

Agreement
City of Amsterdam, New York
Montgomery County, New York
Program Delivery and Project Administration
NYMS Grant # 20160272
(As administered by the New York State Homes and Community
Renewal)

AGREEMENT, made this ____ day of _____ 2017, by and between

City of Amsterdam,

A municipal corporation organized and existing under the laws of the State of New York, with offices at 61 Church Street, Amsterdam, New York 12010 (the “City”), and

Montgomery County, New York,

A municipal corporation, duly organized and existing under the laws of the State of New York, having offices at County Annex Building, P.O. Box 1500, Fonda, New York (the “County”); and

WHEREAS, the City of Amsterdam is the recipient of federal funds through the New York State Homes and Community Renewal offices in the amount of \$500,000; and

WHEREAS, said funds will be used to renovate the sixth floor of the Sanford Clock Tower in the City of Amsterdam to be utilized as incubator space; and

WHEREAS, \$5,000 of the grant amount is to be allocated to Program Delivery and Project Administration; and

WHEREAS, the Montgomery County Legislature per Resolution Number _____ of 2017 authorized the County Executive to sign an agreement with the City of Amsterdam for the purpose of providing Program Delivery and Project Administration for the above referenced grant in the amount of \$5,000.

NOW, THEREFORE, in consideration of the foregoing it is hereby mutually covenanted, promised and agreed by and between the parties hereto as follows:

1. The **City** will pay \$5,000 to the **County** for Project Administration and Program Delivery.
2. The **County** shall perform program delivery duties which will include the following tasks:
 - a. Marketing grant activities;
 - b. Verifying client eligibility;
 - c. Providing education and/or counseling to beneficiaries;
 - d. Preparing loan closing documents,
 - e. Perfecting security, repayment processing, and loan disbursement;
 - f. Performing labor standards compliance work; and
 - g. Any other professional services the **County** deems are required to deliver the program.
3. The **County** shall perform grant administration duties which will include but is not limited to the following tasks:
 - a. Program initiation;
 - b. Environmental record review;
 - c. Program regulation compliance;
 - d. Program file maintenance;
 - e. Minority Women Owned Business Enterprise compliance and coordination;
 - f. Administrative coordination;
 - g. Coordination of submission of required documentation;
 - h. Financial Drawdowns;

- i. Program Monitoring;
 - j. Semi-annual performance assessment reporting; and
 - k. Close-out Reports & Monitoring.
4. The **City** and the **County** shall comply with all Federal, State and Local laws and regulations in the performance of this Agreement.
 5. **TERM:** the term of this Agreement shall be for two years from the date of execution.
 6. **ENFORCEABILITY:** If any term of this Agreement or the application thereof to any person or circumstances shall to any extend be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby and shall be valid and enforced to the fullest extent possible permitted by law.
 7. **WAIVER:** Failure or delay of either party to exercise a right under this Agreement shall not be considered a waiver of that right.
 8. **INSURANCE AND LIABILITY:** The **City** and the **County** shall proceed on a self-insured basis.
 9. **AGENCY:** This agreement in no way establishes an agency relationship between the **City** and the **County**. Each party shall have executive control of its management, employees, staff, policies and assets.
 10. **HOLD HARMLESS:** The **City** and the **County** shall hold each other harmless and indemnify the other party from and against liability, loss, damage, cost and expense which such other party may suffer from any claim, demand, suit, or cause of action which may be made or had against it by reason of the negligence or malpractice on the part of the indemnifying party including its agents, servants, contractors or employees. The **County** shall indemnify the **City** and the Housing Trust Fund Corporation against any claims arising out of the performance of the County's work under this Agreement.

11. **INDEMNIFICATION:** The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of receipt of notice to commencement of any action with respect to which a claim for indemnification is to be made hereunder. The indemnifying party will not be liable to the indemnified party for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof.
12. **ASSIGNMENT:** This Agreement binds the parties hereto and their respective successor, agents, officers, representatives and assigns. This Agreement may not be assigned by either party except by agreement, in writing, duly executed pursuant to General Municipal Law §110-o, signed and acknowledged by the authorized officers and/or representatives of the parties. The terms of this Agreement shall be binding upon the successors, heirs and the assigns of the parties hereto, in the event of approved assignment.
13. **MODIFICATION:** There shall be no oral modifications of this agreement and any modification or amendment of the terms of the agreement shall not be binding unless executed in writing in accordance with the provisions in General Municipal Law §110-o by the parties hereto. The terms of this written agreement contain entire understanding between the parties and supersede any oral representations previously made.
14. **DISPUTE RESOLUTION:** In the event of any dispute under this Agreement, either party shall serve written notice to the other of the existence and nature of the dispute, the amount at issue, if any, and the provision of this agreement governing the dispute. The parties shall negotiate the dispute in good faith until either party advises the other, in writing, that an impasse exists and that they intend to pursue their legal remedies in Court. Unless otherwise agreed in writing by the Parties, the Parties shall continue to perform their respective obligations under this Agreement during any Dispute proceeding.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written:

MONTGOMERY COUNTY

(Seal)

By: _____

Title: _____

CITY OF AMSTERDAM

(Seal)

By: _____

Title: _____

STATE OF NEW YORK

}SS

Montgomery County

On this __ day of _____, 2017, before me personally came _____ to me personally known, who being by me duly sworn, did dispose and say that he resides in Amsterdam, New York; that he is the County Executive of the Montgomery County, the municipal corporation described herein which authorized the execution of the written agreement.

Notary

STATE OF NEW YORK

}SS

MUNICIPALITY OF

On this __ day of _____, 2017, before me personally came _____, to me personally known, who being by me duly sworn, did depose and say that he resides in Amsterdam, New York; that he is the Mayor of the City of Amsterdam, the municipal corporation described herein which authorized the execution of the written agreement.

