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 17th day of November, 2014 ("Effective Date") by and between the Housing Trust Fund Corporation ("Grantee" or "HTFC") and the New York State Office of Parks, Recreation and Historic Preservation (the "Agency" or "OPRHP"), a New York State administrative agency. The foregoing Grantee and Agency 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; and

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

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

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

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

WHEREAS, Grantee wishes to engage the Agency to complete certain activities related to the restoration and rehabilitation of park space in the State of New York, consistent with the eligibility requirements of the CDBG-DR program, as articulated more fully in Exhibit A - Program Description and Exhibit B - Budget;

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

I. AGENCY PROGRAM

The Agency will be responsible for performing the activities detailed in Exhibit A, which may be amended from time to time, and is hereby incorporated by reference ("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 against goals and performance standards as stated in the Program Description. The Agency must 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 fails to take corrective action within a reasonable period of time (as determined by Grantee). If the Agency does not take action to correct such substandard performance within a reasonable period of time (as determined by Grantee) after being notified by Grantee, Grantee may choose not to reimburse the Agency 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.

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 October 29, 2012 and shall end on September 30, 2019. Any funds not properly used by the end of the term, unless approved otherwise in writing by Grantee, promptly shall be remitted, in full and without off-set or deduction, to Grantee.

III. BUDGET

Grantee may require a detailed budget breakdown, and the Agency shall provide such supplementary budget information in a timely fashion in the form and content prescribed by Grantee. Any change to the amount of Grant Funds must be approved in writing by Grantee before such changes are allowed and reimbursable.

IV. GRANT FUNDS

It is expressly agreed and understood that the total amount to be paid by Grantee under this MOU shall not exceed $70,442,976.00 ("Grant Funds"). The amount of Grant Funds that Grantee has agreed to provide the Agency 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.

In the event the Agency is awarded, granted, or provided funds from any other source not disclosed to the Grantee at the time this MOU is executed, 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 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's funding under this MOU.

b) The Agency shall certify in a sworn statement made by a senior official with each request for Grant Funds that to the best of its knowledge based on the information available to the Agency 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 incurring allowable costs permitted under the terms of this MOU or as otherwise pre-approved, in writing, by Grantee. The Agency 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 incurred by the Agency, the Agency shall, upon consultation with New York State Division of the Budget ("DOB"), immediately remit any funds received by the Agency 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 Agency pay any costs associated with such effort, and may require that the Agency 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 is a State entity, the requirements of this section do not apply.

VII. NOTICES

All notices, requests, approvals, and consents of any kind made pursuant to this MOU shall be in writing. 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:

Office of Parks, Recreation and Historic Preservation
Albany, New York 12238 (USPS)
or
625 Broadway
Albany, New York 12207 (courier delivery)
Attn: Marc S. Talluto, Director of Agency Operations and Programs
[redacted]

With an email copy to [redacted]

VIII. GENERAL CONDITIONS

A. Compliance

The Agency 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) The Agency does not assume Grantee's environmental responsibilities described in 24 CFR 570.604; and

(2) The Agency 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 Agency 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 law, regulation, HUD Notice, policy or guideline was established or made effective, 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. The Agency further agrees to utilize Grant Funds available under this MOU to supplement rather than supplant funds otherwise available.

B. Workers' Compensation

The State of New York has a policy of self-retention in lieu of external insurance policies, and shall provide Workers' Compensation Insurance for its employees, including the employees of the Agency, as required by the State Workers' Compensation Law through such retained funds.

C. Insurance & Bonding

The Agency, as an agency of the State of New York, 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.

For construction or facility improvements on property under its jurisdiction the Agency shall require its contractors to comply 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 shall ensure 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 the roles of HUD and of Grantee. In addition, the Agency 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. Grantee may, in its sole discretion, 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 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 materially fails 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 control, of the Agency 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 to Grantee of reports that are untimely, incorrect, or incomplete in any material respect.

In addition, Agency 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 however, the Grantee shall provide the Agency notice in writing of any material failure to comply, and provide the Agency reasonable opportunity to remedy any such material failure before any such termination of the award.

