

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 1st day of April 2013 ("Effective Date") by and between the Housing Trust Fund Corporation ("HTFC") and the New York State Department of State ("DOS"). HTFC and DOS shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

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

WHEREAS, in the aftermath of Hurricane Sandy, the United States Congress, through Public Law passed the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013), as amended ("Act"), appropriating \$16 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, subject to the federal statutes and regulations governing CDBG grants, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD; and,

WHEREAS, pursuant to the federal 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 federal 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, HUD has authorized the State to spend up to twenty percent of CDBG-DR funds so allocated on the combined costs of grant administration and eligible planning activities; and

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; and

WHEREAS, on or about April 26, 2013, HUD approved New York's Initial Action Plan for the utilization of CDBG-DR funds in Response to Hurricane Sandy which was submitted by HTFC on behalf of the State; and

WHEREAS, the New York portion of the federal CDBG-DR Grant Program applicable to this Agreement is known as (and referred to in the Action Plan and this Agreement as) the “New York Rising Community Reconstruction Program” (formerly the “Community Reconstruction Zones”), or simply the “Program”; and

WHEREAS, communities participating in the Program develop locally-driven reconstruction plans identifying resiliency projects and other actions that will help them build back better and smarter in preparation for future extreme weather events; and

WHEREAS, HTFC has engaged DOS to assist the Program in conducting community planning activities mentioned above; and

WHEREAS, DOS, through the Program, has been conducting planning activities since April 1, 2013; and

WHEREAS, HTFC intends to continue to engage DOS to assist the Program; and

WHEREAS, HTFC, through the execution of this MOU, wishes to facilitate the allocation of a portion of CDBG-DR funds to DOS to support DOS’s past and ongoing activities under the Program; and

WHEREAS, the public purpose to be derived from this MOU is the expeditious, efficient and effective recovery of New York from Hurricane Sandy as part of the CDBG-DR Program; and

WHEREAS, the Parties wish to set forth their mutual understanding regarding their respective roles and responsibilities in implementing the CDBG-DR Program;

NOW THEREFORE, in consideration of the promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following terms and conditions:

I. SCOPE OF WORK

DOS will be responsible for performing the activities detailed in Schedule A and incorporated herein (“Scope of Work”). As a reimbursement-based program, for tasks and deliverables contained in the Scope of Work, they must be conducted in a manner satisfactory to HTFC and in compliance with applicable federal and state requirements, laws and regulations. HTFC will monitor the performance of DOS against goals and performance standards as stated in the Scope of Work. DOS must perform (and document to HTFC) the entire Scope of Work. Substandard performance as reasonably determined by HTFC, in its sole discretion, will constitute noncompliance with this MOU. If action to correct such substandard performance is not taken by DOS within a reasonable period of time (as determined by HTFC) after being notified by HTFC, HTFC may choose not to reimburse DOS for noncompliant and/or unallowable work and/or take action to suspend or terminate this MOU or other actions as permitted under applicable law.

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 April 1, 2013 and shall end on March 31, 2015. Any funds not properly used by the end of the term, unless approved otherwise in writing by HTFC, promptly shall be remitted, in full and without off-set or deduction, to HTFC. Because this MOU provides only for reimbursement of funds already expended by DOS, it is not expected that DOS will have custody of any unexpended funds at the end of the term of this MOU.

III. BUDGET

DOS's approved budget is attached hereto as Schedule B and incorporated herein ("Budget"). Any indirect costs charged must be consistent with the conditions of Paragraph VIII(C)(2) of this MOU. HTFC may require a detailed budget breakdown, and DOS shall provide such supplementary budget information in a timely fashion in the form and content prescribed by HTFC. Any change to Budget must be approved in writing by both HTFC and DOS.

IV. GRANT FUNDS

It is expressly agreed and understood that the total amount to be paid by HTFC under this MOU shall not exceed \$ 2,782,935 ("Grant Funds"). The amount of Grant Funds that HTFC has agreed to provide DOS under this MOU is expressly conditioned upon HTFC's receipt of such funds from HUD pursuant to the Act. HTFC reserves the right to reduce the Grant Funds if funding from HUD is not provided at the currently anticipated levels and/or if the actual costs for the approved activities are less than those set forth in the Budget.