Notary

Amended Agreement
City of Amsterdam, New York
Montgomery County, New York
NYMS Grant # 20160272
(As administered by the New York State Homes and Community Renewal)
Exhibit A
Contract Provisions
(Exhibit 4-1 of Homes and Community Renewal Grant Administration Manual)

Insert Contract Provisions as defined by New York State Homes and Community Renewal

EXHIBIT 4-1

Contract Provisions

It is the responsibility of the Recipient to ensure that any of these applicable provisions are included in all contract documents. It is not acceptable for the provisions to just be photo copied and attached to the contract, but rather, the appropriate provision should be included in the appropriate contract section(s). **All contracts entered into or awarded by a Recipient shall contain the following provisions as applicable:**

1. **Equal Employment Opportunity** - All construction contracts awarded in excess of \$10,000 shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. **Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** - All contracts and subgrants in excess of \$2000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. All suspected or reported violations shall be reported to the Federal awarding agency.
3. **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)** - When required by Federal grant program legislation, all construction contracts awarded by Recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The Recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. All suspected or reported violations shall be reported to the Federal awarding agency.

4. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)** - Where applicable, all construction contracts awarded in excess of \$100,000. Contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous on federal and federally financed and assisted construction projects. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
5. **Patent Rights to Inventions Made Under a Contract or Agreement** - Contract agreements for the performance of experimental, developmental, or research work shall provide for the patent rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
6. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended** - Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
7. **Section 312 U.S.C. 1701u of The Housing and Community Development Act of 1968, as amended** - All contracts subject to Section 3 shall include the clause set forth at 24 CFR 135.38 as provided in the Section 3 Rider.
8. The following provisions shall also be included in all contracts.
 - a. Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances by which a contractor violates or breaches the contract terms, and provides for such remedial actions as may be appropriate.

- b. All contracts in excess of \$10,000 shall contain suitable provisions for termination by the Recipient, including the manner by which such termination shall be effected and the basis for settlement.
- c. Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the Recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the OCR may accept the bonding policy and requirements of the Recipient, provided the OCR has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
 - i. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of this bid, execute such contractual documents as may be required within the time specified.
 - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
 - iv. Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."
- d. All negotiated contracts awarded by Recipients or subrecipients shall include a provision to the effect that the Recipient or subrecipient, the OCR, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- e. All contracts shall contain a provision indemnifying the Housing Trust Fund Corporation, its agents and employees, from and against any and all claims, actions, damages, losses, expenses and costs of every nature and, including reasonable attorney's fees, incurred by or assessed or imposed against the

Housing Trust Fund Corporation, to the fullest extent permitted by law, arising out of the project being funded with NYS CDBG funds.

- f. All contracts shall contain a provision acknowledging that all parties shall be bound by, and comply with all applicable Federal, State, and local laws and regulations, including but not limited to, 24 CFR Parts 85 and 570.

Amended Agreement
City of Amsterdam, New York
Montgomery County, New York
NYMS Grant # 20160272
(As administered by the New York State Homes and Community Renewal)
Exhibit B
Scope of Work

Insert Scope of Work

1. The **City** will pay \$5,000 to the **County** for Project Administration and Program Delivery.
2. The **County** shall perform program delivery duties which will include the following tasks:
 - a. Marketing grant activities;
 - b. Verifying client eligibility;
 - c. Providing education and/or counseling to beneficiaries;
 - d. Preparing loan closing documents,
 - e. Perfecting security, repayment processing, and loan disbursement;
 - f. Performing labor standards compliance work; and
 - g. Any other professional services the **County** deems are required to deliver the program.
3. The **County** shall perform grant administration duties which will include but is not limited to the following tasks:
 - a. Program initiation;
 - b. Environmental record review;
 - c. Program regulation compliance;
 - d. Program file maintenance;
 - e. Minority Women Owned Business Enterprise compliance and coordination;
 - f. Administrative coordination;
 - g. Coordination of submission of required documentation;
 - h. Financial Drawdowns;
 - i. Program Monitoring;
 - j. Semi-annual performance assessment reporting; and
 - k. Close-out Reports & Monitoring.

Amended Agreement
City of Amsterdam, New York
Montgomery County, New York
NYMS Grant # 20160272
(As administered by the New York State Homes and Community Renewal)
Exhibit C
Reversion of Assets

Insert Reversion of Assets clause



**Homes and
Community Renewal**

**Housing
Trust Fund
Corporation**

ANDREW M. CUOMO
Governor

JAMES S. RUBIN
Commissioner/CEO

December 16, 2016

Honorable Michael Villa
Mayor
City of Amsterdam
61 Church Street
Amsterdam, New York 12010

Re: New York Main Street (NYMS) Program Grant Agreement
SHARS ID# 20160272

Dear Mayor Villa:

Congratulations on your 2016 New York Main Street (NYMS) program Downtown Anchor grant award. Please find enclosed two copies of the Grant Agreement for the above-referenced project. Please review the Grant Agreement and attachments in their entirety. The checklist included outlines the contents of the Grant Agreement and the supplemental documents required to formally execute the agreement, and to prepare for grant administration. The effective date of your Grant Agreement is December 20, 2016. All funds must be expended and the project completed within the 24-month term of the Grant Agreement, which expires on December 19, 2018.

OCR requires evidence that all construction and permanent financing identified as necessary to complete the proposed project is committed and secured prior to contract execution. To ensure the project will be completed within the 24 month term, all financing must be committed within six months of the date of this letter, or the award may be withdrawn. Documentation of funding commitments must be provided when the grant agreement is returned to OCR.

You will soon be invited to participate in a grant implementation webinar for 2016 NYMS awardees. The workshop will provide an overview of NYMS program rules and regulations, and provide detailed guidance on the NYMS grant administration process. Participation is mandatory for NYMS awardees. Registration instructions will be provided by email.

I would like to take this opportunity to introduce you to Crystal Loffler, your assigned NYMS program representative. If you have any questions concerning your project and/or the completion of the Grant Agreement and associated documents, please contact Ms. Loffler at 518-474-2057 or crystal.loffler@nyshcr.org.