IX. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

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

4. Disclosure

The Agency 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 the Parties' responsibilities with respect to efforts provided under this MOU are subject to the provisions of Article 6-A, "Personal Privacy Protection Law", of the New York State Public Officers Law, as well as all other applicable State and Federal privacy laws (e.g., the Federal Privacy Act, 5 U.S.C. § 552a).

5. Close-out

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

6. Audits & Inspections

All Agency 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 within 30 days after receipt by the Agency. Failure of the Agency 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 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 is not Program Income and shall be remitted promptly to Grantee.

All Program assets, other than Program Income (property, equipment, etc.) shall revert to Grantee upon termination of this MOU in accordance with applicable State and 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 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 Agency funds available under this MOU based upon information submitted by the Agency, 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 in consultation with DOB.

5. GOSR Reporting Obligations

The following chart summarizes some of the Agency reporting obligations to GOSR. This chart is not intended to catalogue all of the Agency's 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 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 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 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 shall cause all of the provisions of this MOU in its entirety to be included in and made a part of any subrecipient agreement executed to effectuate this MOU.

4. Selection Process

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

2. HUD General Provisions

The Agency shall include Grantee's HUD General Provisions, attached hereto as Exhibit E, in any contract entered into under this MOU. The Agency 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

The Agency 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 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 shall comply with HUD's Travel Regulations (Travel Handbook 2300.2). The Agency 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 Agency 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 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 its performance under this MOU, and as modified by the HUD Notices, the Agency 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 Agency 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 Agency also agrees to comply with applicable Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

XI. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Agency 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

The Agency 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, the Agency 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, 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

The Agency agrees to comply with all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program. Grantee shall provide the Agency 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 agrees that it shall be committed to carry out, pursuant to Grantee's specifications, an Affirmative Action Program in keeping with the principles as provided in Executive Order 11246 of September 24, 1965. Grantee shall provide certain Affirmative Action guidelines to the Agency 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 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 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 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 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 subrecipients, contractors and their subcontractors at all tiers on this project, in an amount equal to ten percent (10%) minority-owned business enterprises ("MBE") and ten percent (10%) 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.

The Agency, its 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. In accordance with those requirements, the Agency 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 Agency. The Agency shall provide quarterly reporting of M/WBE data in a form acceptable to HTFC, which may require the Agency 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 M/WBE documentation as supporting documentation. Notwithstanding the provision of such reports and supporting documentation, the Agency, and the Agency's subrecipients, contractors and their subcontractors at all tiers, shall 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 will, in all solicitations or advertisements for employees placed by or on behalf of the Agency; state that it is an Equal Opportunity or Affirmative Action employer.

b. Non-Discrimination

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

The Agency, its subrecipients, contractors, and their subcontractors at all tiers shall 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, the Agency 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. The Agency shall provide quarterly reporting of EEO data in a form acceptable to HTFC, which may require the Agency 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 Agency's subrecipients, contractors and their subcontractors at all tiers, shall maintain copies of all reports and supporting documents as set forth in this MOU.

4. Access to Records

The Agency 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 or other authorized State official.

5. Contract Provisions

The Agency 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.

C. Employment Restrictions

1. Prohibited Activity

The Agency 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 Agency 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. The Agency 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 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 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 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 of its obligation, if any, to require payment of the higher wage. The Agency shall cause or require to be inserted in full, in all such contracts to be executed after the date of execution of this MOU subject to such regulations, provisions meeting the requirements of this paragraph, including HUD Form 4010, "Federal Labor Standards Provisions."

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, and any of the Agency's subrecipients, contractors, and subcontractors. Failure to fulfill these requirements shall subject Grantee, the Agency, and any of the Agency's 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 certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Agency 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 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 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.

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

b. Notifications

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

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 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 MOU.

b. In the event the Agency is not, the Agency 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 Grantee, the Agency, or any designated public agency.

3. Lobbying

The Agency 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, 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 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.