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

V. DISBURSEMENT OF GRANT FUNDS

- a) DOS is required to submit a request for Grant Funds in accordance with the provisions of this MOU and procedures which are established by HTFC. No payment by HTFC of an improper, unauthorized or unallowable request shall constitute a waiver of HTFC'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 DOS's funding under this MOU.
- b) DOS shall certify in a sworn statement made by a senior official with contracting authority with each request for Grant Funds 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 DOS incurring allowable costs permitted under the terms of this MOU or as otherwise pre-approved, in writing, by HTFC. DOS shall not be reimbursed for any costs until all environmental conditions of 24 CFR Part 58 have been fully satisfied and HTFC 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 incurred by DOS, DOS shall immediately remit any funds received by DOS for the unallowable costs to HTFC. DOS may request HTFC challenge the State or Federal determination and pursue other legal recourse to secure these funds, however, HTFC maintains the sole discretion in deciding whether to pursue such funds, may request DOS pay any costs associated with such effort, and may require that DOS return the questioned funds until a final outcome is reached.

VI. NOTICES

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 it is 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 contract shall be directed to the following contract representatives:

HTFC: Housing Trust Fund Corporation
 25 Beaver Street
 New York, New York 10004

Attn: James Rubin, State Director of Storm Recovery
 Robert P. Miller, Chief Financial Officer of Storm Recovery
 Lisa Bova-Hiatt, General Counsel of Storm Recovery

DOS: Department of State
 99 Washington Avenue
 Albany, NY 12231

Attn: George Stafford, Deputy Secretary, Office of Planning and Development
 Linda Baldwin, General Counsel

VII. GENERAL CONDITIONS

A. Compliance

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

- (1) DOS does not assume HTFC's environmental responsibilities described in 24 CFR 570.604; and
- (2) DOS does not assume HTFC'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.

DOS also agrees to comply with all other applicable Federal, State and local laws, regulations, HUD Notices, policies and guidelines, whether existing or to be established, provided the same are applied to activities occurring after the date the policy or guideline was established, governing the Grant Funds provided under this MOU. In the event a conflict arises between the provisions of this MOU and any of the foregoing, the Federal, 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. DOS further agrees to utilize Grant Funds available under this MOU to supplement rather than supplant funds otherwise available.

B. No Employer/Employee Relationship

Nothing contained in this MOU is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. HTFC shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance expenses related to the carrying out of this MOU by DOS.

C. Workers' Compensation

DOS shall provide Workers' Compensation Insurance for all of its employees involved in the performance of this MOU unless granted an exemption by the State. As an agency of the State of New York, DOS has a policy of self-retention in lieu of external insurance policies, and shall provide Workers' Compensation Insurance through such retained funds.

D. Insurance

DOS, as an agency of the State of New York, has a policy of self-retention in lieu of external insurance policies. The State represents that it has the full resources of its taxing power to respond to any claims for liabilities which may arise out of or in connection with this MOU, provided, however, that the State's obligations with respect to any such claims are subject to the availability of lawful appropriations thereof as required by Section 41 of State Finance Law. The potential liability of DOS, as an agency of the State, must be determined in accordance with the provisions of the Court of Claims Act and Public Officers Law.

E. HTFC Recognition

DOS shall insure recognition of the role of HUD and HTFC 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 the role of HUD and of HTFC. In addition, DOS 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 in recognizing HUD and HTFC.

F. Amendments

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

G. Suspension or Termination

In accordance with 24 CFR 85.43, HTFC may suspend or terminate this MOU if DOS materially fails to comply with any 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 DOS's control, of DOS 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 DOS to HTFC of reports that are untimely, incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this MOU may also be terminated for convenience by either HTFC or DOS, 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 HTFC determines that the remaining portion of the award will not accomplish the purpose for which the award was made, HTFC may terminate the award in its entirety.