Congratulations again. We look forward to working together to successfully achieve the goals of your New York Main Street Program.

Sincerely,

Christian Leo
President
Office of Community Renewal

NEW YORK MAIN STREET PROGRAM
GRANT AGREEMENT

This **AGREEMENT** is made effective as of the 20th day of December 2016, by and between the Housing Trust Fund Corporation ("Corporation"), a public benefit corporation created and existing as a subsidiary of the New York State Housing Finance Agency pursuant to Section 45-a of the New York Private Housing Finance Law (the "PHFL"), with an office at 38-40 State Street, Hampton Plaza, 4th Floor, Albany, New York 12207, and the City of Amsterdam ("Recipient"), a not-for-profit corporation organized pursuant to the Not-For-Profit Corporation Law of the State of New York or a unit of general local government, having its principal place of business at 61 Church Street, Amsterdam, New York 12010.

WITNESSETH:

WHEREAS, pursuant to PHFL Article XXVI and the regulations promulgated thereunder ("Statute"), the Corporation is authorized to enter into contracts to provide grants to qualified community based not-for-profit corporations and units of local government for the revitalization of eligible main street and surrounding downtown areas under the New York Main Street program ("NYMS"); and

WHEREAS, the Recipient has applied to the Corporation for NYMS funds to administer a local NYMS program ("Program") as described in the Recipient's 2016 Funding Round application; and

WHEREAS, the Corporation has selected the Recipient to receive an award of NYMS funds to be used for eligible costs to complete the Program ("Program Costs"), in consideration of, among other things, the Recipient undertaking to comply with all the terms and conditions of this Agreement, the Statute, and the Corporation's applicable rules, regulations, policies and procedures, as amended from time to time.

NOW, THEREFORE, in furtherance of the Project, and for the consideration herein provided, the parties do mutually covenant and agree as follows:

1. Scope of Work.

The Recipient shall (a) complete the Program in accordance with the Recipient's approved application ("Application"), which is incorporated herein and summarized in Awarded Budget & Projected Accomplishments attached as **Schedule A**, and it's Administrative Plan ("Plan") attached as **Schedule B**, as modified by the terms of this Agreement or any subsequent amendment approved by the Corporation, and (b) adhere to the Awarded Budget reflected in **Schedule A**. The Recipient represents that it has obtained the managerial and technical capability necessary to undertake and perform the Plan in a satisfactory manner.

2. Term.

The period of performance for all activities assisted pursuant to this Agreement shall be twenty-four (24) months commencing on the effective date of this Agreement and ending on December 19, 2018, ("Term"), unless sooner terminated as provided for herein.

3. Program Costs.

The maximum amount of NYMS funds to be provided to the Recipient is Five Hundred Thousand dollars (\$500,000). The Corporation agrees to reimburse the Recipient for Program Costs described in the Application and the Plan, and contained in the Awarded Budget. Program Costs shall not exceed the amount of NYMS

funds available. Any modification, amendment or rescission of Program Costs must be requested in writing, and approved in writing by the Corporation.

4. **Environmental Review.**

Prior to the formal commitment or expenditure of NYMS funds, the environmental effects of each activity must be assessed in accordance with the State Environmental Quality Review Act (SEQRA) at 6 NYCRR Part 617. Recipient must submit Environmental Review documents as required by the Corporation in a timely manner following grant agreement execution. The Corporation will issue a notice to proceed following the submission of complete and accurate Environmental Review documents. No construction is to occur prior to receipt of this notice.

5. **Equal Opportunity Requirements and Procedures.**

The Corporation values affording minority- and women-owned business enterprises (M/WBEs) the opportunity to participate in the Program. Accordingly, the Recipient will promote and assist the participation of certified M/WBEs as outlined and in accordance with **Schedule C**.

6. **Regulatory Period.**

The Recipient, for a period of five (5) years from the date of Program Completion and final inspection ("Regulatory Period"), shall take all necessary steps to ensure that owners of properties improved under the program ("Assisted Property") maintain the structures and their units in good condition. The Recipient shall also take all necessary steps to ensure that streetscape enhancements are maintained and kept in good condition during the Regulatory Period. Residential units improved under the Program that become vacant during the Regulatory Period must be marketed, and made affordable, to persons of low-income. For the purposes of this Agreement, persons of low-income are defined as persons and families whose incomes do not exceed ninety percent (90%) of the area median income for the metropolitan statistical area in which the target area is located. The Recipient shall require every owner of an Assisted Property to execute a Property Maintenance Declaration, in the form provided by the Corporation, which shall be filed in the County Clerk's Office for the county in which the Assisted Property is located. The Recipient agrees to operate, monitor and regulate the Program in accordance with the Plan, and in compliance with the terms of this Agreement, throughout the Regulatory Period.

7. **Reports.**

During the Term and the Regulatory Period, the Recipient shall, at such times and in such form as the Corporation may require, furnish the Corporation with periodic reports pertaining to the Program, and the costs and obligations incurred in connection therewith, and any other matters covered by this Agreement.

8. **Records.**

The Recipient shall keep and maintain complete and accurate books, records and other documents as shall be required under applicable State and Federal rules and regulations, and as may be requested by the Corporation to reflect and fully disclose all transactions relating to the receipt and expenditure of NYMS funds and administration of the Program. All such books, records and other documents shall be available for inspection, copying and audit at all reasonable times by any duly authorized representative of the State or Federal Government.

9. **Performance Review.**

The Corporation will conduct periodic reviews in such manner and at such times as it shall determine for the purpose, among other things, of ascertaining the quality and quantity of the Recipient's activities, as well as their conformity to the provisions of this Agreement, and the financial integrity and efficiency of the Recipient.

10. Notice of Investigation or Default.

The Recipient shall notify the Corporation within five (5) calendar days after obtaining knowledge of: (i) the commencement of any investigation or audit of its activities by any governmental agency; or (ii) the alleged default by the Recipient under any mortgage, deed of trust, security agreement, loan agreement or credit instrument executed in connection with the Program; or (iii) the allegation of ineligible activities, misuse of NYMS funds, or failure to comply with the terms of the Recipient's approved application. Upon receipt of such notification, the Corporation may, in its discretion, withhold or suspend payment of NYMS funds for a reasonable period of time while it conducts a review of the Program's activities and expenditures.