XII. ENVIRONMENTAL CONDITIONS

A. Environmental Laws

The Agency 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 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 has been certified as self-insured and exempt from the requirement to provide flood insurance by FEMA at 44 CFR Sec 75.14.

C. Lead-Based Paint

The Agency 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

The Agency 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

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

XIII. ASSIGNMENT

The Agency 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 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 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 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:[redacted]
Name: James Rubin[redacted]
Title: State Director of Storm Recovery

New York State Office of Park, Recreation and Historic Preservation

[redacted]
Name: Marc S. Talluto 12/10/14
Title: Director of Agency Operations and Programs

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

EXHIBIT A
Program Description

Program 1. Robert Moses State Park Emergency Beach Nourishment

A. Background

Robert Moses State Park (RMSP), which receives up to 3.5 million visitors per year, is located in southern Suffolk County, on the western end of Fire Island. The Park, which is the oldest state park on Long Island, is well known for its public beaches, which stretch for approximately 5 miles along the Atlantic Ocean. The Park is accessible from Long Island via the Robert Moses Causeway across Great South Bay and serves visitors from the five boroughs of New York City and throughout Suffolk and Nassau Counties. The project site is located within two towns: Babylon and Islip. RMSP is wholly owned and operated by the State of New York which maintains regular annual operations funds to maintain the site through General Fund appropriations and Agency revenue.

On October 29, 2012, Superstorm Sandy caused significant erosional damage along the seaward beaches of RMSP. The function of the beaches as a coastal barrier for nearby communities was compromised; the beaches were no longer wide enough to accommodate the RMSP's more than 3.5 million annual visitors; a portion of the roadway system in RMSP collapsed into the Atlantic Ocean; and erosion placed the RMSP's National Register of Historic Places-eligible water tower at risk. The storm also left endangered species habitat adjoining the beach vulnerable to destruction. After the storm, OPRHP and its consulting engineer conducted a volumetric analysis (profile volume method) that determined the RMSP had lost in excess of 1.2 million cubic yards ("cy") of sand from its beaches and dunes.[1]

During late fall 2012 and early 2013, the New York State Department of Transportation ("NYSDOT") trucked stockpiled sand from the Democrat Point stockpile area to temporarily shore up the beach in front of the berm in the area of the roadway collapse.[2] The trucked sand was placed at the base of the berm to an elevation of 14 feet and widening the adjacent beach. Although these measures did not restore the beach to its pre-Sandy condition, they were thought to provide adequate protection to the State's roadway in the event of a winter storm. At the same time, OPRHP was attempting to secure other emergency sources of sand for beach nourishment.

Pursuant to an Emergency Declaration issued by Governor Cuomo (Executive Order #47), OPRHP worked with OGS, the agency responsible for the State's emergency contracts, to engage companies to design, oversee and carryout dredging for sand and

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[1] As part of its Beach Management Plan, OPRHP regularly surveys the Park's beach and dune profiles using generally accepted engineering practices consistent with industry and regulatory standards. OPRHP's design, engineering and construction staff, supported by its outside engineering firm, regularly assesses site conditions along the Park's beaches, monitor erosion, and compare their finding to historic data.

[2] These activities were undertaken by the NYSDOT, and are not a part of this Program.

nourishment of beaches, as necessary to protect State assets (parking lots, buildings, water and sewer lines and roadway). These activities, known as the **Robert Moses State Park Emergency Beach Nourishment Project** (the "**Program 1**"), were substantially completed in May 2013. To carry out the Project, OGS contracted with Parsons Brinckerhoff Inc., its on-call engineering firm, and competitively bid and awarded two emergency contracts. Stockpiling and nourishment needed to be completed within a narrow timeframe to permit the RMSP to be reopened in time for the Memorial Day weekend and to avoid impacts to the nesting habitat of the endangered Piping Plover.