HTFC shall provide 60 days' written notice to DOS before terminating this MOU.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

DOS agrees to comply with 24 CFR 85.20-26 and agrees 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

DOS shall administer its program in conformance with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments". 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

DOS shall maintain all records required by applicable law to be maintained, including but not limited to the Federal regulations specified in 24 CFR Part 85, Subpart C, § 570.506 and the applicable HUD Notices, that are pertinent to the activities to be funded under this MOU, as well as any additional records required by HTFC. 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 24 CFR 570.502, and 24 CFR 85.20-26;
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

DOS 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 HTFC'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

If applicable, DOS shall maintain client data for efforts provided as required by HTFC. 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, HTFC monitors or their designees for review upon request.

4. Disclosure

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

5. Close-out

DOS's obligation to HTFC shall not end until all close-out requirements are completed. Close-out activities and requirements are subject to 24 CFR §§ 85.50, 507.509, and 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 HTFC), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this MOU shall remain in effect during any period that DOS has control over CDBG-DR funds, including Program Income; but because all payments to DOS under this MOU will be reimbursement for funds already expended and services rendered, it is not anticipated that DOS will control any CDBG-DR funds following close-out.

6. Audits & Inspections

All DOS records with respect to any matters covered by this MOU shall be made available to HTFC, 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 DOS within 30 days after receipt by DOS. Failure of DOS 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. DOS hereby agrees to have an annual agency audit conducted in accordance with current HTFC policy concerning DOS audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income and Other Assets

DOS 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 HTFC, absent written authorization from HTFC to the contrary, in accordance with any procedures established by HUD and HTFC. 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 HTFC.

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

2. Indirect Costs

Pursuant to OMB Circular A-87, Attachment A, Part G, "Interagency Services," DOS may receive reimbursement under this MOU for indirect costs equal to up to ten percent of its direct salary and wage costs. For any indirect costs to be charged to HTFC in excess of ten percent, DOS will develop an indirect cost allocation plan for determining the appropriate DOS's share of administrative costs, and shall submit such plan to HTFC for approval, in a form specified by HTFC.

3. Progress Reports

DOS shall submit regular Progress Reports to HTFC in the form, content, and frequency as required by HTFC. At a minimum, Progress Reports shall be submitted no less frequently than as required by 24 CFR Part 85, Subpart C § 570.507 and the applicable HUD Notices.

4. Payment Procedures

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

5. GOSR Reporting Obligations

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

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

D. Sub-granting

1. Approvals

DOS 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 HTFC prior to the execution of such agreement. HTFC shall respond to any request for written consents as soon as practicable upon receipt of such request.

2. Monitoring

To assure compliance with Federal, State, and local laws, regulations, HUD Notices, program guidelines and the policies and procedures to be issued by HTFC, DOS will monitor all DOS efforts on a regular basis. Upon finding instances of noncompliance, or as requested by HTFC, DOS shall summarize results of monitoring efforts 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 HTFC, followed by a written report within ten (10) calendar days.

3. Content

DOS shall cause all of the provisions of this MOU in its entirety, including all attached Exhibits A through F, to be included in and made a part of any subrecipient agreement executed to effectuate HTFC Program of this MOU.

4. Selection Process

DOS shall undertake to insure that all subgrants utilized to effectuate HTFC Program of this MOU shall be awarded on a fair and open basis in accordance with applicable Federal, State and local laws, regulations, 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 HTFC along with documentation concerning the selection process.

E. Procurement/Contracting

1. General

Unless specified otherwise within this MOU, DOS shall procure all materials, property, equipment, or services in accordance with the requirements of 24 CFR § 85.36, including, but not limited to the need to appropriately assess the lease versus purchase alternatives. Only when HTFC's procurement policies are more stringent than those found at 24 CFR § 85.36, will DOS be required to comply with current HTFC policy concerning the acquisition of materials, property, equipment, or services.

2. HUD General Provisions

DOS shall include HTFC's HUD General Provisions, attached hereto as Exhibit E, in any contract entered into under this Agreement. DOS shall also require all contractors to flowdown the HTFC's HUD General Provisions to all subcontractors as well as the requirement to flowdown such terms to all lower-tiered subcontractors.

