

**NEW YORK FORWARD**  
**GRANT AGREEMENT**

This **AGREEMENT** is made effective as of the 1st day of May 2024, 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 Village of Medina ("Recipient"), an entity organized and existing under the laws of the State of New York or a unit of general local government, having its principal place of business at 119 Park Avenue, Medina, New York 14103.

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter 54 of the Laws of 2023, SFY 2023-24 Department of State NY Forward capital appropriations and reappropriations, and subject to the availability of funding provided therein, the Corporation is authorized to enter into contracts to provide grants related to a downtown revitalization program designed for transformative housing, economic development, transportation and community projects; and

**WHEREAS**, the Recipient has applied through the NY Forward program for funding to complete a project as described in the Strategic Investment Plan and the subsequent award booklet ("Project"); and

**WHEREAS**, the Recipient has been selected to receive an award of NY Forward (NYF) funds to be used for eligible costs to complete the Project ("Project Costs"), in consideration of, among other things, the Recipient undertaking to comply with all the terms and conditions of this Agreement, the SFY 2023-24 Department of State Downtown Revitalization capital appropriations and reappropriations, 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 Awarded Budget & Projected Accomplishments attached as **Schedule A**, and its Administrative Plan attached as **Schedule B**, as modified by the terms of this Agreement or any subsequent amendment approved in writing by the Corporation, 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 commence on the effective date of this Agreement and end on **December 31, 2027**, ("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 NYF funds to be provided to the Recipient is Six Hundred Seventy Thousand Dollars (\$670,000) ("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, subject to availability of State funding. The Corporation shall have no obligation to make disbursements for items other than the eligible items set forth in Schedule A.

The Corporation may, at its sole discretion, provide need-based awards to commit additional funds to existing contracts specifically for the continuance or expansion of eligible activities. The Corporation may, at its sole discretion, also provide multi-year contracts or renewals based on the Corporation's available funds. Additional funds are subject to board approval.

**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:

<https://hcr.ny.gov/downtown-revitalization-initiative-dri-new-york-forward-nyf-forms>

**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 grant agreement execution. The Corporation will issue a notice to proceed with Program activities following the submission of complete and accurate Environmental Review documents. No construction or Program activities shall occur prior to receipt of this notice.

**6. Equal Opportunity Requirements and Procedures.**

Recipient is required to comply with Articles 15-A of the New York State Executive Law and Article 3 of the Veterans Services Law. 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") and Service-Disabled Veteran-Owned Businesses ("SDVOBs"). Recipient's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements.

The Recipient will promote and assist the participation of certified M/WBEs and SDVOBs as outlined and in accordance with Participation by Minority Group Members, Women and Service Disabled Veterans with Respect to State Contracts: Requirements and Procedures attached as **Schedule C**.

**7. Wage and Hour Provisions.**

If the Program includes public work contracts covered by Article 8 of the New York Labor Law or a building service contract covered by Article 9 thereof, neither contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, a contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, the contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the Corporation of any approved

sums due and owing for completed work.

**8. 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 Project, and the costs and obligations incurred in connection therewith, and any other matters covered by this Agreement.

**9. 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 Project. 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.

**10. 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. Such reviews may be conducted without prior notice.

**11. 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 Project; or c) the allegation of ineligible activities, misuse of the Award, 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 some or all of the Award for a reasonable period of time while it conducts a review of the Program activities and expenditures.

**12. Conflict Of Interest.**

The Recipient must have a formal, written Conflict of Interest policy. At a minimum, the policy should outline which parties are covered and what measures will be taken to allow eligible parties access to program benefits while avoiding actual and perceived conflicts of interest. The Recipient must ensure that its Conflict of Interest policy is aligned with the DRI policies and procedures established by the Corporation.

**13. 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.

**14. 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 and Schedule B. In-kind services and cash payments are not eligible Project Costs. Construction 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, Schedule B and Commitment & Disbursement Procedures for Local Program Administrators document made available on the Corporation's website. Each such request shall

- be submitted electronically to [Disbursements@hcr.ny.gov](mailto:Disbursements@hcr.ny.gov) 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 15 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.

## **15. 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 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 Schedule A, 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) 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.
- (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 its terms.