B. Scope of Program

The Project was completed pursuant to two emergency contracts executed and managed by OGS that consisted of the following components:

- Acquisition of sand from dredging of Captree Channel;
- Acquisition of sand from the existing stock pile area at Democrat Point;
- Full restoration of dunes and beach at the Field 5 area, and partial restoration of the Field 4 area;
- Reinforcement of the beach and berm in front of the traffic circle and water tower, to protect the berm and roadway reconstruction performed by NYSDOT; and
- Planning and design costs

Program 1, as performed by OGS contractors, involved the restoration of beach and dune areas deteriorated by Superstorm Sandy from Field 4 to Field 5 at Robert Moses State Park. Approximately 300,000cy of sand was transported by truck from the sand stockpile area at Democrat Point to the beaches at Field 5 and to a lesser degree Field 4. The sand was placed and distributed by earth moving equipment to partially rebuild the lost dunes and beach. Approximately 300,000 cy of sand was taken from the Captree Channel dredging area, of which 220,000 cy was placed on Field 5, where some was deposited on the beach west of Field 5, and the remaining 80,000 cy was placed in a stockpile area for future use.

The Project included constructing dunes with a base width of approximately 100 feet and height of 20 feet in the area where dunes existed prior to Sandy, restoring the elevation and width of the beach to pre-storm conditions. The finished beach had a width of approximately 180 feet, with an upper elevation of approximately 17 feet and a beach berm of ten feet above mean sea level. The total acreage of beach and dune restoration at Field 5 was approximately 20 acres.

C. Contracting and Budgeting

As authorized by Section 9 of the Public Buildings Law, OGS executed two emergency contracts on behalf of OPRHP to complete the Project. These two contracts – EC 248 and EC 271 totaling $7,420,791 and $3,522,185, respectively -- were recently closed out by OGS. The total of these two contracts is $10,942,976. OPRHP and GOSR have reviewed contract and related documents provided by OGS to ensure GOSR has sufficient documentation supporting the reimbursement. An index to that documentation is provided below.

In accordance with its procurement procedures, OGS reviewed multiple bids and selected two contractors to carry out the Project on an emergency basis: (1) Village Dock, Inc. (OGS Contract No. EC 248) for work on Field 5, and (2) Grace Industries LLC (OGS Contract No. EC 271) for work on Fields 4 and 5. These two emergency contracts were managed by Parsons Brinkerhoff, Inc., pursuant to work orders issued by OGS under a pre-existing on-call term contract (OGS Contract No. S6198): (1) Work Order No. 15 for management of EC 248, and (2) Work Order No. 18 for management of EC 271. In turn, Parsons Brinkerhoff entered into a subconsultant agreement with Gahagan & Bryant Associates (a/k/a "GBA") to perform certain tasks in connection with project design and endangered species monitoring. OGS also incurred staff time and other costs in the procurement, administration, oversight and auditing of the emergency contracts.

PROGRAM 2. ROBERT MOSES STATE PARK DREDGING AND BEACH STABILIZATION PROJECT

A. Background

Robert Moses State Park (RMSP), which receives up to 3.5 million visitors per year, is located in southern Suffolk County, on the western end of Fire Island. The Park, which is the oldest state park on Long Island, is well known for its public beaches, which stretch for approximately 5 miles along the Atlantic Ocean. The Park is accessible from Long Island via the Robert Moses Causeway across Great South Bay and serves visitors from the five boroughs of New York City and throughout Suffolk and Nassau Counties. The project site is located within two towns: Babylon and Islip.

Superstorm Sandy's damage to the Park in October of 2012 was severe: most of the Park's beaches were eroded by wind and wave action, and a portion of the Park's iconic traffic circle was destroyed. Governor Cuomo issued an emergency declaration on the day of the storm (October 28, 2012), which authorized state agencies to carryout activities to address the storm's immediate effects. Pursuant to the emergency declaration, and to permit recreational use of the park during the summer of 2013, the New York State Department of Transportation (NYSDOT) reconstructed the traffic circle and OPRHP (through the Office of General Services) completed boardwalk repairs and temporary beach stabilization south of Parking Fields 4 and 5 (Program 1 – described above). Although emergency efforts were successful, additional preventative and rehabilitative measures were required to stabilize and restore the RMSP beaches and shoreline, offset beach erosion that threatens wildlife habitat, and restore the functionality of the beaches as coastal barriers for inland communities.