3. Records

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

4. Travel

DOS shall comply with all applicable State regulations and guidelines regarding reimbursement of travel expenses to be paid for with CDBG-DR funds provided under this MOU. A copy of the Travel Policy applied by DOS is attached to this MOU as Exhibit F.

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 and 24 CFR Subpart J, as applicable, which include but are not limited to the following:

1. DOS shall transfer to HTFC 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 DOS'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 HTFC deems appropriate. If DOS fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, DOS shall pay HTFC 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 HTFC. DOS 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 HTFC 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 acquired with funds under this MOU that is not needed by DOS for activities under this MOU shall be (a) transferred to HTFC; or (b) retained after compensating HTFC 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.

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

To the extent applicable to its performance under this MOU, and as modified by the Notice, DOS 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. DOS 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. DOS also agrees to comply with applicable HTFC ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

DOS 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

DOS agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as

revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCD Act are still applicable.

3. Land Covenants

This 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, DOS 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 HTFC 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, DOS, 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

DOS 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. HTFC shall provide DOS 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

DOS agrees that it shall be committed to carry out, pursuant to HTFC's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. HTFC shall provide certain Affirmative Action guidelines to DOS to assist in the formulation of such program. DOS shall submit a plan for an Affirmative Action Program for approval prior to the award of funds. HTFC agrees that at the time of signing of this MOU, DOS's Affirmative Action Program, as described on its website at http://dosnet/affirm_training/affirm_mission.html, constitutes an approvable Plan for the purposes of this section.

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

a. Federal Requirements

DOS 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.

DOS 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. DOS may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

b. HTFC Requirements

Pursuant to New York State Executive Law Article 15-A (“Article 15-A”), HTFC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and/or women-owned business enterprises (“M/WBEs”) in the performance of HTFC-funded contracts. HTFC values affording M/WBEs the opportunity to participate in the performance of the contract(s) to be awarded for this project. Accordingly, DOS certifies that it has made and will continue to make good-faith efforts to promote and assist the participation of certified M/WBEs through the use of contractors and their subcontractors at all tiers on this project, in an amount equal to zero percent (0%) minority-owned business enterprises (“MBE”) and zero percent (0%) 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, and must be revisited, with new goals established and agreed to in writing, prior to DOS contracting or subcontracting any tasks pursuant to this MOU.

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

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

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

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

b. Non-Discrimination

DOS shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. DOS shall not

discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

c. HTFC Requirements

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

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

4. Access to Records

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

5. Contract Provisions

DOS will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

DOS 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

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

DOS further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this MOU:

"The work to be performed under this MOU 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."

DOS 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.

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

b. Notifications

DOS 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

DOS will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by HUD. DOS will not subcontract with any entity where it has notice or knowledge that the latter 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. Conduct

1. Hatch Act

DOS agrees 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

DOS agrees to abide by the provisions of 24 CFR 85.36 and 570.611, which include (but are not limited to) the following:

a. It is presumed that DOS is subject to state ethic 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 DOS is not, DOS shall maintain written standards of conduct governing the performance of its 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 HTFC, DOS, or any designated public agency.

3. Lobbying

DOS hereby certifies that:

a. To the best of its knowledge and belief, no Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this 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;

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, HTFC 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 by either Party.

5. Religious Activities

DOS agrees 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.

XI. ENVIRONMENTAL CONDITIONS

A. Environmental Laws

DOS agrees 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 HTFC 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 HTFC Program.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), DOS shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

DOS agrees 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

DOS 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 MOU, 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

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

XII. ASSIGNMENT

DOS shall not assign or transfer any interest in this MOU without the prior written consent of HTFC.

XIII. 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.

XIV. 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.

XV. WAIVER

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

XVI. CHOICE OF LAW

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

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

XVII. 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 either Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either Party.