11. Supporting Documentation.

All expenditures made from NYMS funds pursuant to this Agreement shall be supported by written bids, written contracts, billings, bank documents and any other documentation that the Corporation may request, at any time during the Regulatory Period, to establish that such NYMS funds have been used in accordance with the terms of this Agreement.

12. Disbursement.

The Recipient shall submit to the Corporation requests for disbursements in such form and manner and at such times as the Corporation may require. The Recipient shall not request disbursement of funds under this Agreement until the funds are needed for payment of incurred eligible costs. Each such request shall (a) state the amount requested to be disbursed; (b) be certified by an officer of the Recipient and, where required by the Corporation, by a licensed architect or engineer retained by the Recipient; and (c) constitute an affirmation that the representations and warranties contained in Section 13 hereof remain true and correct on the date thereof. All NYMS funds paid to the Recipient shall be disbursed to the contractor or vendor within five (5) business days of receipt, except where such funds are to reimburse the Recipient for payments already disbursed to the contractor or vendor. In its discretion, the Corporation may make such disbursements, directly to the contractor or vendor, and the execution of this Agreement by the Recipient shall constitute an irrevocable direction and authorization to so disburse the funds. No further direction or authorization from the Recipient shall be necessary to warrant such direct disbursement, and all such disbursements shall satisfy, pro tanto, the obligations of the Corporation. The Corporation shall have no obligation to make disbursements for items other than eligible Program Costs, as herein defined.

13. Representations and Warranties.

The Recipient represents and warrants to the Corporation that:

- (a) It is, as of the date hereof, and has been for at least one (1) year prior to the execution of this Agreement, duly organized, validly existing and in good standing under the Not-for-Profit Corporation Law of the State of New York and is authorized to enter into this Agreement and the transactions contemplated hereby; or it is, as of the date hereof, a unit of local government duly organized and validly existing under the laws of the State of New York and is authorized to enter into this Agreement and the transactions contemplated hereby.
- (b) If applicable, it has secured commitments for such additional funds sufficient to complete the Program and that the source of such funds is specified in the Awarded Budget.
- (c) There is no pending or threatened litigation that might affect the Recipient's ability to comply with this Agreement or complete the Program.
- (d) The transactions contemplated hereby do not violate any applicable law or the certificate of incorporation, charter, by-laws or any other legal instrument affecting the Recipient.
- (e) The Program, to the extent necessary, has been approved by all governmental authorities which have jurisdiction over the Recipient, the Program or any construction performed in connection therewith.
- (f) All construction, if any, heretofore performed in connection with the Program has been performed within the perimeter of the Target Area, identified in the Application and summarized in Awarded Budget & Projected Accomplishments attached as Schedule A, in accordance with the Plan and in accordance with all laws, ordinances, rules, orders, regulations and requirements of any governmental authority having

jurisdiction over the Recipient, the Program or any construction performed in connection therewith (any of the foregoing a "Requirement," collectively "Requirements"), and with any restrictive covenants applicable to the Assisted Property, and the intended use of the Assisted Property complies with all applicable zoning ordinances, regulations and restrictive covenants.

(g) The Plan and any other information contained herein or heretofore provided to the Corporation by the Recipient is true and correct in all respects, and accurately represent the condition of the Program and of the Recipient as of the respective dates thereof, no materially adverse change has occurred in the condition of the Program or the financial conditions of the Recipient since the respective dates thereof, and the Recipient has neither received, nor made application for nor received commitments for, any additional grants or loans, other than those specified in the Awarded Budget.

(h) There is no default on the part of the Recipient under this Agreement or under any other instrument executed in connection with the Program or with any other program funded by New York State Homes and Community Renewal or the Corporation, and no event has occurred and is continuing which notice or the passage of time would constitute an event of default thereunder.

(i) This Agreement and all other instruments executed in connection with the Program will be, upon execution thereof, legal, valid and binding instruments enforceable against the Recipient in accordance with their terms.

14. Covenants of the Recipient.

The Recipient covenants as follows:

(a) It will comply promptly with any Requirement and furnish the Corporation, upon request, with official searches made by any governmental authority.

(b) It will cause all conditions hereof to be satisfied in a timely manner and will comply with all Program requirements and guidelines, as well as any applicable State and Federal laws and regulations, as amended.

(c) It will, upon demand, correct any defect in the Program or any departure from the Plan not approved by the Corporation. The disbursement of any NYMS funds hereunder shall not constitute a waiver of the Corporation's rights to require compliance with this covenant with respect to any such defects or departures from the Plan.

(d) It will place at any construction site a sign, the form of which shall have been approved by the Corporation, identifying the participation of the Governor of the State of New York and the Corporation in the financing of the Program, which sign shall be of a size and in a location so as to be visible from outside the construction site, as approved by the Corporation.

(e) It will execute all such instruments and documents that the Corporation may require for the purpose of effectuating the provisions of this Agreement.

15. Insurance.

During the Term, the Recipient shall take all adequate measures to safeguard against the risk of liability for injuries or death of employees of the Recipient, contractors and subcontractors, and of any other persons. The Recipient shall provide the Corporation with an insurance certificate for comprehensive general liability coverage in a minimum amount of one million dollars naming the Corporation and the State of New York as additional insureds, together with certificates for automobile insurance (if applicable), fire insurance, workers' compensation and disability benefits. All certificates shall be with a New York State licensed carrier of insurance. Within two (2) business days of having received any notice of non-renewal, cancellation, termination, or rescindment for any type of insurance required herein, the Recipient shall provide the Corporation with a copy of such notice, either by facsimile or email (in pdf format) to the signatory hereof, together with an explanation of any efforts taken to reinstate such coverage. The Recipient may not cancel, terminate or fail to renew any insurance policy required herein, unless and until the Recipient has received the Corporation's written consent thereto.