B. Program Scope

The CDBG funded project consists of dredging of approximately 400,000 cubic yards of sand from the Captree State Boat Channel north of RMSP. The project removes shoal areas and would maintain safe navigation in Captree State Boat Channel, restoring the channel to its historic configuration. The project would dredge an approximately 3,550-foot by 400-foot area of the existing Captree State Boat Channel west of the Robert

Moses Bridge to a maximum depth of 14 feet below Mean Low Water (MLW). Dredging will be performed by means of a hydraulic dredge.

The material will be pumped directly onto the beach utilizing two existing pipelines; one pipeline is located near the western edge of Parking Field 4 and one is located near the western edge of Parking Field 5. Dredged sand would be placed along the oceanfront in the Park at specified locations adjacent to Parking Fields 3, 4, and 5. These locations stretch approximately 9,500 linear feet from an area west of Parking Field 3 to the western edge of Parking Field 5. The dredged material would be used to restore a public beach, damaged by Superstorm Sandy, to its pre-storm conditions and to offset continued beach erosion. A portion of the beach restoration area is located near the traffic circle surrounding the Robert Moses Water Tower, the park's central access point and vital traffic management facility.

The dredged material will be placed in phases; the phases were developed based on discussions with NYSDEC, USACE, and USFWS in order to minimize potential effects on piping plover nesting and foraging areas along this section of beach. The phasing schedule prioritizes areas known for past nesting piping plover activity; these areas will be restored during the initial phases of the project so that the restoration activities can be completed before the nesting period begins. Another important consideration in the phasing schedule is the need to restore critical areas, such as the traffic circle. The dredged material will be placed on the beach and distributed throughout the beach mechanically. Any remaining material would be placed in an upland site which will be contained by an embankment with a return flow leading into ocean by means of a spillway. This stockpiled material would be transported to beach areas where needed by truck at a later time.

OPRHP may use CDBG-DR funds to acquire additional sand (up to 200,000 cubic yards) should it become available from other sources. The restoration of the beach and access roadways is an important part of the area's post-Sandy recovery from public safety, infrastructure stabilization, economic and recreation perspectives. The project would support previous investments made to restore RMSP and strengthen its beaches against future storms.

The project has received permits from the New York State Department of Environmental Conservation (NYSDEC) and the United States Army Corps of Engineers (USACE). As part of its permitting process, USACE consulted with the United States Department of the Interior Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service. Additionally, OPRHP has undertaken consultation with the New York State Historic Preservation Office (SHPO) and the New York State Department of Environmental Conservation. The New York State Department of State (NYSDOS) has also made a determination about the project's consistency with the state's Coastal Management Program.

PROGRAM 3. ROBERTO CLEMENTE STATE PARK REVITALIZATION-BULKHEAD, ESPLANADE, TIDAL POOL, LOWER PLAZA & NORTHERN SHORELINE

A. BACKGROUND

Roberto Clemente State Park is a 25-acre park with 3,700 linear feet of waterfront along the Harlem River. Approximately 2,000 linear feet of the waterfront is bulkhead structure and the remainder consists of unstructured revetments and rip rap shoreline. The bulkhead at the center of Park provides coastal defense for extensive park infrastructure; the adjacent River Park Towers residential complex that is home to about 5,000 residents in 1,600 units; two public school buildings serving 650 elementary and middle school students; and a major power transmission line serving the Bronx.

