

**NEW YORK MAIN STREET TECHNICAL ASSISTANCE PROJECT**  
**GRANT AGREEMENT**

This **AGREEMENT** is made effective as of the 29th day of January 2018, 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 Montgomery County ("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 local government, having its principal place of business at 20 Park Street, Fonda, New York 12068.

**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 technical assistance program ("Program") as described in the Recipient's application ("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 ("Project 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 Program, 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 its Application, which is incorporated herein by this reference and summarized in Awarded Budget & Projected Accomplishments (attached as **Schedule A**) and b) adhere to the Awarded Budget & Projected Accomplishments reflected in **Schedule A**. The Recipient represents that it has obtained the managerial and technical capability necessary to undertake and perform the Program activities described in Schedule A and Schedule B.

**2. Term.**

The period of performance for all Program activities assisted pursuant to this Agreement shall be twelve (12) months commencing on the effective date of this Agreement and ending on **January 28, 2019**, ("Term"), unless sooner terminated as provided for herein. Any modification or amendment of the Term must be requested in writing, and approved in writing by the Corporation.

**3. Project Costs.**

The maximum amount of NYMS funds to be provided to the Recipient is Twenty Thousand dollars (\$20,000 "Award"). The Corporation agrees to reimburse the Recipient for Project Costs outlined in Schedule A. Reimbursable Project Costs shall not exceed the amount of the Award. Any modification, amendment or rescission of Project Costs must be requested in writing, and approved in writing by the Corporation. The Corporation reserves the right to reduce the Award: a) to conform to any revision to which the parties may agree in writing to with respect to eligible projects; or b) if the actual costs for the approved activities are less than those budgeted for in Schedule A. The Corporation shall have no obligation to make disbursements for

items other than the eligible items set forth in Schedule A.

**4. Forms and Instructions.**

Forms and instructions required for the administration of the Program described in this Agreement, and attached schedules, are available online at the following website: <http://www.nyshcr.org/Forms/NYMS/>

**5. Environmental Review.**

Prior to the formal commitment or expenditure of the Award, the environmental effects of each Program activity must be assessed in accordance with the State Environmental Quality Review Act (SEQRA) at 6 NYCRR Part 617. An environmental review process must be conducted to identify specific environmental factors that may be encountered during Program activities, and to develop procedures to ensure compliance with regulations pertaining to these factors. The Recipient must submit Environmental Review documents as required by the Corporation and outlined in the Environmental Compliance Handbook following the execution of this Agreement. The Corporation will issue a notice to proceed with Program activities following the submission of complete and accurate Environmental Review documents. No Program activities shall occur prior to receipt of this notice.

**6. Reports.**

During the Term 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.

**7. 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 the Award and administration of the Program. All such books, records and other documents shall be available for inspection, copying and audit during the Term and for seven (7) years following the final disbursement of the Award by any duly authorized representative of the State or Federal Government.

**8. 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 Program activities, as well as their conformity to the provisions of this Agreement, and the financial integrity and efficiency of the Recipient. Such reviews may be conducted without prior notice.

**9. Notice of Investigation or Default.**

The Recipient shall notify the Corporation within five (5) calendar days after obtaining knowledge of: a) the commencement of any investigation or audit of its activities by any governmental agency; or b) 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 c) the allegation of ineligible activities, misuse of the Award, or failure to comply with the terms of the Recipient's Application. Upon receipt of such notification, the Corporation may, in its discretion, withhold or suspend payment of some or all of the Award for a reasonable period of time while it conducts a review of the Program activities and expenditures.

**10. Supporting Documentation.**

All expenditures made from the Award pursuant to this Agreement shall be supported by written bids, written contracts, billings, bank documents and any other documentation as required by the Corporation. The Corporation may request or review the documentation at any time during the Term or Regulatory Period to establish that the Award has been used in accordance with the terms of this Agreement.

**11. Disbursement.**

- (a) The Recipient shall request disbursement of funds under this Agreement only for reimbursement of Costs, or with written approval, payment of incurred Project Costs. The Corporation shall have no obligation to make disbursements for items other than eligible Project Costs, as defined in Schedule A.

In-kind services and cash payments are not eligible Project Costs. Activities occurring prior to Corporation's issuance of a notice to proceed are not eligible Project Costs and will not be reimbursable hereunder.

- (b) The Recipient shall submit to the Corporation requests for disbursements in such form and manner and at such times as the Corporation may require following procedures outlined in Schedule A and the Commitment & Disbursement Procedures for Local Program Administrators document made available on the Corporation's website. Each such request shall
  - be submitted electronically to [Disbursements@nyshcr.org](mailto:Disbursements@nyshcr.org) with forms and supporting documentation;
  - 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
  - constitute an affirmation that the representations and warranties contained in Section 12 hereof remain true and correct on the date thereof.
- (c) Funds shall be transferred to the Recipient through an Automated Clearing House (ACH), i.e. direct deposit, procedure. As the Award is paid to the Recipient it shall be disbursed to the owner, contractor or vendor within five (5) business days of electronic deposit, 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 Award. 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.

## **12. 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 transaction contemplated hereby.
- (b) If applicable, it has secured commitments for any such additional funds sufficient to complete the Program.
- (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 activities performed in connection therewith.
- (f) The Schedule A 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 Schedule A.
- (g) 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.
- (h) 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 its terms.

## **13. 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 Schedule A not approved in writing. The disbursement of any Award funds shall not constitute a waiver of the Corporation's rights to require compliance or the Corporation's right to recapture any funds disbursed inadvertently for ineligible expenditures.
- (d) It will execute all such instruments and documents that the Corporation may require for the purpose of effectuating the provisions of this Agreement.