**16. 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 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 Project, which sign shall be of a size and in a location so as to be visible from outside the construction site.
- (e) It will execute all such instruments and documents that the Corporation may require for the purpose of effectuating the provisions of this Agreement.

**17. 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, 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.

**18. 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.

**19. 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.

**20. 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 Project 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) 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 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.

## **21. 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.

## **22. 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.

## **23. 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.

**24. 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 of 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. All contract amendments, modifications, or cancellations must be requested in writing by the recipient. Upon approval by the corporation, amendments to contract term/duration must be executed by the Corporation. Other amendments or modifications require execution by both Recipient and Corporation.

**25. 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.

**26. 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.

**27. Photograph 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.

**28. 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 given when it is received.

**29. 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.

### **30. Standard Clauses for Housing Trust Fund Corporation Contracts.**

- (a) Contracting with Business Conducting Business in Russia. In accordance with New York State Executive Order No. 16 (“EO 16”), by signing this Agreement, the Recipient certifies and affirms that it (i) does not conduct business operations in Russia within the meaning of EO 16; (ii) does conduct business operations in Russia within the meaning of EO 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia; and/or (iii) does conduct business operations in Russia within the meaning of EO 16 but only to the extent necessary to provide health and safety services within Russia or to comply with Federal law, regulations, executive orders, or directives. A copy of EO 16 may be downloaded at: [https://www.governor.ny.gov/sites/default/files/2022-03/EO\\_16.pdf](https://www.governor.ny.gov/sites/default/files/2022-03/EO_16.pdf).
- (b) Iran Divestment Act. By entering into this Agreement, Recipient certifies in accordance with State Finance Law §165-a that it is not on the list of “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>.

Recipient further certifies that it will not utilize on this Agreement any subcontractor that is identified on the Prohibited Entities List. Recipient agrees that should it seek to renew or extend this Agreement, it must provide the same certification at the time the Agreement is renewed or extended. Recipient also agrees that any proposed Assignee of this Agreement will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the Corporation.

During the term of the Agreement, should the Corporation receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Corporation will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Corporation shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Recipient in default.

The Corporation reserves the right to reject any bid, request for assignment, renewal, or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal, or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities List after contract award. (c) Affordable Care Act. By entering into this Agreement, Recipient acknowledges that it is the sole responsibility of the Recipient to provide and maintain all Affordable Care Act (“ACA”) requirements/benefits. The ACA mandates employers with 50



or more full-time equivalents to offer coverage to full-time employees and their dependents ormpay taxes if an employee obtains Exchange coverage and a premium tax credit. (Exchange coverage allows you to use the State’s insurance exchange marketplace to obtain coverage from competing private health care providers.) Employees of the Recipient providing services to the Corporation are employees of the Recipient and are not employed by the Corporation nor the State of New York.

(d) Responsibility and Debarment. The Recipient shall at all times during term of this Agreement remain responsible. Responsible shall include remaining off any Federal or State debarred, suspended or ineligible contractor lists. The Recipient agrees, if requested by the Corporation, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity, and current status on any Federal or State debarred, suspended or ineligible contractor lists. Recipient also agrees to complete any required questionnaires or other documents in its effort to determine that they are a responsible entity. The Corporation shall evaluate responsibility with respect to four factors: (a) financial and organization capacity; (b) legal authority to do business in New York State; (c) integrity; and (d) previous performance.

**31. Compliance with Breach Notification and Data Security Laws.**

Recipient shall comply with the provisions of the New York State Information Security Breach and Notification Act ((General Business Law § 899-aa and State Technology Law § 208) and General Business Law § 899-bb, as applicable. Further, in the event of any unauthorized acquisition or acquisition without valid authorization of computerized data which compromises the security, confidentiality, or integrity of personal information maintained by the Recipient, the Recipient shall notify HTFC of such breach immediately following the discovery of the breach if personal or private information was, or is reasonably believed to have been, acquired by a person without validation. The Recipient shall also disclose any breach of the security of its systems to any resident of New York State whose private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Such disclosure shall be made in the most expedient time possible and without unreasonable delay.

**32. 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, Women and Service Disabled Veterans 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: \_\_\_\_\_  
Crystal Loffler  
President, Office of Community Renewal

**Village of Medina**

By: \_\_\_\_\_  
Marguerite Sherman  
Mayor

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that they executed the same in their capacity (ies), and that by their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

This contract has been approved by the Housing Trust Fund Corporation's Counsel as to form and its Treasurer as to fiscal sufficiency.

