

**COMMUNITY DEVELOPMENT BLOCK GRANT  
DISASTER RECOVERY  
SUBRECIPIENT AGREEMENT  
NEW YORK RISING SMALL BUSINESS STORM RECOVERY PROGRAM**

THIS AGREEMENT, made effective as of the 15th day of July, 2013, by and between the Housing Trust Fund Corporation ("Grantee") and the Dormitory Authority of the State of New York ("Subrecipient").

WHEREAS, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.), portions of the State of New York ("State") received major disaster declarations as a result of Hurricane Sandy, Hurricane Irene, Tropical Storm Lee and other eligible events in calendar years 2011, 2012, and 2013; and

WHEREAS, pursuant to the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013), as amended ("Act"), Congress appropriated \$16,000,000,000 for the national Community Development Block Grant Disaster Recovery ("CDBG-DR") program (the "CDBG-DR Grant Program"); and

WHEREAS, pursuant to the federal CDBG-DR Grant Program, and Federal Register Notice in Docket No. FR-5696-N-01, 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 the Department of Housing and Urban Development ("HUD") in the amount of \$1,713,960,000; and

WHEREAS, on April 13, 2013, HUD approved the State of New York's *CDBG-DR Action Plan for Community Development Block Grant Program Disaster Recovery* (the "Action Plan"); and

WHEREAS, the New York portion of the federal CDBG-DR Grant Program applicable to small business storm recovery is known as (and referred to in the Action Plan and this Agreement as) the "New York Rising Small Business Storm Recovery Program", or simply the "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, the Grantee is authorized to administer the Program and distribute CDBG funds in the State; and

WHEREAS, the Subrecipient is a body corporate and politic constituting a public benefit corporation of the State of New York, duly organized and existing under and pursuant to the Constitution and laws of the State, including without limitation Chapter 524 of the Laws of 1944, as amended, constituting Titles 4 and 4-B of Article 8 of the Public Authorities Law of the State; and

WHEREAS, pursuant to Section 45-a of the New York State Private Housing Finance Law, the Subrecipient is authorized to render services to the Grantee in order to assist the Grantee in administering the New York Rising Small Business Storm Recovery Program; and

WHEREAS, the Grantee wishes to engage the Subrecipient to provide construction-related project management services in connection with the New York Rising Small Business Storm Recovery Program.

NOW, THEREFORE, the parties agree to the following terms and conditions:

I. SCOPE OF WORK

The Subrecipient, either directly or through its subrecipients or subcontractors, will be responsible for providing the construction management services detailed in the scope of work attached hereto as **Schedule A** and incorporated herein ("Scope of Work"), in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing CDBG-DR funds hereunder. The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated in the Scope of Work. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time (as determined by the Grantee) after being notified by the Grantee, the Grantee may initiate contract suspension or termination procedures.

II. TERM

The period of performance for all activities (with the exception of those activities required for the close out and final audit) assisted pursuant to this Agreement shall commence as of the effective date of this Agreement, and shall end two (2) years from the date that HUD and the HTFC execute the Grantee's CDBG-DR grant agreement. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of any CDBG-DR funds or other CDBG-DR assets, including loan repayments.

III. BUDGET

The Subrecipient'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 Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the Budget must be approved in writing by both the Grantee and the Subrecipient.



#### IV. GRANT FUNDS

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed Six Million Dollars (\$6,000,000) ("Grant Funds"). The amount of Grant Funds that the Grantee has agreed to provide the Subrecipient under this Agreement is expressly conditioned upon the Grantee's receipt of such funds from HUD pursuant to the Act. The Grantee reserves the right to reduce the Grant Funds if the actual costs, as determined by a duplication of benefits analysis or otherwise, for the approved activities are less than those set forth in the Budget.