16. Contract Supervision.

It is agreed that the services to be performed under this Agreement shall be subject to the overall

administration, supervision and direction of the Corporation and that the Corporation may periodically call meetings which shall be attended by Recipient.

17. Required Cooperation.

The Recipient agrees to cooperate with the Corporation for all of the purposes of this Agreement in order to assure the expeditious and satisfactory completion of the Program. The Recipient also agrees to complete promptly all forms and reports as may from time to time be required by the Corporation and/or the State of New York in the proper administration and performance of said services. The Recipient further agrees that the Corporation may modify this Agreement as may be deemed necessary by the Corporation, to best make use of the Corporation's funding sources available for this Program.

18. Default.

(a) If an Event of Default as defined below shall occur, all obligations on the part of the Corporation to make any further payment of NYMS funds shall, if the Corporation so elects, terminate and the Corporation may, in its discretion, exercise any of the remedies set forth herein; provided, however, that the Corporation may make any payments after the happening of an Event of Default without thereby waiving the right to exercise such remedies, and without becoming liable to make any further payment.

(b) The following shall constitute an Event of Default hereunder:

(i) if the Recipient fails, in the opinion of the Corporation, to comply with or perform any provision, condition or covenant contained in this Agreement, any applicable State or Federal law or regulation, or the Program policies and procedures established by the Corporation;

(ii) if at any time any representation or warranty made by the Recipient shall be incorrect or materially misleading;

(iii) if the Recipient has failed to commence the Program in a timely fashion or has failed to complete the Program within the Term.

(c) Upon the happening of an Event of Default, the Corporation may, in its discretion, exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of such remedies shall not preclude the Corporation from pursuing any other remedies contained herein or otherwise provided at law or in equity:

(i) Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice.

(ii) Commence a legal or equitable action to enforce performance of this Agreement.

(iii) Withhold or suspend payment of NYMS funds.

(iv) Recapture any NYMS funds disbursed to the Recipient on a pro rata basis over the Regulatory Period. The amount to be recaptured shall be determined by reducing the original amount of NYMS funds disbursed to the Recipient by one fifth (1/5th) for each year of the Regulatory Period the Recipient was in compliance with this Agreement.

(v) Exercise any corrective or remedial action, to include, but not be limited to, advising the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or requiring the Recipient to reimburse the Corporation for the amount of NYMS funds expended or used in an unauthorized manner or for an unauthorized purpose.

(d) In the event this Agreement is terminated by the Corporation for any reason, or upon the closeout of the Program, unless the Recipient obtains the prior written consent of the Corporation to the contrary, all unspent NYMS funds held by the Recipient shall immediately be turned over to the Corporation, and the Corporation shall have no further liability or obligation under this Agreement; provided, however, that nothing herein is intended to relieve the Corporation of its obligation to pay for services properly performed by the Recipient prior to such termination. Notwithstanding any such termination or closeout, the Recipient shall remain liable to the Corporation for any unspent NYMS funds, the expenditure or use of NYMS funds in a manner or for a purpose not authorized by this Agreement, or damages as a result of any breach of this Agreement by the Recipient. The Corporation shall have the right, at any time prior or subsequent to any such termination or

closeout, to pursue any and all available remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this Agreement and to recover NYMS funds which are unspent, expended or used in an unauthorized manner or for an unauthorized purpose.

19. Indemnification.

To the fullest extent permitted by law, the Recipient shall defend, indemnify and hold harmless the Corporation and its agents and employees from and against any and all claims, actions, damages, losses, expenses and costs of every nature and kind, including reasonable attorneys' fees, incurred by or asserted or imposed against the Corporation, as a result of or in connection with the Program. All money expended by the Corporation as a result of such claims, actions, damages, losses, expenses and costs, together with interest at a rate not to exceed the maximum interest rate permitted by law, shall be immediately and without notice due and payable by the Recipient to the Corporation.

20. No Commitment Beyond Term.

The Recipient shall not enter into any contract, lease, loan or other agreement, the terms or effect of which shall commit the use of NYMS funds received pursuant to this Agreement for a period prior to commencement of the Term or subsequent to the termination of this Agreement, unless the Recipient obtains the prior written consent of the Corporation. The Recipient shall follow a formal procedure approved by the Corporation in soliciting and entering into contracts, leases and/or agreements which will be paid with NYMS funds under this Agreement.

21. Assignment.

The Recipient may not assign any right granted to it under this Agreement or delegate any obligation imposed on the Recipient herein without the prior written consent of the Corporation, and any purported assignment or delegation without the Corporation's prior written consent shall be void. No such assignment or delegation consented to by the Corporation shall be effective until the proposed assignee or delegatee (the "Assignee"), as the case may be, shall execute, acknowledge and deliver to the Corporation an agreement pursuant to which the Assignee shall assume the obligations imposed on the Recipient by this Agreement. This Agreement shall inure to the benefit of the successors and permitted assigns of the parties hereto.

22. Property Release.

To permit the Corporation to publish photographs of Assisted Property for promotional or public relation purposes, the Recipient agrees to obtain a written consent, in the form provided by the Corporation, from each owner of an Assisted Property, which it will provide to the Corporation upon request.

23. Miscellaneous.

(a) All notices or other communications with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when personally delivered or sent by certified mail, return receipt requested, to the parties at the addresses first set out herein, or at such other address of which the receiving party shall have notified the sending party, except that notice of such change or address shall be deemed to have been given when it is received.

(b) No action shall lie or be maintained against the State of New York or the Corporation upon any claim based upon or arising out of this Agreement or the work performed hereunder or anything done in connection herewith, unless such action shall be commenced within six (6) months after the termination of this Agreement, or one year from the accrual of the cause of action, whichever is earlier.

(c) If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and enforceable to the fullest extent permitted by law.