**Schedule A**  
**Awarded Budget & Projected Accomplishments**  
**Village of Medina**  
**Small Project Fund**  
**409-413 Main Street**

SHARS ID: 20240422

**Award Budget**

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<u>Funding Source</u>	<u>Amount</u>
New York Forward Award	\$ 670,000
Other Sources Small Project Fund	\$ 90,000
Other Sources Main Street	\$370,000

**Activity Budget Detail**

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<u>Activity</u>	<u>Amount Not to Exceed</u>
<b>Small Project Fund</b>	
Building Renovation & Business Assistance	\$255,000
<i>Architecture, Engineering &amp; Environmental Testing</i>	\$15,000
Administration	\$30,000
<b><i>Small Project Fund Total</i></b>	<b>\$300,000</b>
<b>409-413 Main Street</b>	
Building Renovation and Soft Costs	\$370,000
<b><i>409-413 Main St. Total</i></b>	<b>\$370,000</b>
<b>Grand Total</b>	<b>\$670,000</b>

**Target Area**

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The Village of Medina’s New York Forward Study Area.

**Payment Schedule**

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NYF funds will be released on a reimbursement basis.

**Small Project Fund:** Renovation and soft costs available at 100% construction complete for each individual project.

**409-413 Main Street:** Funds will be released on a reimbursement basis. Not more than 50% of the total project cost will be reimbursed. Progress payments will be approved at the following milestones: 50% construction complete; 100% construction complete.

**Projected Accomplishments**

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**Small Project Fund**

- 4 Commercial or mixed-use buildings will be rehabilitated
- 4 Upper-floor residential units will be rehabilitated or created
- 4 Business Assisted

**409-413 Main Street:** Thomas Development, LLC will renovate approximately 4,600 square feet on the second floor of the property located at 409-413 Main Street in Medina, New York. Four new apartment units will be created including three 1,000 square foot one-bedroom units and one 1,200 square foot two-bedroom unit. NYF funds will be used for exterior and interior renovations, including the addition of two egress stairs, a lift, exterior windows, building insulation, and a fire suppression system.

### **Program Compliance**

The term Local Program Administrator (LPA) is used as a placeholder throughout this document to refer to the contracted entity and administrator of the 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 Grant Agreement. Any defect or departure from the Administrative Plan must be requested and approved in writing.
- Prior to commencing the program, the LPA must review the eligible work items, program budget, and program timeline with OCR staff. OCR reserves the right to change or disallow aspects of the program.
- Program funds may only be requested for reimbursement for eligible costs incurred within the grant period pursuant to the grant agreement. This program operates fully as a reimbursement program and payment will be made only upon satisfactory completion of projects.
- The LPA must abide by the activity limits and match requirements specified in the Schedule B, Administrative Plan.
- Funds budgeted for administrative expenses shall not exceed 10% of the award or the amount noted under *Activity Budget Detail*, whichever is less. Administrative funds shall be only for payment of reasonable administration and planning costs related to the contract.
- LPAs are permitted to request an initial disbursement of the budgeted administrative funds prior to completion of building projects. Administrative funds beyond the initial percentage will be available based on overall program completion. This will be determined by evaluating the percentage of program funds committed and disbursed, and the proposed program activities. Documentation of how the initial request was ultimately allocated should be provided with the subsequent disbursement.
- Soft costs shall be only for payment of reasonable Architecture, Engineering or Environmental Testing expenses related to a specific project. Soft costs are allocated on a per-project basis, must be within activity limits, and require matching funds. In-kind match is not eligible.
- 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.
- The LPA will enter into a contract with the property owner to provide the program financial assistance. The contract must include the requirement to insure the premises for the full (100%) replacement value and to obtain flood insurance coverage if the premises is in a special flood hazard area.
- The LPA will complete a procurement process for all activities to be reimbursed with program funds. A minimum of two bids or proposals will be obtained and reviewed for all project costs, including but not limited to purchases, services and renovation, administration or professional service activities. This process is required to establish the reasonableness of project costs.
- All participating contractors must supply references and proof of proper insurance. Proof of insurance must include general liability coverage in a minimum amount of one million dollars and workers' compensation

coverage. The LPA, State of New York, and the Housing Trust Fund Corporation must be listed as additional insured.