#### V. DISBURSEMENT OF GRANT FUNDS

- A. The Subrecipient is authorized to request Grant Funds only in accordance with the provisions of this Agreement and the procedures established by the Grantee. No payment by the Grantee of an improper or unauthorized request shall constitute a waiver of the Grantee's right to: (i) challenge the validity of such payment; (ii) enforce all rights and remedies set forth in this Agreement; or (iii) take corrective or remedial administrative action including, without limitation, suspension or termination of the Subrecipient's funding under this Agreement.
- B. The Subrecipient shall certify with each request for Grant Funds that: (i) all statements and representations previously made regarding this Agreement are correct and complete; and (ii) to the best of the Subrecipient's knowledge, the funds do not duplicate reimbursement of costs and services from any other source.
- C. The use of Grant Funds is conditioned upon the Subrecipient incurring costs permitted under the terms of this Agreement or as otherwise pre-approved, in writing, by the Grantee. The Subrecipient shall not incur costs to be charged against Grant Funds until all Environmental Conditions of 24 CFR Part 58 have been fully satisfied and the 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 costs are disallowed by any monitoring, audit or oversight of either Grantee or the Federal Government, the Subrecipient shall be responsible for remitting those funds to the Grantee. Failure to complete the Program described in the Statement of Work may constitute a basis for disallowance of costs.
- E. Prior to committing or receiving funds for each eligible activity, the Subrecipient must receive written authorization from the Grantee in the form established by Grantee programmatically for the Program. As a procedure for commencing any activities pursuant to this Agreement, the Grantee shall provide written notice to the Subrecipient of the authorization mechanism, i.e., a notice to proceed

("NTP"), and any activities undertaken by the Subrecipient pursuant to such authorization shall be considered duly authorized by the Grantee.

VI. NOTICES

With the exception of the NTP referenced in Section V (e) above, all notices, requests, approvals and consents of any kind made pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date it is sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee: Housing Trust Fund Corporation  
Office of Community Renewal  
38-40 State Street  
Albany, New York 12207  
Attn.: Seth Diamond, Director of Storm Recovery

Subrecipient: Dormitory Authority of the State of New York  
515 Broadway  
Albany, New York 12207  
Attn: Paul T. Williams, President

With a copy to its General Counsel at:

Dormitory Authority of the State of New York  
515 Broadway  
Albany, New York 12207  
Attn: Michael E. Cusack, Esq., General Counsel

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

VII. GENERAL CONDITIONS

A. Compliance

The Subrecipient agrees to comply with the applicable requirements of Title 24 of the Code of Federal Regulations, Part 570 (HUD's regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except (1) the Subrecipient does not assume the Grantee's environmental responsibilities

described in 24 CFR 570.604 and (2) the Subrecipient does not assume the Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52 and (3) where waivers or alternative requirements are provided for in the Federal Register Notice published by HUD on March 5, 2013, entitled "Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy", FR-5696-N-01 ("Notice"). The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, policies and Grantee guidelines, whether existing or to be established, governing the Grant Funds provided under this Agreement. In the event a conflict arises between the provisions of this Agreement and the Notice, the Notice shall control. The Subrecipient further agrees to utilize Grant Funds available under this Agreement to supplement rather than supplant funds otherwise available.

**B. Independent Contractor**

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

**C. Hold Harmless**

To the extent that the Subrecipient utilizes the services of any subrecipient or subcontractor in connection with the performance of the Subrecipient's duties and obligations under this Agreement, any such contract shall contain a provision that the subrecipient or subcontractor shall hold the Subrecipient and the Grantee harmless and defend and indemnify the Subrecipient and the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the subrecipient's or subcontractor's performance or non-performance of such services.

**D. Workers' Compensation**

The Subrecipient shall provide Workers' Compensation Insurance coverage as provided below for all of its employees involved in the performance of this Agreement.

**E. Insurance**

A. Subrecipient agrees that it, and each of its subcontractors and consultants of every tier, shall purchase and maintain insurance for the term of this Subrecipient Agreement, as follows:



1. Workers' Compensation and Employers Liability Insurance

- a. Workers' Compensation (including occupational disease) and Employer's Liability New York Statutory Endorsement with a minimum limit of one million Dollars (\$1,000,000.00) as evidenced by **ONE** of the following:
  - i. C-105.2 (9/07 or later) – Certificate of Workers' Compensation Insurance. The insurance carrier will provide a completed form as evidence of in-force coverage.
  - ii. U-26.3- Certificate of Workers' Compensation Insurance from the State Insurance Fund. The State Insurance Fund will provide a completed form as evidence of in-force coverage.
  - iii. GSI-105.2 /SI-12- Certificate of Workers' Compensation Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office or the contractor's Group Self Insurance Administrator will provide a completed form.

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

2. New York State Disability Benefit Insurance as evidenced by **ONE** of the following:

- a. DB-120.1 (May 2006, or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law.
- b. DB-155 – Certificate of Disability Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office will provide a completed form.
- c. CE-200 – Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Authority will *not* accept this as an exemption from providing Workers' Compensation Insurance.) The Certificate may be obtained from the NYS Workers' Compensation Board's website at

[www.wcb.state.ny.us/content/main/forms.htm](http://www.wcb.state.ny.us/content/main/forms.htm). The CE-200 cannot be used for multiple projects. Therefore, a new form will have to be completed prior to award of any subsequent contracts.