(d) Any action to be taken or consents to be given by the Corporation hereunder may be taken or given by a

representative or agent designated by the Corporation for such purpose. All consents and approvals to be given by the Corporation hereunder must be in writing.

(e) The captions and headings of the various sections herein are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such sections.

(f) This Agreement, including the attached schedules, constitutes the entire agreement between the parties and supersedes all prior oral and written agreements with respect to the Program.

(g) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York.

24. Schedules.

The following schedules are hereby incorporated into this Agreement and the Recipient, shall adhere to the provisions contained therein.

Schedule A - Awarded Budget & Projected Accomplishments

Schedule B - Administrative Plan

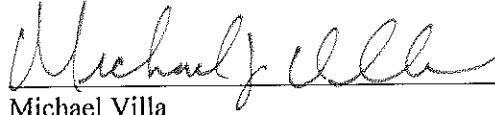
Schedule C - Participation by Minority Group Members and Women with Respect to
State Contracts: Requirements and Procedures

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

Housing Trust Fund Corporation

By: _____
Christian M. Leo
Vice President

City of Amsterdam

By: 
Michael Villa
Mayor

**Schedule A
Awarded Budget & Projected Accomplishments
City of Amsterdam
Sanford Clock Tower Renovation Project**

SHARS ID: 20160272

Award Budget

<u>Funding Source</u>	<u>Amount</u>
New York Main Street (NYMS) Award	\$500,000
Other Sources	\$321,655

NYMS Activity Budget Detail

<u>Activity(ies)</u>	<u>Amount Not to Exceed</u>
Downtown Anchor Renovation	\$495,000
Administration	\$5,000
Architecture, Engineering & Environmental Testing	\$0

Target Area

37 Prospect Street in the City of Amsterdam.

Projected Accomplishments

<u>Units</u>
0 Residential Units
1 Commercial Units
0 Civic/Community Units

Program Compliance

The term Local Program Administrator or LPA shall refer to the City of Amsterdam, the recipient of New York Main Street (NYMS) program funds.

- The LPA must endeavor to meet the projected accomplishments. Any defect or departure from the proposal must be requested and approved in writing.
- The LPA must follow the processes identified in the Administrative Plan included as Schedule B to the NYMS Grant Agreement. LPAs are required to supplement the identified processes to develop a local NYMS program. Any defect or departure from the Administrative Plan must be requested and approved in writing.
- NYMS funds may only be requested for reimbursement for eligible program costs incurred within the grant period pursuant to the NYMS grant agreement. Prior to commencing the program, the LPAs must review the eligible work items, program budget, and program timeline with OCR staff. The NYMS program operates fully as a reimbursement program and payment will be made only upon satisfactory completion of building projects.
- Downtown Anchor funds awarded for the identified renovation project shall not exceed 75% of the total renovation project cost.
- NYMS funds budgeted for Administrative expenses shall not exceed 5% of the NYMS award or the amount

noted above under Activity Budget Detail, whichever is less. Administrative funds shall be only for payment of reasonable administration and planning costs related to the NYMS contract.

- NYMS funds budgeted for Architecture, Engineering or Environmental Testing shall not exceed 18% of the NYMS building renovation funds committed for a project, and shall not exceed the amount noted above under Activity Budget Detail. Architecture, Engineering or Environmental Testing costs incurred for work on buildings that eventually prove infeasible and do not receive other investments will not be reimbursed with NYMS funds, therefore, project delivery expenses may not be requested as part of a partial payment prior to project completion.
- Projects including NYMS funds must produce a finished commercial or residential space, ready for occupancy, within the 24 month contract term. NYMS funds will be disbursed only for completed projects. Work can be completed on part of a building, leaving another part unfinished as a holdover for future use, provided that the project can be completed in compliance with all applicable codes and ordinances, and the unfinished space does not present a hazard to occupants or users of the building.
- Perceived or actual conflicts of interest may arise when certain individuals have access to inside information regarding the award of a contract or property assistance. A contractor cannot receive NYMS funds for work done on property that s/he owns, or a property that is owned by an immediate family member. Prior to commencing a project where there is a possible conflict of interest, the LPA must review the eligible work items with OCR staff.
- Prior to the commitment or expenditure of NYMS program funds, the environmental effects of each activity must be assessed in accordance with the State Environmental Quality Review Act (SEQRA) at 6 NYCRR Part 617. The LPA must submit Environmental Review documents as required by Housing Trust Fund Corporation in a timely manner following grant agreement execution. Housing Trust Fund Corporation will issue a notice to proceed following the submission of complete and accurate Environmental Review documents.
- Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law of 1980 requires publicly-funded projects to be reviewed for their potential impact/effect on historic properties. LPAs must submit proposed project scopes of work for each participating project to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP or SHPO) for review. This review is required for all NYMS funded projects.
- In cases where relocation of residential and/or non-residential tenants will be required, the LPA must develop a plan for temporary relocation. Prior to commencing project, the LPA must review the relocation plan with OCR staff.
- The LPA, for a period of five (5) years from the date of project completion and final inspection, must take all necessary steps to ensure that the owner of any NYMS assisted project maintains the structure and its units in good condition. The LPA must submit an executed Property Maintenance Declaration for an assisted building at the time reimbursement is requested from OCR. The LPA must develop a formal plan for monitoring the assisted properties and ensuring compliance with NYMS rent limits for assisted residential units for the full regulatory term. The plan must address staff assignment of this responsibility and address continuity of operations.

Schedule B
2016 New York Main Street (NYMS) Administrative Plan
City of Amsterdam
Sanford Clock Tower Renovation Project

SHARS ID: 20160272

The term Local Program Administrator or LPA shall refer to the City of Amsterdam, the recipient of the Housing Trust Fund Corporation (HTFC) funds. The New York Main Street Program Guide provides information to supplement the procedures outlined in the Administrative Plan.

1. Program Development

1. a. Project Selection

The LPA must maintain correspondence and documents related to the selection of the identified project for support as a Downtown Anchor.

