5. **Program Code:** Enter the appropriate program code
- 7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned
- 7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs
- 7c. **Type of Trade:** Same as item 7c. under CPD Programs
- 7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs
- 7e. **Woman Owned Business:** Enter Yes or No
- 7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs
- 7g. **Section 3 Contractor:** Enter Yes or No
- 7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs
- 7i. **Section 3 Subcontractor:** Enter Yes or No
- 7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs

Public Housing and Indian Housing Programs

PHAs/HAs are to report all contracts/subcontracts. Include only contracts executed during this reporting period.

1. **Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report. Check box as appropriate.
3. **Contact Person:** Same as item 3 under CPD Programs
4. **Reporting Period:** Check only one period
5. **Program Code:** Enter the appropriate program code.
- 7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned
- 7b. **Amount of Contract/Subcontract:** Same as item 7b under CPD Programs
- 7c. **Type of Trade:** Same as item 7c under CPD Programs
- 7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d under CPD Programs
- 7e. **Woman Owned Business:** Enter Yes or No
- 7f. **Contractor Identification (ID) Number:** Same as item 7f under CPD Programs
- 7g. **Section 3 Contractor:** Enter Yes or No
- 7h. **Subcontractor identification (ID) Number:** Same as item 7h under CPD Programs
- 7i. **Section 3 Contractor:** Enter Yes or No
- 7j. **Contractor/Subcontractor Name and Address:** Same as item 7j under CPD Programs

Contractor/Subcontractor Name and Address: Enter this information for each
Previous editions are obsolete

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$	
B. Total dollar amount of contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving contracts		

2. Non-Construction Contracts:

A. Total dollar amount of all non-construction contracts awarded on the project/activity	\$	
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving non-construction contracts		

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program, which promotes the award of contracts to business concerns that meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

Other Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program, which promotes the award of contracts to business concerns that meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., mandates that the Department ensure that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very low-

income persons, particularly those who are recipients of government assistance for housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as a self-monitoring tool. The data is entered into a data base and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian Housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F) or the number of new hires utilized on the Section 3 covered project (columns B, C and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit two copies of this report to the local HUD Field Office. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

HUD Field Office: Enter the Field Office name forwarding the Section 3 report.

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
- 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.

Submit two (2) copies of this report to the to the HUD Field Office of Fair Housing and Equal Opportunity, Program Operations and Compliance Center Director, at the same time the performance report is submitted to the program office. For those programs where such a report is not required, the Section 3 report is submitted by January 10. Include only contracts executed during the reporting period specified in item 8. PHAs/HAs are to report all contracts/subcontracts.

* The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.

9. Program Name: Enter the name of the HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e., supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New Hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: Enter the number of Section 3 residents that were employed and trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts - Self-explanatory

smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

her;
form HUD-60002 (6/2001)
ref 24 CFR 1

PART 6B. HTFC Diversity Forms

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

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered for (name agency/ies or project location) _____

MWBE

This organization will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from Agency(ies) and solicit bids from them directly.
- (3) Ensure that plans, specifications, requests for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhance participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative for a statement that it will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 2 _____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison

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

M/WBE Contract Goals

20% Minority and Women's Business Enterprise Participation

Minority Business Enterprise Participation

Women's Business Enterprise Participation

EEO Contract Goals

___% Minority Labor Force Participation

___% Female Labor Force Participation



New York State
Homes & Community Renewal
www.nyshcr.org

EEOC Statement

of the

New York State Housing Finance Agency,
State of New York Mortgage Agency,
New York State Affordable Housing Corporation,
State of New York Municipal Bond Bank Agency,
Tobacco Settlement Financing Corporation and
Housing Trust Fund Corporation
(individually, "Agency" and collectively, "Agencies")

It is the goal of the Agencies to ensure compliance with the federal Equal Employment Opportunity Act of 1972, as amended. Respondents with fifteen (15) or more employees responding to this solicitation, must submit a statement disclosing whether the Respondent: (a) is currently operating under or negotiating, or has at some time in the last five (5) years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); (b) has been, at some time in the last five (5) years, or is currently the subject of a civil action brought against it by the EEOC; (c) has been, at some time in the last five (5) years, or is currently the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; (d) has operated, at some time in the last five (5) years, or is currently operating under an order of a court to take affirmative action as a result of a civil action brought against it by the EEOC.

Please answer the above question either in the affirmative or negative.

_____ Respond YES or NO.

If YES, provide explanation:

Respondent's Signature

Date of Respondent's Signature

Print Name of Respondent

**PART 6C. Construction Requirements and
Procedures for Contracts with HTFC**



New York State
Homes & Community Renewal
 Office of Fair Housing and Equal Opportunity
 Web Site: www.nvshcr.org

CUMULATIVE PAYMENT STATEMENT
 (Instructions on Reverse Side)

Contractors Name and Address:	Federal ID #	Goals		Reporting Period	
		MBE __%	WBE __%	Quarter	Year
SHARS/Project #		Work Location			
Name of Firm and Address (List All Firms)	Type of Service Provided (Select only one)	NYS Certified MBE	WBE	Payment This period	Contract Amount
Federal ID#	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/>	<input type="checkbox"/>	No Payment <input type="checkbox"/>	
Federal ID#	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/>	<input type="checkbox"/>	No Payment <input type="checkbox"/>	
Federal ID#	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/>	<input type="checkbox"/>	No Payment <input type="checkbox"/>	
Federal ID#	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/>	<input type="checkbox"/>	No Payment <input type="checkbox"/>	

 Signature of Company Official

 Print Name of Company Official

 Date

INSTRUCTIONS FOR FILING CUMULATIVE PAYMENT STATEMENT

This document pertains to **HCR funding only**. The form is to be completed and signed by the Company Official and submitted by the 10th of each quarter. The form must include **ALL** (e.g. MBE, WBE and non-M/WBE) subcontractors or suppliers assigned to this contract. The Affirmation of Income Payments to MBE/WBE (ADM-146) must accompany this form for each MBE/WBE firm who has received payment.