- 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. The LPA must have a formal, written Conflict of Interest policy. At a minimum, the policy must outline which parties are covered and what measures will be taken to allow eligible parties access to program benefits while avoiding actual and perceived conflicts of interest.
- Projects including program funds should produce a finished commercial or residential space, ready for occupancy, within the contract term. 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.
- Prior to the commitment or expenditure of 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. The LPA 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.

**Schedule B**  
**New York Forward Administrative Plan**  
**Village of Medina**  
**Small Project Grant Fund**  
**409-413 Main Street**

*The term LPA is used as a placeholder throughout this document to refer to the recipient and administrator of the New York Forward (NYF) funds. All referenced forms and documents can be found here: <https://hcr.ny.gov/downtown-revitalization-initiative-dri-new-york-forward-nyf-forms>*

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*The program consists of two separate activities. The administrative process and requirements vary among these activities. Below is a brief description of each subprogram.*

**Small Project Fund:** *A Small Project Fund has been established to assist property owners and small businesses with small-scale building improvements and commercial equipment upgrades.*

**409-413 Main Street:** *The project was selected during the NYF process for funding as a standalone project. Thomas Development, LLC will renovate the second floor of the property to create four new apartment units, including three one-bedroom units, and one two-bedroom unit.*

**The following Administrative Plan sections apply to 409-413 Main Street:**

*Proof of Available Financing, Payment Process, Housing Trust Fund Corporation Approval, and Project Development through Program Compliance*

## **1. Program Development**

### **1. a. Administrative Structure**

A maximum of 10% of the Small Project Fund (Program) will be used for administration grant.

- LPA –The *Village of Medina* is the lead administrator for the Program and is responsible for overall program administration and consultant and financial management.
- Consultant Services – The LPA will procure the services of a consultant to assist in project management and grant administration tasks. A minimum of two bids or proposals will be received and reviewed to determine reasonableness of costs. A formal contract that outlines roles and responsibilities will be executed. Responsibilities include develop marketing materials, review projects for eligibility, work with property owners and architects to develop scopes of work, solicit contractor bids, review proposed project designs for compliance with design guidelines, prepare project commitment and environmental compliance paperwork, conduct inspections, ensure compliance with program requirements, submit payment reimbursement requests, etc.

### **1. b. Marketing Plan**

The LPA will conduct outreach in the eligible service area to make all property owners and business owners aware of the availability of financial assistance.

- The LPA will develop and distribute informational materials to market program availability and explain program requirements. These will be distributed to property and business owners in the target area.
- Instructions on how to apply for assistance and required forms will be available at the offices of the LPA.
- Public informational meetings will be held at one or more locations within the community to present information and answer questions.

- The LPA will retain distribution lists, public notices and other documentation of marketing and outreach efforts in program files.

1. c. Financing Structure

The LPA will offer funding assistance to eligible projects that enhance and strengthen the New York Forward area.

1.c.1 Applicant Eligibility - Applicants who are eligible for Program assistance include property owners that are:

- Individuals
- For-profit entities
- Not-for-profit entities

\* LPAs can add additional provisions – e.g. current on taxes, etc.

1.c.2 Eligible Activities

- Interior and exterior building renovations for commercial and mixed-use spaces, e.g. façade/storefront renovations, permanently affixed signage and awnings, commercial interior fit-out, HVAC, MEP, and other permanent building improvements
- Upper-story residential improvements
- Permanent commercial machinery and equipment, that is integral to the business and not a replacement of existing equipment unless it allows for more/new products to be offered and has a useful life of more than one year. and an acquisition cost of \$2,000 or more per unit
- Soft Costs – architectural, engineering, environmental
- Public art

1.c.3 Ineligible Activities

- Ineligible uses of funds include: acquisition costs; improvements to structures owned by religious or private membership-based organizations; improvements to municipally owned and municipally operated buildings; furnishings, appliances, electronics, tools, disposable supplies, incidental business equipment, non-permanent fixtures, temporary artwork.
- Funds may not be used for site work or ancillary activities on a property including but not limited to: septic systems/laterals, grading, parking lots, sidewalks, patios, decks, garages, sheds, landscaping, fences, free standing signs, general maintenance or repairs.
- Ineligible business activities include: inventory, rent or lease expenses, working capital or other undefined expenses that do not sustain business operations.
- Funds cannot be used for participant, participant’s family or participant’s staff labor. In-kind labor and the reimbursement for materials only is also not eligible.
- Funds may not be used for residential unit improvements that are not part of a mixed-use building/development.