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

3. Commercial General Liability ("CGL") insurance obtained by the Subrecipient and subcontractors and/or subrecipients engaged directly by the Subrecipient (the "CMs"), with policy limits for Bodily Injury, Personal Injury and Property Damage of at least five million dollars (\$5,000,000) per project location/per occurrence with a policy aggregate limit of at least five million dollars (\$5,000,000).

Commercial General Liability ("CGL") insurance obtained by each of the CMs' subcontractors and/or subrecipients of every tier with policy limits for Bodily Injury, Personal Injury and Property Damage of at least one million dollars (\$1,000,000) per project location/per occurrence with a policy aggregate limit of at least one million dollars (\$1,000,000).

The limits may be provided through a combination of primary and umbrella/excess liability policies, and may involve retentions acceptable to Subrecipient. The coverage will provide and encompass:

- a. Excavation, Collapse and Underground Hazards (X, C and U), where applicable;
- b. Independent Contractors;
- c. Blanket Written Contractual Liability covering all Indemnity Agreements, including all indemnity obligations contained in the General Conditions;
- d. Products Liability and Completed Operations Aggregate limit of three million dollars (\$3,000,000) per project/per occurrence for a term of no less than three (3) years.
- e. CGL coverage written on an occurrence form;
- f. Endorsement naming the Grantee and the Subrecipient as Additional Insureds;
- g. Each and every policy or policies procured by a subcontractor or consultant must be endorsed to

be primary and non-contributory as respects the coverage afforded the Additional Insureds and such policy shall be primary to any other insurance maintained by the Grantee and/or the Subrecipient. Any other insurance maintained by the Grantee and/or Subrecipient shall be excess of and shall not contribute with the subcontractor's or consultant's insurance, regardless of the "other insurance" clause contained in the Grantee and/or Subrecipient's own policy of insurance.

- h. Each subcontractor and consultant shall list any deductible or SIR and provide a copy of the endorsement.

4. Commercial Comprehensive Automobile Liability and Property Damage Insurance covering all owned, leased, hired and non-owned vehicles used in connection with the activities defined in this Agreement with a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000 each person/each accident. The limit may be provided through a combination of primary and umbrella/excess liability policies.

5. Grantee agrees to list Subrecipient as Additional Insured on any additional CGL insurance policy it may obtain with respect to this Program.

6. To the extent applicable only to subcontractors and consultants of Subrecipient, Professional Liability, with limits of not less than two million Dollars (\$2,000,000) each claim/\$2,000,000 annual aggregate, subject to a deductible or self-insured retention of not more than two hundred thousand Dollars (\$200,000) per claim or an amount acceptable to the Subrecipient.

Each subcontractor and subrecipient of the Subrecipient, as the case may be, shall purchase at its sole expense Extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is canceled or not renewed. Written proof of this extended reporting period must be provided to the Subrecipient prior to expiration or cancellation.

B. Certificates of Insurance, demonstrating the required insurance coverage, must be submitted and approved by the Grantee



and/or Subrecipient (as the case may be) prior to the commencement of activities. Policies described on the Certificate shall provide thirty (30) days written notice prior to the cancellation, non-renewal, or material modification of any policy. Certificate(s) of Insurance, when submitted to the Grantee and/or Subrecipient (as the case may be), constitute a warranty that the insurance coverage described is in effect for the policy term shown.

C. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the Subrecipient.

D. Neither the procurement nor the maintenance of any type of insurance by the Grantee and/or Subrecipient shall in any way be construed or deemed to limit, discharge, waive or release any subcontractor or subrecipient of any tier from any of the obligations or risks accepted by the them or to be a limitation on the nature or extent of said obligations and risks of the such subcontractor or consultant.

#### F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

#### G. Amendments

This Agreement may be amended at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or the Subrecipient from its obligations under this Agreement. The Grantee may, in its sole discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts. If such amendments result in a change in the Grant Funds or the Scope of Work, such modifications will be incorporated only by written amendment signed by both the Grantee and the Subrecipient.

#### H. Suspension or Termination

1. Termination For Cause. In accordance with 24 CFR 85.43, the Grantee may, after giving reasonable written notice specifying the effective date of same, suspend or

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

- a. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
  - b. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
  - c. Ineffective or improper use of funds provided under this Agreement; or
  - d. Submission by the Subrecipient to the Grantee of reports that are incorrect or incomplete in any material respect.
2. In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.
3. Except in the event of termination or suspension for cause, the Subrecipient shall be entitled to payment on invoices submitted to the Grantee no later than ninety (90) days from the date of termination contained within the notice, to the extent that requests represent eligible activities satisfactorily completed during the term of the Agreement and otherwise reimbursable under the terms of this Agreement.