2. Project Development

2. a. Design Standards

The LPA will develop design guidelines for exterior renovations if the municipality in which the project is located does not already require participating renovation projects to undergo an architectural or design review process. These guidelines will be consistent with the requirements of the State Historic Preservation Office, Housing Trust Fund Corporation (HTFC), municipality in which the project is located and the LPA. The LPA will enforce the standards throughout the development process.

2. b. Work Write-up / Scope of Work

The LPA will meet with the property owner to develop a scope of work and an initial estimate of costs. The LPA will explain program requirements related to design, environmental hazards, energy efficiency and other required work scope items.

A formal written scope of work is a NYMS program requirement. The scope of work for participating projects must address:

- Immediate health and safety concerns;
- The correction of existing code violations;
- Environmental hazards as described in the program environmental compliance checklist;
- Installation of energy conservation measures;
- Improvement of accessibility for persons with disabilities;
- Consistency with local program design guidelines; and
- Preservation of historical elements of the building.

The LPA is responsible for coordinating the work write-ups with local code officials, the State Historic Preservation Office, and other regulators. If needed, additional experts must be consulted. Both the LPA and the property owner must sign-off on the formal scope of work before the LPA may begin to seek bids for the work.

The property owner will be responsible for paying for all agreed upon repairs, but the LPA will not reimburse more than the costs identified as available per building for the funding year. Reimbursements will be issued only upon satisfactory completion of all work as described in the written scope of work. Satisfactory completion will be determined by the LPA.

2. c. Contractor Selection

The LPA will establish a list of contractors able to perform work in compliance with applicable standards. The

LPA may choose to develop this list through a formal Request for Qualifications (RFQ) process to provide contractors and professional service providers an equal opportunity for consideration. All contractors must supply references and proof of proper insurance. The LPA will use this list to solicit bids or quotes for the project activities. Additional contractors can be added to the list at any time, however, references and proof of proper insurance must be supplied to the LPA and approved.

Under Article 15A of the New York State Executive Law, all award recipients are required to comply with the Equal Employment Opportunity provisions of Section 312 of that Article. Also, all awardees are required to make affirmative efforts to ensure that New York State Certified Minority and Women-Owned Business Enterprises are afforded opportunities for meaningful participation in projects through inclusion on the list of contractors funded by HTFC pursuant to Section 313 of the Article. Please visit NYS Empire State Development's Division of Minority & Women Business Development website for a directory of certified Minority and Women-Owned Businesses: <http://www.esd.ny.gov/MWBE.html>

An appropriate procurement process must be completed for all activities to be reimbursed with program funds. At a minimum, two bids or proposals must be obtained and reviewed for all renovation, administration or professional service activities to establish the reasonableness of project costs.

The procurement process must be free of collusion or intimidation, and the LPA must exercise appropriate oversight over the entire process to ensure that it is fair, efficient and free of actual and perceived conflicts of interest. A clear, written, scope of work for the project, as outlined in Work Write-up / Scope of Work above, must be the basis for the bids or proposals. All bidders must have equal access to relevant information, including information on the property itself.

The bids or proposals for all activities must be submitted directly to the LPA by the contractor. The LPA will advise the property owner of acceptability of bids and proposed cost. If the property owner chooses other than the lowest bidder, re-imburement will be based on the amount of the lowest bid.

2. d. Contracting Procedures

The LPA will enter into a contract with the property owner to provide the program financial assistance. The contract will outline the roles and responsibilities for both the LPA and the participating property owner.

At a minimum, the contract must specify:

- Agreed upon scope of work;
- Projected amount of financial assistance awarded;
- Estimated project timeline;
- Requirement to sign and file the NYMS Property Maintenance Declaration form;
- Requirement to sign the NYMS Property Release form permitting the Housing Trust Fund Corporation to use photographs of the assisted properties.
- Requirement to engage a contractor and begin construction within 30 days of LPA approval.
- Payments will be made only after work is complete, and on a reimbursement basis;
- LPA has the right to inspect work at any time;
- LPA may terminate the award and cancel the contract should the work be inconsistent with the program rules outlined, agreed upon scope of work or project design, stated timeline or if insurance is not maintained by the participating contractor;
- Property owner will cooperate with the LPA requirement to monitor the ongoing maintenance of the property, including the rent limits for assisted residential units for the five year regulatory term.

3. **Construction Management/Quality Control**

3. a. Construction Monitoring

The LPA retains the right to inspect work in progress at any point. The LPA must perform periodic inspections of renovation activities to monitor adherence with program rules, environmental hazard compliance, and general

project progress. These visits must be documented in LPA project files.

3. b. Final Inspection

A final inspection is required before submitting a final payment request. The LPA, property owner and other relevant professionals must verify that the work was completed properly and is consistent with the contracted scope of work. A final inspection report must be documented in LPA project files, and submitted with the request for reimbursement.

4. Financial Management

4. a. Staff

The LPA's chief financial officer will be responsible for all financial transactions under this contract. The LPA should have a written policy on internal controls, and use this policy to determine the process for review and approval of requests for disbursement of NYMS funds. The Authorized Signature Form must be completed to designate the representative(s) authorized to sign disbursement requests and must reflect the LPA's written policy on internal controls.

4. b. Interim / Construction Financing

The property owner will be responsible for paying for all agreed upon repairs, but the LPA will not reimburse more than the costs identified as available per building for the funding year. Participating property owners are responsible for obtaining construction or interim financing for the renovation projects.

The NYMS program operates fully as a reimbursement program and payment will be made only upon satisfactory completion of renovation activities. Request for progress payments are discouraged, and will only be considered based on demonstrated need and by written request prior to commencement of renovation project. The request must minimize the number of progress payments, and clearly outline the proposed payment schedule.

5. Ongoing Maintenance

5. a. Obligations

The property owner is required to maintain the property assisted with NYMS funds for a period of five years from the date of project completion and final inspection. This requires that any assisted improvements be maintained in a manner that is consistent with the goals of the NYMS program for the regulatory term. Assisted residential units, when they become vacant, must be marketed and affordable to low income households during the regulatory term. This requirement is met through a rent limit imposed on the assisted residential unit.