1.c.4 Available Funding

- Building Renovation
  - The LPA may award between \$25,000 - \$100,000 in Program funds, per building, not to exceed 75% of the total eligible project cost. Building renovation funds may be used to renovate facades, storefronts and commercial interiors, with an additional \$25,000 per residential unit up to a per building maximum of \$150,000, not to exceed 75% of the total project cost.
- Minor Exterior Projects

- The LPA may award between \$10,000 - \$25,000 in Program funds, per project, not to exceed 75% of the total eligible project cost and not to exceed \$100,000 in Program funds. Activities may include signage, awning, and painting.
- Small Business Assistance
  - The LPA may award between \$10,000 - \$50,000 in Program funds, per project, not to exceed 75% of the total eligible project cost. Small Business Assistance funds may be used for permanent machinery and equipment.
- The minimum match requirement is 25% of the total project cost.
- Match requirements must be realized on a building-by-building basis and are calculated using the total project cost.
- In-kind match is not eligible.
- Costs incurred prior to the effective date of the grant agreement are not eligible for reimbursement and not eligible as a match.
- Soft Costs
  - Eligible soft costs include Architecture, Engineering, and Environmental Testing expenses.
  - Soft costs must be included within per building activity funding limits identified above and may not exceed 18% of the awarded funds.
  - Soft costs require matching funds, and in-kind match is not eligible.
  - Soft costs incurred for work on buildings that eventually prove infeasible and do not receive other investments will not be reimbursed with Program funds. Therefore, reimbursements for soft costs may not be requested as part of a partial payment prior to project completion.

1.c.5 Proof of Available Financing – Property owners are responsible for the total cost of the project. Grants will reimburse property owners at the conclusion of the project after all costs are paid. Proof of available financing through cash in bank, secured loan commitments, and/or project lines of credit is required.

1.c.6 Payment Process - The program operates fully as a reimbursement grant program and the owner is responsible for paying for all agreed upon improvements and payment of grant funds will be made only upon satisfactory completion of the items in the approved scope of work and payment of expenses.

- No reimbursement shall be requested until periodic inspections of the work has been completed by the LPA or its representative. All completed work shall comply with all applicable building codes and standards.
- To substantiate work costs, Owners must provide the following:
  - written contracts;
  - bank documents;
  - copies of invoices;
  - cancelled checks;
  - lien releases;
  - and any other documents deemed reasonably necessary by the LPA or required by HTFC to maintain effective internal controls.
- Cash payments/cash receipts are not permitted and will not be reimbursed

1. d. Project Review & Selection Process

The LPA will use the following project selection criteria and project review and selection process. This process will be used consistently throughout the term of the Program.



#### 1.d.1 Project Application

- Applications for funding will be available during a period to be determined and specified by LPA. Applications must be submitted and deemed complete by the LPA prior to the determined close date to be eligible for funding. The LPA has prepared an application with instructions. The application materials outline the program requirements and selection priorities. The application requests all information necessary to fully review the project for eligibility.
- The LPA will advise applicants on the disposition of an application within 30 business days

#### 1.d.2 Project Review Committee

- The Project Review Committee will implement the project selection process and generate funding decisions.
- The Committee will include a diverse group with relevant experience.
- The planned members will not include elected officials or those that cannot meet the conflict of interest policy.

#### 1.d.3 Project Selection and Review Criteria - Project selection criteria will afford priority to:

- Projects that are visually prominent Downtown;
- Projects that include renovation of upper story residential units
- Projects with historic value or historic properties in danger of being lost in part or in total to disrepair or damage;
- Projects that with the assistance of grant funds, will reduce blight, contribute to the economic recovery of the downtown, or realize a stabilization or expansion of a Downtown business;
- Projects where assistance will create jobs;
- Projects where assistance will allow business to expand service offerings.
- Projects that have not received additional NYF awards.