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

The Subrecipient 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

The Subrecipient 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.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement, as well as any additional records required by the 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 Notice;
- 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; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

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

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name,



address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

#### 4. Disclosure

The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this Agreement, 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.

#### 5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of Program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG-DR funds, including program income.

#### 6. Audits & Inspections

For Federal Grant Program purposes only, all Subrecipient records with respect to any matters covered by this Agreement shall be made available to the 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 Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Federal subrecipient audits and OMB Circular A-133.

### C. Reporting and Payment Procedures

#### 1. Program Income

The Subrecipient shall report monthly all program income, as defined in section VI(A)(17)(a) of the Notice, generated by activities carried out with CDBG-DR

funds made available under this Agreement. All program income shall be returned to the Grantee, absent written authorization from the Grantee to the contrary, in accordance with any procedures established by HUD and the Grantee. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

## 2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

## 3. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

## D. Procurement

### 1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All Program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

### 2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 85.36.

### 3. Travel

The Subrecipient 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 Agreement. The Subrecipient shall obtain prior written approval from the Grantee for any travel to out of service area assignments.

## E. Use and Reversion of Assets

The use and disposition of real property and equipment, if any, under this Agreement shall be in compliance with the requirements of 24 CFR Part 85 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG-DR funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement or such longer period of time as the Grantee deems appropriate. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the 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 the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period or such longer period of time as the Grantee deems appropriate.
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the 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.

#### F. Use of Grant Funds to Make Loans

If the Subrecipient utilizes Grant Funds to make loans (a "CDBG-DR Loan") and this Agreement is terminated, or if there is a finding by the Grantee of deficient performance or inadequate management capacity by the Subrecipient (any such instance, a "Subrecipient Default"), the Grantee shall have the right to require that all payments due under any or all CDBG-DR Loans be made directly to the Grantee and the Grantee shall be entitled to all rights and remedies under any loan documents between the Subrecipient and the borrower. In addition, upon the occurrence of any Subrecipient Default, the Subrecipient shall promptly assign all Promissory Notes or other document evidencing a CDBG-DR Loan ("CDBG-DR Promissory Note") and any instrument securing any collateral for a CDBG-DR Loan (a "CDBG-DR Security Instrument"), to any successor subrecipient designated by HTFC. The following language must be inserted into every CDBG-DR Promissory Note and CDBG-DR Security Instrument:



"The Lender, in consideration of the Community Development Block Grant disaster recovery ("CDBG-DR") funds awarded to it by the New York State Housing Trust Fund Corporation ("HTFC"), assigns all of its rights and remedies under this Promissory Note to HTFC. In the event (i) the Subrecipient Agreement entered into between the Lender and HTFC is terminated for any reason, or (ii) HTFC, in its sole and absolute discretion, finds deficient performance or inadequate management capacity on the part of the Lender, HTFC shall have the right to notify the Debtor under this Promissory Note to make payment directly to HTFC, and to enforce any and all obligations of the Debtor under this Promissory Note or any other loan instrument executed in connection herewith. Until such time as HTFC elects to exercise such rights by mailing to Lender and Debtor written notice thereof, Lender is authorized to collect payments and enforce all rights under this Promissory Note."

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

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

#### X. PERSONNEL & PARTICIPANT CONDITIONS

##### A. Civil Rights

##### 1. Compliance

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

### 3. Land Covenants

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

### 4. Section 504

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

## B. Affirmative Action

### 1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out, pursuant to the Grantee's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide certain Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

### 2. Women- and Minority-Owned Businesses (W/MBE)



The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

The Grantee and the Subrecipient value affording minority- and women-owned business enterprises (M/WBEs) the opportunity to participate in the performance of the contract to be awarded for this project. Accordingly, the Subrecipient has made and will continue to make good-faith efforts to promote and assist the participation of certified MWBEs that maintain and/or enhance the value of their proposals as subcontractors and suppliers on this project in accordance with the Action Plan and applicable Federal and State laws, rules and regulations. MWBE participation shall be applicable to the contract as a whole and will be monitored by the Grantee. To that end, the parties hereby agree to adopt the following HTFC forms and procedures for purposes of this Agreement:

- a) Initially, the Subrecipient and its authorized subcontractors and/or subrecipients shall complete the Staffing Plan, PROC-1 form, attached hereto as **Schedule C**.
- b) Thereafter, this information is to be submitted to the Grantee by the Subrecipient on a quarterly basis during the term of this Agreement to report the actual workforce utilized in the performance of this Agreement by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Quarterly Workforce Report, PROC-5 form, attached hereto as **Schedule D**, must be submitted to report this information for the quarters ending March 31st, June 30th, September 30th and December 31st.