The LPA will require each property owner receiving NYMS funds to file a Property Maintenance Declaration, in a form approved by HTFC, with the clerk of the county in which the project is located. In the Declaration the property owner will declare that he/she has received assistance from NYMS and will maintain the property in a manner consistent with the program objectives for a minimum of five years. In the event of non-compliance or resale, the amount of grant funds will be subject to repayment in accordance with a simple annual declining balance, based on the five-year regulatory term.

5. b. Responsible Parties

The LPA will monitor projects assisted under NYMS during the five-year regulatory term. The LPA will ensure maintenance of Main Street investments. The LPA must develop a formal plan for monitoring the assisted properties and ensuring compliance for the five-year term. The plan must address staff assignment of this responsibility and address continuity of operations. As part of this plan, the LPA will periodically inspect assisted properties and conduct any inspections directed by HTFC.

6. Program Compliance

6 a. Conditions

Housing Trust Fund Corporation reserves the right to change or disallow aspects of the application and may make such changes conditions of its commitment to provide funding to a project or program. The LPA will address any additional requirements or conditions of approval.

6. b. Covenants of the Recipient

The LPA will comply with all applicable statues, guidelines, regulations, policies and procedures of the New York Main Street program. Any defect or departure from the NYMS Administrative Plan must be requested and approved in writing. The LPA must refer to Grant Agreement Schedule A - Awarded Budget & Projected Accomplishments for a summary of the awarded program activities.

Schedule C

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The Housing Trust Fund Corporation (HTFC) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Recipient agrees, in addition to any other nondiscrimination provision of this agreement and at no additional cost to the HTFC, to fully comply and cooperate with the HTFC in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Recipient's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix or enforcement proceedings as allowed by this Agreement.

II. Contract Goals

- A. For purposes of this Agreement, the HTFC hereby establishes a goal of, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on this Agreement and achieving the Contract Goals established in section II-A, Recipient should reference the directory of New York State Certified MBWEs found at the following internet address:
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

Additionally, Recipient is encouraged to contact the Division of Minority and Woman Business Development's assigned Compliance Officer to discuss additional methods of maximizing participation by MWBEs on this Agreement.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Agreement. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in this Agreement, such a finding constitutes a breach of contract and Recipient shall be liable to the HTFC for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Recipient agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Recipient shall comply with the following provisions of Article 15-A:

1. Recipient and its subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Recipient and its subcontractors shall submit an EEO policy statement to the HTFC with its MWBE Utilization Plan in accordance with the NYS Homes and Community Renewal (HCR)'s Office of Fair Housing and Equal Opportunity ("OFHEO") procedures. If Recipient or its subcontractors do not have an existing EEO policy statement, a model statement can be found on the HCR website.
3. Recipient's EEO policy statement shall include the following language:
 - a. The Recipient or its subcontractors will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Recipient shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Recipient shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Recipient's obligations herein.
 - d. The Recipient will include the provisions of sections (a) through (c) of this subsection and paragraph "E" of this section, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Agreement.
4. Recipient or its subcontractors will comply with both Executive Law Article 15A and Executive Law Article 15, including, but not limited to Section 296.

C. Staffing Plan

To ensure compliance with this section Recipient shall submit a Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of this Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Recipient shall complete the Staffing Plan form and submit it within 60 days of this Agreement.

D. ADM 136 Monthly Employment Utilization Report ("Monthly Report")

1. Once a contract has been awarded and during the term of the construction, Recipient and its subcontractors are responsible for updating and providing notice to the HTFC of any changes to the ADM 136. This information is to be prepared monthly and submitted on a quarterly basis to report the actual workforce utilized on the project by the specified categories listed including ethnic background, gender and Federal occupational categories.
2. Separate forms shall be completed by each subcontractor performing work on the project.
3. In limited instances it may not be possible to separate out the workforce utilized on the project from subcontractor's total workforce. When a separation can be made, subcontractor shall submit the ADM 136 and indicate that the information provided related to the actual workforce utilized on this project. When the workforce to be utilized on the project cannot be separated out from subcontractor's total workforce, subcontractor shall submit the ADM 136 and indicate that the information provided is subcontractor's total workforce during the subject time frame, not limited to work specifically for this project.

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

IV. MWBE Utilization Plan

- A. The Recipient represents and warrants that Recipient will submit an ADM- 095B MWBE Utilization Plan either prior to, or within 60 days of work being definitely assigned and described under this Agreement or subsequent work order hereunder.
- B. Recipient agrees to use such MWBE Utilization Plan for the performance of MWBEs on this project pursuant to the prescribed MWBE goals set forth in section II-A of this Appendix.
- C. Recipient further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Agreement. Upon the occurrence of such a material breach, the HTFC shall be entitled to any remedy provided herein, including but not limited to, a finding of Recipient non-responsiveness.

V. Waivers

- A. For Waiver Requests Recipient should refer to OFHEO's Good Faith Efforts Guide on the HCR website.
- B. If Recipient, after making good faith efforts, is unable to comply with MWBE goals, Recipient may submit a Request for Waiver documenting good faith efforts by Recipient to meet such goals. Requests are to be in writing and directed to Wanda Graham, Director, Office of Fair Housing and Equal Opportunity, NYS Homes and Community Renewal, 641 Lexington Avenue, 5th Floor, New York, New York 10022.
- C. If the HTFC, upon review of the Utilization Plan and updated Compliance Reports determines that Recipient is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the HTFC may issue a notice of deficiency to Recipient. Recipient must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Recipient is required to submit a Quarterly MWBE Contractor Compliance Report Form to the HTFC by the 10th day following each end of quarter over the term of the Agreement documenting the progress made towards achievement of its MWBE goals.

VII. Forms

The required forms can be found on the HCR website at <http://www.nyshcr.org/Forms/NYMS/>.