**14. 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.

**15. 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.

**16. Required Cooperation.**

The Recipient agrees to cooperate with the Corporation for all of the purposes of this Agreement 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.

**17. 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 the Award 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 reasonable 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 NYMS 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 as set forth in Section 2.
- (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) calendar days prior written notice.
  - (ii) Commence a legal or equitable action to enforce performance of this Agreement.
  - (iii) Withhold or suspend payment of the Award.
  - (iv) 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 the Award 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, any unspent Award 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 Award, the expenditure or use of the Award 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 the Award that is unspent, expended or used in an unauthorized manner or for an unauthorized purpose.

**18. 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.

**19. Non-liability.**

Nothing in this Agreement or arising out of the development or operation of the Program shall impose any liability or duty whatsoever on the Corporation, the State of New York or any of its agencies or subdivisions.

**20. Subcontracts.**

The Recipient shall:

- (a) require any participating Subrecipient, contractor, subcontractor, or agent ("Third Party") to comply with all applicable Federal, State and Local laws and regulations;
- (b) adopt and perform such review and inspection procedures as are necessary to ensure compliance by a Third Party with all applicable Federal, State and Local laws and regulations;
- (c) require any Third Party to indemnify the Corporation and the Recipient against any and all claims arising out of the Third Party's performance of work;
- (d) remain fully obligated under this Agreement notwithstanding its designation of a Third Party to undertake all or any portion of the Program.

**21. 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 the Award received pursuant to this Agreement for a use not authorized by the terms of this Agreement or 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.

**22. 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 ("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.

**23. Severability.**

Should any part, term, or provision of this Agreement be decided by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity, legality, and enforceability of the remaining portions shall not be affected or impaired.

**24. Notice.**

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.

**25. Miscellaneous.**

- (a) 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 (1) year from the accrual of the cause of action, whichever is earlier.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York.
- (g) This Agreement may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**26. Project Deliverables**

- (a) Materials produced pursuant to this Agreement shall be provided to the Corporation upon project completion and prior to reimbursement of Project Costs.
- (b) Materials produced shall be provided to the Corporation in electronic format.
- (c) Materials produced pursuant to the Agreement are property of the Corporation and the Corporation reserves the right to modify and distribute such materials.
- (d) All contracts between the Recipient and providers hired to produce Project materials must include a provision requiring Project materials to be explicitly labeled as works for hire and exclusive property of the Recipient and the Corporation;
- (e) Materials produced shall be clearly labeled with the Project Number and the following statement: "Developed with funding assistance from Housing Trust Fund Corporation and NYS Homes and Community Renewal. Document is property of Housing Trust Fund Corporation and *Recipient organization*."

**27. 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

**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

**Montgomery County**

By: \_\_\_\_\_

Matthew Ossenfort

County Executive



**Schedule A**  
**2018 Awarded Budget & Projected Accomplishments**  
**Montgomery County**  
**St. Johnsville Main Street Design NYMS-TA Project**

**SHARS ID:** 20170246

**CFA ID:** 77916

**Award Budget**

<b><u>Funding Sources</u></b>	<b><u>Amount</u></b>
New York Main Street (NYMS) Award	\$20,000
Other Sources	\$1,000

**Projected Accomplishments**

Activity and Deliverable(s)	Start Date	Estimated Completion Date	Cost	NYMS-TA Cost	Estimated Payment Request Date
Procure Professional Services: - Request for Proposals (RFP) for professional services; - Firm selected;	10/31/17	11/28/17	-	-	N/A
Feasibility Studies for eight buildings: - Building condition assessment and structural engineering study; - Code analysis to determine potential uses for buildings; - Internal plan drawings and façade improvements for three buildings with estimated costs for renovations. - Façade plan drawings for five buildings with Estimated costs for construction.	02/01/18	05/01/18	\$15,000	\$14,250	07/01/18
Design Guidelines	03/01/18	04/15/18	\$6,500	\$5,750	07/01/18
Project Closeout: - Final reports and recommendations to property owners and HTFC.	04/15/18	05/01/18	-	-	N/A
			\$21,500	\$20,000	

**Program Compliance**

The term Local Program Administrator or LPA shall refer to Montgomery County, the recipient of Housing Trust Fund Corporation (HTFC) 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.
- NYMS-TA funds may only be requested for reimbursement for eligible project costs incurred within the grant period pursuant to the NYMS-TA grant agreement. Prior to commencing the project, the LPAs must review the eligible work items, project budget, and project timeline with OCR staff. The NYMS-TA program operates fully as a reimbursement program and payment will be made only upon satisfactory completion of identified deliverables.

- Requests for NYMS-TA funds shall not exceed 95% of the total project cost documented by invoices and payments. NYMS-TA Projects require a minimum of 5% cash match, in-kind match is ineligible and administrative expenses are not eligible for reimbursement.
- LPA must incorporate provisions from Grant Agreement Section 26 in solicitation materials and final deliverables:
  - (a) Materials produced pursuant to this Agreement shall be provided to the Corporation upon project completion and prior to reimbursement of Project Costs.
  - (b) Materials shall be provided to the Corporation in electronic format only.
  - (c) Materials produced pursuant to the Agreement are property of the Corporation and the Corporation reserves the right to modify and distribute such materials.
  - (d) All contracts between the Recipient and providers hired to produce Project materials must include a provision requiring Project materials to be explicitly labeled as works for hire and exclusive property of the Recipient and the Corporation;
  - (e) Materials produced shall be clearly labeled with the Project Number and the following statement:  
“Developed with funding assistance from Housing Trust Fund Corporation and NYS Homes & Community Renewal. Document is property of Housing Trust Fund Corporation and Recipient organization.”