The Park experienced about three feet of flooding over the top of the bulkhead during Superstorm Sandy. Following the storm, inspection of the 40-year-old bulkhead revealed severe corrosion and loss of backfill beneath the park esplanade. The condition has led to the closing of the esplanade to pedestrians and emergency vehicles that use it to respond to emergencies at the River Park Towers complex or on the Harlem River. Along the Park's shoreline north of the bulkhead, the unstructured revetment also experienced significant erosion, with the shoreline receding closer to the adjacent recreational facilities. In addition, electrical infrastructure and lighting throughout the Park, including in the Park's Lower Plaza and esplanade, were destroyed by salt water flooding.
The project will enable OPRHP to rebuild the bulkhead with a more resilient design and enhance the adjacent esplanade area. The redesigned waterfront will provide enhanced flood protection; storm resilience and green infrastructure. The outdated esplanade will be rehabilitated into a more park-like setting, featuring new plantings and a scenic 9,000-square-foot inter-tidal area to provide natural habitat and absorb heavy rainfall. The funds will also stabilize 1,400 feet of eroded shoreline located directly north of the bulkhead, protecting park facilities including baseball fields and recreational fields. This project will provide for a resilient shoreline and park facilities, and restore tidal wetlands that help mitigate floodwaters

B. Program Description

The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) is proposing improvements within an approximately 16-acre portion of Roberto Clemente State Park (project site), located on the eastern shore of the Harlem River just north of West Tremont Avenue and west of the Major Deegan Expressway in the Bronx, New York.

Improvements to be funded with up to $46.5 million of Community Development Block Grant – Disaster Recovery (CDBG-DR) program funds would include replacement of the existing sheet pile bulkhead that is in critical condition and reconstruction of the adjacent esplanade; creation of a tidal/intertidal habitat[3] from uplands as part of the bulkhead replacement; enhancements to the Lower Plaza area that will reduce hardscape

[3] In response to comments received during the public comment period, the tidal pool and intertidal habitat is now referred to as "tidal/intertidal habitat."

and improve it as a public gathering space; repair of the south stair entrance; re-grading and replanting with native plant species on portions of the remaining shoreline that is not stabilized with sheet pile.

EXHIBIT B
Budget

Program 1

Payee	Work	Amount	Total
OGS Emergency Contract EC 248			
Village Dock, Inc.	Construction	[redacted]	[redacted]
Parsons Brinkerhoff, Inc.	Construction Management	[redacted]	[redacted]
OGS & Contract Employees	Administration & Oversight	[redacted]	[redacted]
	SUBTOTAL:	[redacted]	[redacted]
OGS Emergency Contract EC 271		[redacted]	[redacted]
Grace Industries, LLC	Construction	[redacted]	[redacted]
Parsons Brinkerhoff, Inc.	Construction Management	[redacted]	[redacted]
OGS & Contract Employees	Administration & Oversight	[redacted]	[redacted]
	SUBTOTAL	[redacted]	[redacted]
	TOTAL		**$10,942,976**

Program 2

The commitment of CDBG-DR funding for this project is budgeted at a maximum of and shall not exceed $13 million. 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.

In accordance with NYS procurement procedures, OPRHP bid the project and the contract was awarded to the lowest bidder, Village Dock, Inc. The project budget for CDBG-DR reimbursement consists of construction costs, which include mobilization and the cubic yard cost of sand; including the cost of sand placement and grading on the beach.

The dredging and sand placement began in February, 2014. 225,000 cubic yards of sand were dredged and placed on the beach. Due to environmental constraints and ACOE projects underway in the region, the project will conclude in the fall of 2015 with dredging and placement of the remaining 175,000cy of sand and a possible dredging and stockpiling of an additional 200,000cy depending on availability of sand sources.

Program 3

The commitment of CDBG-DR funding for this project is budgeted at a maximum of and shall not exceed $46.5 million. The total budget for this project, including both CDBG-DR funding and other sources, is $49,150,000. 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 Program 3:

- Bulkhead, esplanade and tidal pool reconstruction are estimated at $35,925,000 (based on 100% design submission) inclusive of construction costs ($31,813,000); design fees ($2,274,767) and construction management ($1,836,644).

- The Lower Plaza is estimated at approximately $5,175,000

- Northern Shoreline at approximately $8,050,000

EXHIBIT C
Designation of Depository

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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.

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, 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 or one of its contractors.

Completed Projects:

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

EXHIBIT E
Appendices for Contractors and Subcontractors at all Tiers

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