The Workforce Reports referenced in this paragraph shall be submitted, in PDF format, to [OFHEO1@nyshcr.org](mailto:OFHEO1@nyshcr.org) by April 10th, July 10th, October 10th, and January 10th. Without limiting the foregoing, the Subrecipient confirms for itself and its authorized subcontractors and/or subrecipients to comply with the provisions of the Human Rights Law, and other applicable Federal and State statutory and constitutional non-discrimination provisions. The Subrecipient and its authorized subcontractors and/or subrecipients 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.

### 3. Access to Records

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

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

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

### 5. Subcontract Provisions

The Subrecipient 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

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

### 2. Labor Standards

The Subrecipient agrees to comply with the applicable requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review

upon request. The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the 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 Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

### 3. "Section 3" Clause

#### a. Compliance

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

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

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

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

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

b. Notifications

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

c. Subcontracts

The Subrecipient 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. The Subrecipient 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. Assignability



Neither the Subrecipient nor the Grantee shall assign or transfer any interest in this Agreement without the prior written consent of the other party thereto, which consent shall not be unreasonably withheld, delayed, or conditioned; provided however, that any subcontract entered into by the Subrecipient in connection with the performance of its obligations hereunder, which has been approved by the Grantee in accordance with Section X.D.2.a. hereof, shall not constitute an assignment for purposes of this Section X. D1.

## 2. Subcontracts

### a. Approvals

The Subrecipient shall not enter into any subcontract with any agency or individual to assist with the performance of this Agreement without obtaining the written consent of the Grantee prior to the execution of such agreement.

### b. Monitoring

In accordance with guidelines to be issued by the Grantee, the Subrecipient will monitor all subcontracted services on a regular basis to assure contract 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.

### c. Content

The Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

### d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

## 3. Hatch Act

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

## 4. Conflict of Interest

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

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- 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 the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

- a. 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the language of paragraph (d) 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:

d. Lobbying Certification

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.

6. Copyright

If this Agreement results in any copyrightable material or inventions, the 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.

7. Religious Activities

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

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 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 pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection



In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Grantee 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). Notwithstanding the foregoing, the Grantee may consult with Subrecipient, its subcontractors and/or subrecipients on a case-by-case basis for technical advice in the determination of issues relevant to National Flood Insurance Program requirements.

#### C. Lead-Based Paint

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

#### D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

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.

## XII. SEVERABILITY

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

XIII. SECTION HEADINGS AND SUBHEADINGS

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

XIV. WAIVER

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

XV. ENTIRE AGREEMENT

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

**Housing Trust Fund Corporation**

By:   
Name: Seth Diamond  
Title: Director of Storm Recovery

**Dormitory Authority of the  
State of New York**

By:   
Name: Paul T. Williams, Jr.  
Title: President

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



**SCHEDULE A**  
**SCOPE OF WORK**  
**INSPECTION-RELATED PROJECT MANAGEMENT SERVICES**  
**NEW YORK RISING SMALL BUSINESS STORM RECOVERY PROGRAM**

**Overview**

Pursuant to the federal Disaster Appropriations Act, 2013 (Pub. L. 113-2, approved January 9, 2013), Congress appropriated \$16,000,000,000 for the national Community Development Block Grant Disaster Recovery ("CDBG-DR") program (the "Grant Program"). In accordance with the Federal Register Notice in Docket No. FR-5696-N-01 (as amended), the United States Department of Housing and Urban Development, Office of the Assistant Secretary for Community Planning and Development ("HUD") awarded New York State \$1,713,960,000 of CDBG-DR Grant Program funds ). On April 13, 2013, HUD approved the State of New York *CDBG-DR Action Plan for Community Development Block Grant Program Disaster Recovery* (the "Action Plan"). The New York portion of the federal CDBG-DR Grant Program is known (and referred to in the Action Plan, this Agreement and Scope of Work) as the "Recreate New York Smart Home Program", or simply the "Program".