Quarter	Reporting Period	Due Date
1st	April 1 – June 30	July 10
2nd	July 1- September 30	October 10
3rd	October 1 - December 31	January 10
4th	January 1 – March 31	April 10

- Contractor's Name & Address:** Indicate name, address, city, state and zip code.
- Contractor's Federal ID #:** If Federal ID # not assigned, provide Social Security # of the owner.
- Goals:** Indicate HCR's assigned MBE and WBE participation goals.
- Reporting Period:** Indicate reported month and year.
- SHARS/Project #:** Indicate HCR's SHARS #/Project #.
- Subcontractor or Supplier Name & Address**
Federal ID #: Indicate the name, address, city, state and zip code.
If Federal ID # not assigned, provide Social Security # of the owner.
- Description of Work:** Check the box that best describes the work performed. (CHECK ONE BOX ONLY)
- NYS Certified** Indicate if MBE or WBE. (CHECK ONE BOX ONLY) Only firms certified by NYS will be counted towards goals
- Payments This Period:** Indicate amount paid to each subcontractors or suppliers this reporting period.

NOTE: IF THERE WAS NO PAYMENT THIS PERIOD, PLEASE CHECK THE BOX.

Contract Amount: Indicate total contract amounts or purchase agreement(s) for each subcontractor or supplier.



New York State
Homes & Community Renewal
Office of Fair Housing and Equal Opportunity
Web Site: www.nysher.org

Affirmation of Income Payments to MBE/WBE

Each MBE and WBE FIRM must sign and submit this form to the Contractor. The Contractor/Vendor must submit this form to the Office of Fair Housing and Equal Opportunity by the 10th of each Quarter.

CONTRACTOR

1. Name and Address of Contractor

2. SHARS/Project #

Federal ID #	<p>3. Reporting Period</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td style="border: 1px solid black; padding: 5px;">Quarter</td> <td style="border: 1px solid black; padding: 5px;">Year</td> </tr> </table>	Quarter	Year
Quarter	Year		

M/WBE FIRM

1. Name and Address

2. Date contract started:

Federal ID #	<p>3. New York State Certified (Check One)</p> <p><input type="checkbox"/> MBE</p> <p><input type="checkbox"/> WBE</p>
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4. Type of Service Provider (Check one box only)

Construction Supplier Consultant Service Service/Commodity

5. Summary of Payments

a. Total MBE/WBE contract amount \$ _____

b. MBE/WBE payment received for this reporting period \$ _____

c. Total MBE/WBE payments received as of this reporting period \$ _____

Signature of MBE/WBE	Print Name of MBE/WBE	Date
Signature of Contractor	Print Name of Contractor	Date

Failure to submit this form will result in non-compliance.



New York State
Homes and Community Renewal
Office of Fair Housing and Equal Opportunity
 Website: www.nyshcr.org

MONTHLY EMPLOYMENT UTILIZATION REPORT

(Instructions on Next Page)

Project Name:		Reporting Period:	From: _____	To: _____
Contractor/ Firm Name:		Address:		
Federal ID/SS#:		SHARS #:		Location of Work:
Labor Amount:	\$ _____	Construction Start Date:	_____	Percent of Job Complete:

TOTAL NUMBER OF EMPLOYEES FOR THIS REPORTING PERIOD

Job or Trade Category	Total Number of Employees		Black or African American		Hispanic or Latino		Native Hawaiian or Other Pacific Islander		Native American or Alaskan Native		Asian	
	M	F	M	F	M	F	M	F	M	F	M	F
	Professionals											
Technicians												
Office/Clerical												
Construction Trade - List Each												
Grand Totals												

Company Official's Name: _____ Title: _____

Company Official's Signature: _____ Date: _____

Telephone Number: _____ Fax Number: _____

NOTE: Failure to submit this form will result in non-compliance.

INSTRUCTIONS FOR FILING MONTHLY EMPLOYMENT UTILIZATION REPORT

The Monthly Employment Utilization Report (ADM-136) is to be completed and signed by the contractor or subcontractor and **submitted by the 10th of each quarter** for the duration of this contract. This report covers all hourly workers, including foremen, supervisors or crew chiefs, journey workers and apprentices or trainees working on the project. Professionals, technicians and office clerical field office staff working on the contract should also be reported.

Name of Project: Indicate the Name of Assigned Project

Reporting Period: Indicate reported month and year.

Contractor or
Subcontractor Name: Indicate name, address, city and zip code.

Federal ID Number: If Federal ID # not assigned, provide Social Security # of the owner.

Labor Amount: Indicate dollar amount allocated for labor on the Detailed Estimate.

SHARS Number: Indicate HCR assigned SHARS #.

Location of Work: Indicate county where project is located.

Contract Start Date: Indicate date construction actually began.

Percent of Job Complete: Indicate the estimated percentage of job completed.

Job or Trade Category: Indicate the total number of employees for the field office staff, including supervisory personnel and administrative staff at the job site. Indicate the number of employees for each construction trade.

Total Number of
Employees: Indicate the total number of **all** employees, regardless of ethnicity, under each trade category for all males (M) and all females (F). **Note: These two columns include the number of employees for the entire workforce.**

Total Number of Employees
Minority & Females:

Grand Totals:

Indicate the total number of employees for each minority group member(s) under each trade category for all minority males (M) and all females (F). ***Note: These columns include only the minority workforce.***

Total of columns under each trade category for all males (M) and all females (F).

The company official's name, title and telephone number should be printed or typed at the bottom of the form.