XVIII. SUBROGATION

By: _____

Name: James Rubin

Title: State Director of Storm Recovery

New York State Department of State

By: 

Name: Judith Kenny

Title: Director of Administration
New York State Department of State

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

DOS acknowledges that funds provided through this MOU are Federal funds administered by HUD under the CDBG-DR Program and that all funds provided by this MOU are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged subject to Federal regulation, however, DOS shall promptly return any and all funds to HTFC, 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 by either Party.

XIX. ENTIRE AGREEMENT

This MOU constitutes the entire agreement between HTFC and DOS 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 HTFC and DOS 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



Name: James Rubin

Title: State Director of Storm Recovery

New York State Department of State

By: _____

Name: Judith Kenny

Title: Director of Administration

New York State Department of State

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

EXHIBIT B
Budget

In relation to this MOU, between DOS and HTFC, HTFC agrees to reimburse DOS for (1) the salaries and wages of DOS employees engaged in the CDBG-DR eligible activities as set forth under Exhibit A to this MOU, (2) reimbursable fringe benefit costs associated with such activities, (3) reimbursable indirect costs associated with such activities, and (4) travel expenses incurred by DOS in accordance with DOS's written travel policy in effect at the time the travel expense was incurred. The combined total of these expenses shall not exceed 2,782,935 dollars.

The hourly rate to be paid, with regard to each DOS employee, will not exceed the hourly rate normally paid to that individual employee under like circumstances where the employee is engaging in non-federally sponsored activities. All charges to HTFC in support of the salaries and wages of DOS employees must be supported by payrolls with documented Leave and Accrual Tracking System (LATS) - Time Distribution System (TDS) annotations indicating that the employee was engaged in the CDBG-DR eligible activities as set forth under Exhibit A to this MOU.

HTFC agrees to reimburse DOS for costs associated with fringe benefits incurred as part of its performance of the CDBG-DR eligible activities as set forth under Exhibit A to this MOU. The amount of DOS's fringe benefits costs to be paid shall be calculated according to the rates established by New York State Department of Budget and published in the Office of the State Comptroller's Guide to Financial Operations, Chapter VII, Section 9, "Fringe Benefits and Indirect Costs." These rates are published annually; for State fiscal year 2014-2015, the total fringe benefit rate for federally-funded State programs is 53.48 percent.

Given the large geographic scope of the planning areas, the sophistication of the work to be provided, and the rapid pace of the planning process, HTFC recognizes the need for DOS employees engaged in the CDBG-DR eligible activities as set forth under Exhibit A to this MOU to travel to the affected communities to facilitate and participate in the planning committee meetings and public engagement events. The grass-roots nature of the NY Rising Community Reconstruction Program requires the DOS employees to work in situ, and thus the ability to reimburse for travel expenses incurred by DOS is a necessity. In accordance with OMB Circular A-87, travel expense eligibility was governed by the existing DOS travel policy as typically applied to DOS officers and employees in DOS's regular operations. All charges to HTFC seeking reimbursement for travel expenses under this MOU must be accompanied by expense report documentation, including detailed and itemized receipts or detailed calculations of per diem payments, illustrating that the travel has been authorized in accordance with the DOS policies set forth under Exhibit F to this MOU.

In accordance with OMB Circular A-87, Attachment A, Part G, "Interagency Services," HTFC also agrees to reimburse DOS for indirect costs of up to the standard rate of ten (10) percent of its direct salary and wage costs incurred under this MOU. Pursuant to OMB Circular A-87, DOS may calculate its indirect costs, and seek reimbursement thereof, using this standard rate of ten (10) percent in lieu of an indirect cost allocation plan. DOS shall not seek reimbursement for any indirect costs in excess of ten percent of direct salary and wage costs without first developing an indirect cost allocation plan, in a form specified by HTFC, and receiving HTFC's written approval thereof.

EXHIBIT D
HUD and HTFC 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 done 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.

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 :

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

Completed Projects:

1. All completed projects must include permanent recognition of HTMC and GOSR. DOS is required to submit to HTFC for written approval of the proposed permanent recognition.

EXHIBIT E
Appendices for Contractors and Subcontractors at all Tiers