In accordance with applicable federal law, the purpose of this federal grant is to assist the State of New York in the recovery of the most impacted and distressed areas declared a major disaster due to Hurricane Sandy, Hurricane Irene, Tropical Storm Lee and other eligible storm events in calendar years 2011, 2012 and 2013. Pursuant to title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), this federal grant is being administered by the New York State Housing Trust Fund Corporation ("HTFC"), a public benefit corporation, as grantee. The Dormitory Authority of the State of New York ("DASNY"), as an authorized grant subrecipient pursuant to this Subrecipient Agreement and applicable federal law, agrees, either directly or through its procured subcontractors or subrecipients, to provide inspection-related project management services for damage assessments, inspections and cost of repair estimates to the HTFC in connection with the Program described in this Subrecipient Agreement, in a manner consistent with the standards, goals and performance measures listed herein.

The initial phase of the New York Rising Small Business Storm Recovery Program will seek to inspect at least 350 eligible small businesses in storm impacted Program eligible counties throughout the State by October 13, 2013, or thereafter as determined by HTFC. Under the Program, disaster-impacted property owners will apply directly to HTFC for CDBG-DR grant assistance, either online or by visiting Small Business Development Center (SBDC) staffed by HTFC's Program Management personnel and located throughout the Program area. Thereafter, a Program Case Manager will review the application, evaluate other potential funding sources, and determine Program eligibility in accordance with applicable federal and state requirements.

Inspection-related project management services for damage assessments, inspections and cost of rehabilitation and/or repair estimates (collectively, the "Inspection Management Services") will be provided by DASNY and its procured subcontractors and/or subrecipients. Pursuant to the process established by HTFC in accordance with Section V(e) of the Agreement, HTFC will authorize DASNY and its procured subcontractors and/or subrecipients to perform work through a system of task orders that delineate the number of inspections to be completed at the HTFC-approved rates, calculated on a time and materials basis.



Inspection Management Services and other project management services provided by DASNY and its procured subcontractors and/or subrecipients shall exclude any and all services and/or work performed pursuant to any direct contract or other agreement between the property owner and/or small business owner (as the case may be) and any other independent contractor(s), professional architect, engineering and/or surveying consultant(s) or other consultant(s). Without limitation to the foregoing, nothing in this Agreement and Scope of Work is intended to or shall be deemed or construed in any manner, as creating or establishing employer/employee, principal/agent or contractor/subcontractor relationship between any such parties, on the one hand, and DASNY and its subcontractors and/or subrecipients or HTFC, on the other.

In a manner consistent with HUD Docket No. FR-5696-N-01, HTFC: (i) is except to the extent assigned to DASNY, its subcontractors or subrecipients herein, responsible for providing adequate technical assistance to subrecipients or subgrantees to ensure the timely, compliant, and effective use of Program funds , and (ii) may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy development, and financial management, it being understood, however, that certain delegable fiduciary obligations for financial management will be the responsibility of DASNY, its subcontractors and/or subrecipients, as specified in and pursuant to the notification process set forth in Section V(e) of the Agreement.

### **CDBG-DR Guiding Principles and Grant Program Responsibilities**

In order to clarify the duties between the parties, it is noted that HTFC is subject to the following CDBG-DR Guiding Principles :

### **Guiding Principles for All CDBG-DR Grantees**

1. Development of proficient financial controls and procurement processes.
2. Establishment of adequate procedures to prevent the duplication of benefits in the award and processing of CDBG-DR grants.
3. Development of a grant administration plan that ensures the timely expenditure of CDBG-DR Grant Program funds.
4. Maintenance of a comprehensive database and web site or sites regarding CDBG-DR Grant Program disaster recovery activities.
5. Establishment of additional mechanisms and/or procedures designed to detect and prevent waste, fraud, and abuse of CBDG-DR grant funds.
6. Entry of relevant performance data into the HUD Disaster Recovery Grant Reporting (DRGR) system.
7. Ensuring that all authorized activities and associated construction work are:
  - a. eligible for CBDG-DR Grant Program relief;
  - b. meet a national grant objective;
  - c. address a direct or indirect disaster impact in an approved geographic area;
  - d. allocated in a manner that complies with the CBDG-DR Grant Program requirement that a minimum of 50 percent of the grant award be used for

activities that benefit low- or moderate-income (LMI) persons.

8. Establishment of procedures to ensure compliance with applicable environmental review requirements pursuant to 24 CFR Part 58, as applicable, or as otherwise provided in the federal CDBG-DR Grant Program.
9. Provision of required expenditure and outcome data to HUD, and any necessary updates to the State Action Plan as shall be required by the CDBG-DR Grant Program approval.
10. Overall management of the CDBG-DR Grant Program, including but not limited to the direct management of Program Delivery Services (as defined herein) and oversight of Grant Program Support Services (as defined herein) assigned to DASNY.