#### 1.d.4 Project Scoring - Projects will be selected based on the impact it will have within the service area. Projects will be scored based on the following criteria:

- Readiness- projects that provide proof of overall feasibility and readiness such as proof of ownership, documentation that 100% of the financing for the project is in place, reasonable construction timeline.
- Physical Impact- projects that are visually prominent downtown, have historic value, are in danger of being lost, bring existing properties into compliance with design guidelines, that are transformative beyond normal maintenance.
- Economic Impact- projects leveraging grant funds with private investment that with the assistance of grant funds, will reduce blight and vacancies, contribute to the economic recovery of the target area, or realize a stabilization or expansion of downtown tax base, businesses and/or jobs.
- Goals Achieved - projects that advance the goals and priorities of the community's Strategic Investment Plan.

#### 1.d.5 Conflicts of Interest

Under certain circumstances, an applicant for funding may have a "conflict of interest". For example, a conflict of interest may be present if the applicant is related to an employee, officer, Board Member, Project Review Committee member, or elected official of the Community. There are other cases where a conflict of interest may also be present. Applicants will be required to complete a Conflict of Interest Disclosure Form to determine if a conflict of interest exists. If a conflict of interest does exist, the LPA will make a formal determination and provide it to HTFC staff to document the decision.

Municipal agencies must adhere to Article 18, “Conflicts of Interest of Municipal Officers and Employees,” of the NYS General Municipal Law. For this reason, LPA municipal officers and employees cannot participate in the program as a grant recipient or contractor.

1.d.6 Project Selection Documentation

- The LPA will retain clear documentation of each project selection committee decision in its program files. This documentation will include an eligibility determination for each application reviewed, and a justification for each project selection decision. This documentation will include all relevant project review or scoring memos, Project Selection Committee meeting minutes, board approval of projects or other related correspondence.

1. e. Design Standards

The LPA will develop design guidelines for exterior renovations if the LPA 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), and the Community. The LPA will enforce the standards throughout the development process.

1. f. Housing Trust Fund Corporation Approval

Projects approved locally will be submitted to Housing Trust Fund Corporation (HTFC) for review and approval prior to notifying property or business owner of formal funding approval. The submission to HTFC will include:

- Property location information
- Business information
- Project scope of work
- Award amount
- Total project cost
- Proposed payment structure
- Projected outcomes, e.g. units assisted, jobs created/retained

1.g. Award Letter

The LPA will provide a formal award letter to the property or business owner and should outline the basic requirements of participating in the program.

At a minimum, the letter will specify:

- Projected amount of financial assistance awarded (“Up to” Award Amount)
- Match requirements
- Approved scope of work or eligible activities
- Ineligible activities
- Environmental Review requirements
- Procurement requirements
- Local requirements
- Timeline to accept award and begin project

**2. Project Development**

2. a. Environmental Review

Prior to the commitment or expenditure of program funds, the environmental effects of each activity will be assessed in accordance with the State Environmental Quality Review Act (SEQR). The LPA will submit all

required environmental review paperwork according to the requirements outlined in the HTFC Environmental Compliance Handbook.

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

Once a project application has been formally selected for Program assistance, the LPA will meet with the property owner to develop the formal project scope of work and explain program requirements related to design, environmental hazards, energy efficiency.

A formal written scope of work or description of the use of funds is required. The scope of work for a participating renovation project must address:

- Immediate health and safety concerns;
- The correction of existing code violations;
- Environmental hazards;
- Installation of energy conservation measures;
- Accessibility for persons with disabilities;
- Consistency with any other local program design guidelines; and
- Preservation of historical elements of the building.

The LPA is responsible for coordinating renovation 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.

#### 2. c. Contractor Selection

The LPA may 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 participating contractors must supply references and proof of proper insurance. Proof of insurance must include general liability coverage in a minimum amount of one million dollars and workers' compensation coverage. The LPA, State of New York **and** the Housing Trust Fund Corporation must be listed as additional insured. 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.

##### EEO & MWBE Requirements

The LPA is required to comply with Articles 15-A of the New York State Executive Law and Article 3 of the New York State Veterans Law. 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”) and Service-Disabled Veteran-Owned Businesses (“SDVOBs”). LPA’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. 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://ny.newnycontracts.com/>

The LPA will submit a Contractor Bid Solicitation Plan with the grant agreement. This Plan will identify a minimum of four certified MWBE firms that will be included in the bid solicitation process. Once the contractor/vendor selection process is complete, the LPA must report to HTFC on the use of certified MWBE firms.

##### Procurement & Bidding

The LPA will complete a procurement process for all activities to be reimbursed with Program funds. A minimum of two bids or proposals will be obtained and reviewed for all project costs, including but not limited

to purchases, services and renovation, administration or professional service activities. This process is required to establish the reasonableness of project costs. The procurement process will be free of collusion or intimidation, and the LPA will 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 section, 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/proposed cost. The LPA shall select the lowest responsible bidder. If the property owner chooses other than the lowest bidder, re-imburement will be based on the amount of the lowest responsible bid. The LPA will document the bid solicitation, review and selection process, and save such documentation in its project files.

#### Conflicts of Interest

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 Program funds for work done on property that he or she owns, or a property that is owned by an immediate family member. An immediate family member includes a spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law. Prior to commencing a project where there is a possible conflict of interest, the LPA must review the eligible work items with HTFC staff. OCR may allow a property owner to act as a general contractor with prior approval. If the property owner has the expertise to act as the general contractor, the LPA must formally request an exception. The request should include a policy statement that addresses the concerns listed above. The policy must include third party inspection, verification of costs, and overall project certification by an architect or project estimator. Documentation of appropriate licenses, environmental certifications, and required insurance must also be included in the request. In these instances, only subcontractor expenses that have met required procurement procedures are eligible for reimbursement. The LPA must obtain written consent prior to entering into contract with the business owner/ contractor. Projects that do not comply with these rules will not be eligible for reimbursement.

#### 2. d. Contracting Procedures

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

At a minimum, the contract will specify:

- Agreed upon scope of work;
- Projected amount of financial assistance awarded;
- Estimated project timeline;
- Requirement to insure the premises for the full (100%) replacement value, obtain fire insurance and other appropriate insurance depending on makeup of building and obtain flood insurance coverage if the premises is in a special flood hazard area.
- Regulatory term or repayment provisions;
- Requirement to sign a photo release form permitting the LPA and HTFC to use photographs of the assisted business or property;
- Requirement to engage a contractor and begin activities within 30 days of formal LPA approval;
- Payment structure, timing;
- LPA has the right to inspect work at any time;
- Disbursement documentation requirements

- LPA may terminate the award and cancel the contract should the work or purchases 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.

### 3. Construction Management/Quality Control

#### 3. a. Construction Monitoring

The LPA retains the right to inspect or audit 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 or review of project activities by the LPA is required for each participating project. A final report or reconciliation must be submitted to HTFC to formally document completion of project activities.

### 4. Financial Management

#### 4. a. Internal Controls

The LPA's chief financial officer will be responsible for all financial transactions under this contract. The LPA must have a written policy on internal controls, and use this policy to determine the process for review and approval of requests for disbursement of funds from HTFC. An 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. Commitment and Disbursement/Accessing Funds

##### Commitment Procedures

The LPA must submit a Project Set Up form to formally commit funds, and receive approval from OCR prior to the start of project activities. The Project Set Up process first requires a commitment at the local level to the project. A project specific environmental compliance checklist and supporting documentation must also be submitted at this time. The LPA should refer to the Commitment & Disbursement Procedures for detailed instructions on the Project Set up process.

##### Disbursement Procedures

- The program operates fully as a reimbursement program and payment will be made only upon satisfactory completion of projects
- Requests must be submitted electronically to [Disbursements@hcr.ny.gov](mailto:Disbursements@hcr.ny.gov) with forms and supporting documentation in a single PDF. Subject line must read: *NYF – SHARS ID – LPA Name*
- The LPA Commitment & Disbursement Instructions provide detailed instructions for preparing a disbursement request. The document is available online, here: <https://hcr.ny.gov/commitment-and-disbursement-procedures>

### 5. Ongoing Maintenance / Regulatory Term

All assistance is in the form of a reimbursable grant with a five (5)-year compliance period. The property owner will be required to execute a Declaration document committing to this compliance period. Should the property owner sell the property within the five (5)-year timeframe, they will be responsible for repaying a portion of the grant funding received. A Declaration Form will be filed with the County Clerk to secure this obligation and the following repayment schedule will apply:

*Months 0-12:*

*100% repayment due*

<i>Months 13-24:</i>	<i>80% repayment due</i>
<i>Months 25-36:</i>	<i>60% repayment due</i>
<i>Months 37-48:</i>	<i>40% repayment due</i>
<i>Months 49-60:</i>	<i>20% repayment due</i>
<i>Months 60 and beyond:</i>	<i>0% repayment due</i>

### Commercial Business Machinery and Equipment

Procedures for managing equipment whether acquired in whole or in part with grant funds, will, at a minimum, meet the following requirements:

- A physical inventory of the equipment must be taken, and the results reconciled with the final inspection report at least once a year for a period of no more than 5 years.
- A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of equipment. Any loss, damage, or theft shall be investigated.
- Adequate maintenance procedures must be developed to keep the equipment in good condition.
  - ⊖ In the event the Owner is required to sell the equipment during the maintenance period, they will be responsible for repaying the grant funding received. Repaid funds will be used by the LPA to fund other eligible commercial and business type projects located in the NYF Target Area.

## **6. Contract Monitoring & Closeout**

Once all contract activities are complete, the LPA will notify HTFC staff. If a monitoring review identifies findings or concerns, the LPA must provide documentation within the stated time period that issues have been corrected. Contract Closeout documents must be returned promptly, and any remaining funds will be deobligated.

## **7. Program Compliance**

### **7. 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.

### **7. b. Covenants of the Recipient**

The LPA will comply with all applicable statues, guidelines, regulations, policies and procedures of the program. Any defect or departure from the approved Administrative Plan must be requested and approved in writing. The LPA must refer to the Grant Agreement and associated schedule(s) for a summary of the awarded program activities, budget and projected accomplishments.

## Schedule C

### Participation By Minority Group Members, Women And Service Disabled Veterans 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”), and New York State Veterans Services Law Article and 9 NYCRR Section 252 (“SDVOB 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 Laws Article 15-A and Veterans Services Law Article 3. 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”) and Service-Disabled Veteran-Owned Businesses (“SDVOBs”). 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 VI of this Schedule or enforcement proceedings as allowed by this Agreement.

#### II. Contract Goals

- A. For purposes of this Agreement, the HTFC hereby establishes a goal of, 20% 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 and SDVOBs 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 online, here:
- <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687> and certified SDVOBs found online, here: <https://online.ogs.ny.gov/SDVOB/search>
- C. 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.
- D. 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.
  2. The Recipient and its subcontractors shall submit an EEO policy statement (form available) to the HTFC with its Bid Solicitation Plan in accordance with the NYS Homes and Community Renewal (HCR)'s Office of Economic Opportunity and Partnership Development procedures. If Recipient or its subcontractors do not have an existing EEO policy statement, a sample form 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, 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.

### **IV. Contractor Bid Solicitation Plan**

- A. The Recipient represents and warrants that Recipient will submit a Contractor Bid Solicitation Plan either prior to, or within 60 days of work being assigned and described under this Agreement or subsequent work order hereunder.
- B. Recipient agrees to use such Contractor Bid Solicitation Plan to outline marketing and outreach efforts planned



to expand contracting opportunities for certified 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 Contractor Bid Solicitation 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. Request for Waiver**

- A. If the Recipient, after making good faith efforts, is unable to comply with the MWBE goals, the Recipient may submit a Request for Waiver (Form PROC-3) documenting good faith efforts by the Recipient to meet such goals. If the documentation included with the waiver request is complete, the Agency(ies) shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- B. If HTFC, upon review of the Bid Solicitation Plan, and other supporting documentation including the Bid Solicitation Log and Certification of Good Faith Efforts Utilization Plan determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regard to such non-compliance, the Agency(ies) may issue a notice of deficiency to the Contractor. The Contractor 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. Liquidated Damages**

In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, that such a finding constitutes a breach of Contract and the Agency(ies) may withhold payment from the Recipient. Such liquidated damages shall be calculated as an amount equaling the difference between (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

## **VII. Reporting**

Recipient is required to submit the related Project Detail Sheet and Affirmation of Income Payment to MBE/WBE and/or SDVOB at the time of a related request for reimbursement.

## **VIII. Forms**

The required forms can be found on the HCR website at <https://hcr.ny.gov/downtown-revitalization-initiative-dri-new-york-forward-nyf-forms>.