### **HTFC Program Delivery Services**

In a manner consistent with this Agreement, the CDBG-DR Grant Program and State Action Plan, HTFC shall be responsible for the following services ("Program Delivery Services"):

1. Overall management of the CDBG-DR Grant Program application process, including but not limited to the provision of Small Business Development Centers staffed by HTFC personnel & located throughout the program area, and staffing of all Master Program Management and Case Work (CW) Program Delivery functions.
2. Decision-making on all CDBG-DR grant applications, including without limitation the approved grant dollar amount and description of authorized construction work.
3. Overall coordination of the property owners, including the relationship between the property owner and DASNY as Construction Management Program Director (CMPD) for authorized inspections and cost estimate work, as more particularly defined herein.
4. Administration of all program funding, including but not limited to:
  - a. Managing the CDBG-DR Grant Program and relationship with HUD personnel in a manner consistent with all federal requirements and the State Action Plan;
  - b. Obtaining the Grant Program funds from HUD;
  - c. Making authorized payments to DASNY and its procured subcontractors and/or subrecipients; and
  - d. Subject to the all applicable inspection, review and recommendation procedures, making payments to the contractors, architects and engineers performing construction work directly for property owner/business owner.
5. Approval of all necessary Program Delivery tools.

Provision of an HTFC Project Manager who shall be the single contact person to act as a liaison with DASNY and who shall be empowered to make decisions as required to effectively and efficiently aid in the progression of authorized construction work under the CDBG-DR Grant Program.



## **Responsibilities of DASNY**

In a manner consistent with this Agreement, CDBG-DR Grant Program and New York State Action Plan, DASNY shall perform the following activities on behalf of the HTFC:

### **Grant Program Support Services**

DASNY's role in the overall Program is visually depicted in the chart at **Schedule A-1**, attached hereto and made a part hereof. DASNY shall directly fulfill the role of Construction Management Program Director (CMPD), as indicated on Schedule A-1. In addition, DASNY, either directly or through its procured subcontractors and/or subrecipients, shall provide such Inspection Management Services and other authorized project management services as HTFC shall determine are necessary to ensure compliance with the Program and the Action Plan (the "Grant Program Support Services"). To this end, DASNY, either directly or through its procured subcontractors and/or subrecipients, shall, at a minimum:

1. Develop a program to provide inspection damage assessments and cost estimates, that will assist HTFC in meeting its obligation to ensure the timely expenditure of CDBG-DR Grant Program funds.
2. Coordinate with the Small Business Program Management Contractor on the execution of the inspection process to prevent duplication of effort.
3. Designate a geographical service area for each of its employees, authorized subcontractors and/or subrecipients.
4. Provide Inspection Management Services specific to damage assessments, inspection and cost-estimation in accordance with the State Action Plan and applicable HTFC administrative policies and procedures delivered to DASNY in accordance with the Agreement. Said damage assessment, inspection and cost estimation shall include:
  - a. Allowable Activities (AA) – work already performed by the property owner and/or the small business owner in accordance with this Agreement; and
  - b. Estimated Cost of Repair (ECR) - work to be done to bring the property back to pre-storm state.
5. Implement necessary financial controls required by HTFC to document CDBG-DR Grant Program compliance. Without limitation to the foregoing, DASNY shall cooperate with HTFC in the development and/or implementation of all inspection and cost estimated financial controls as required by HTFC to: (a) ensure CDBG-DR Grant Program compliance; and (b) detect and prevent fraud, waste and abuse of CDBG-DR Grant Program funds.
6. Adhere to all written policies and procedures provided by HTFC to prevent duplication of benefits in the award and processing of CDBG-DR Grant Program funds.
7. Cooperate with HTFC Program Delivery Services personnel to promote an orderly and professional grant administration process and good relations with Program Delivery Services personnel and property owners.

8. Monitor a percentage, to be determined and required by HTFC, of Inspection Management Services certified as complete to evaluate quality, compliance with the approved plans and specifications, and prevent fraud.
9. Complete only authorized activities, approved by HTFC in writing in accordance with Section V(e) of the Agreement as meeting CDBG-DR Grant Program requirements .
10. Cooperate with HTFC in all proceedings necessary to demonstrate compliance with applicable environmental review requirements in 24 CFR Part 58 or as otherwise provided in the CDBG-DR Grant Program approval.
11. Report relevant performance and expenditure data (including reasonable projections thereof) to HTFC in the format specified by HTFC in writing, to facilitate its compliance with all applicable CDBG-DR Grant Program requirements for reporting, database entry and internet web site hosting, including attendance at required meetings for this purpose.
12. To facilitate compliance with CDBG-DR Grant Program requirements and ensure the smooth and orderly management and administration of all financial aspects of the Program, DASNY shall assign relevant duties under this Subrecipient Agreement to its existing position of Inspection Financial Specialist ("IFS").
13. DASNY shall establish a list of procured professional engineers and architects licensed by the State of New York and other experts who will serve on the Pooled Expert Consultant Resources Panel established for the sole purpose of providing subject matter expertise to HTFC, DASNY and its procured subrecipients or subcontractors on an as-needed basis in the review of plans and specifications provided by the property owner and its consultant engineer(s) and/or architect(s), under the Program, and the inspection of structures and construction work funded by the Program and completed by the property owner's contractor.
14. DASNY shall provide other and further project management services as shall be: (a) agreed to by the parties in writing, and (b) consistent with the purposes, intent and requirements of the CDBG-DR Grant Program and State Action Plan.

#### **Responsibilities of Inspection Subrecipients or Subcontractors**

Pursuant to the requirements of the CDBG-DR Grant Program and New York State Action Plan, DASNY and its procured subcontractors and/or subrecipients shall, to the extent required by HTFC in the written work authorization or other task authorization pursuant to Section V(e) of the Agreement, be responsible for providing the following inspection-related project management services to HTFC:

1. Establish and maintain uniform financial controls, performance management systems and QA/QC measures meeting HTFC, DASNY, CDBG-DR Program Grant and State Action Plan objectives for the management of: (a) authorized activities completed by Local Inspection Managers, Team Leaders and Head Inspectors pursuant Section V(e) of the Agreement; and (b) to the extent applicable, associated Program inspection-related tasks completed by any external contractors, and architect and engineer (A&E) service providers hired directly by the property owner and approved in writing by HTFC



- pursuant to the HTFC Program Delivery Services process.
2. Adhere to all written policies and procedures provided by HTFC pursuant to the Agreement to prevent duplication of benefits in the award and completion of authorized Program inspection work.
  3. Establish and maintain, in cooperation with DASNY, appropriate IT systems that link MCM (Master Construction Manager) and HTFC Program Management systems, including procedures to ensure smooth and timely transition of data if direct system link is not feasible.
  4. Establish, in consultation with HTFC and DASNY, and maintain and implement, all standard, uniform, appropriate and/or required processes and procedures for the orderly and transparent administration of inspection-related aspects of the CDBG-DR Grant Program, including the following:
    - a. Timely and efficient assignment and management of (and tracking and reporting on), all authorized activities and associated Program inspection work, at internal, upstream (HTFC and DASNY) and downstream (Local Inspection Manager, Team Leader and Head Inspector) levels.
    - b. Ensuring that only authorized activities and associated Program inspection work, approved by HTFC in writing pursuant to Section V(e) of the Agreement as having met applicable CDBG-DR Grant Program requirements, is undertaken.
    - c. Documenting, responding to and addressing property owner complaints regarding inspection quality and workmanship.
    - d. Detection and prevention of waste, fraud, and abuse of CDBG-DR Grant Program funds.
    - e. Such other and further processes and procedures as shall be requested by HTFC or DASNY in writing.

NOTE: All processes and procedures shall be subject to review and approval by HTFC and DASNY, and shall support HTFC's obligation to ensure the timely expenditure of all CDBG-DR Grant Program funds.

5. Create appropriate training materials for Local Inspection Managers, Team Leaders and Head Inspectors to ensure consistency of actions across the Program.
6. Upon written authorization from HTFC pursuant to Section V(e) of the Agreement, assist HTFC and DASNY in the development of all necessary Program delivery tools.
7. Establish a methodology for estimating and evaluating project costs to be used by the Local Inspection Managers and Project Teams, which takes into account available procurement and bidding processes for consultants, contractors, sub-contractors and materials utilizing the State's buying power to save costs, while complying with applicable state and federal procurement rules.
8. Provide cash flow estimates projecting need for internal, inspection management subcontractors and/or subrecipients and property owner/business owner related expenses.
9. Provide such other and further requested services as may be necessary to administer the CDBG-DR Grant Program in a manner consistent with program requirements, as authorized by Section V(e) of the Agreement.



## **Payment**

Payment to DASNY and its procured subcontractors and/or subrecipients for services rendered will be made by HTFC based on actual expenditures and approved work authorizations, together with task authorizations approved pursuant to Section V (e) of the Agreement.