

ADDITIONAL PROVISIONS

These Additional Provisions are required by the Mobility Counseling Subrecipient Agreement executed by and between the Housing Trust Fund Corporation ("HTFC") and Enterprise Community Partners, Inc. ("Enterprise"), dated as of April 1, 2022. The Additional Provisions are hereby incorporated into the Contract by and between Contractor and Enterprise.

For purposes of this Contract, the following guidance applies to the Additional Provisions:

- *"HUD" shall mean the U.S. Department of Housing and Urban Development*
- *"Subrecipient" should be read as "Contractor".*
- *"this Agreement" should be read as the Contract between Enterprise and Contractor.*
- *"Work Plan" shall mean the Work Plan attached as Exhibit A to the Grant Agreement.*
- *"Budget" shall mean the Budget attached as Exhibit B to the Grant Agreement.*
- *"HCV" shall mean the Section 8 Housing Choice Voucher program.*
- *All provisions should be read "as applicable" in the context of the Work Plan that the Contractor is performing and the Contractor's relationship to Enterprise.*
- *When the Additional Provisions state that an item must be reported to or submitted to HTFC, that instruction should be read as "must be reported to" or "submitted to Enterprise". Contractor will have no direct contact with HTFC; all reports, other information and approvals shall be processed through Enterprise.*

By signing the Contract, the signer hereby certifies on behalf of the Contractor that any required certifications required by the Additional Provisions are true and correct to the best of the knowledge and belief of the signer.

I. COMPLIANCE WITH ALL LAWS.

Tasks and deliverables contained in the Work Plan must be conducted in a manner satisfactory to HTFC and in compliance with applicable federal and state requirements, laws, and regulations. Nothing in this Agreement shall waive or otherwise limit the actions HTFC may take or the remedies HTFC may seek as a result of any noncompliance by Subrecipient, including but not limited to suspending or debarring Subrecipient from future New York State benefits.

II. GRANT FUNDS

HTFC reserves the right to reduce the Grant Funds if funding from HUD is not provided at the currently anticipated levels for the extension years and/or if the actual costs for the approved activities are less than those set forth in the Budget.

In the event Subrecipient is awarded, granted, or provided with additional funds from any other source, which includes funds that Subrecipient uses or intends to use to fund, in part or whole, programs, projects or activities contemplated by this Agreement or any subsequent amendment hereto, Subrecipient shall immediately notify Enterprise of such funds, the

amount, the source, and the conditions for their use. Subrecipient further agrees to provide any additional information Enterprise or HTFC requests related to such funds.

III. DISBURSEMENT OF GRANT FUNDS

A. Subrecipient shall certify in a statement made by either a Senior Vice President or Vice President with each request for Grant Funds that to the best of his or her knowledge based on the information available to Subrecipient at the time and after making due inquiry: (i) all statements and representations previously made regarding this Agreement are correct and complete; and (ii) the funds do not duplicate reimbursement of costs and services from any other source.

B. The following may occur as determined by HTFC: extension or tolling of the payment time is justified due to a defect in invoice, failure to submit required documents, requirement of an audit prior to payment, requirement of a federal government examination of an invoice prior to payment, or any other exception. Should an invoice be subject to tolling due to a compliance or invoice defect or suspected improprieties of any kind, Enterprise shall notify Subrecipient of any such defects or improprieties within fifteen (15) calendar days of receipt of invoice, thereby tolling the thirty (30) day payment period until such defects or improprieties are resolved in the reasonable determination of Enterprise and HTFC.

C. In the event applicable State or Federal Government authorities determine that any costs incurred by Subrecipient for which HTFC seeks reimbursement from State or Federal funding are disallowed, HTFC shall provide notice in writing to Enterprise, who in turn will provide notice to Subrecipient, including evidence of the State or Federal basis (bases) for disallowance, and Subrecipient shall remit any funds received by Subrecipient for the unallowable costs to Enterprise within five (5) business days of the notice.

IV. GENERAL CONDITIONS

A. Compliance. To the extent applicable, Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 982 including any regulations referenced therein as such regulations apply directly to Subrecipient's obligations under this Agreement. Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, HUD Notices, policies, and guidelines, whether existing or to be established, governing the Grant Funds provided under this Agreement. In the event a conflict arises between the provisions of this Agreement and any of the foregoing, the Federal, State, and local laws, regulations, HUD Notices, policies, and guidelines shall control and this Agreement shall be interpreted in a manner so as to allow for the terms contained herein to remain valid and consistent with such Federal, State, and local laws, regulations, HUD Notices, policies, and guidelines. Subrecipient further agrees to utilize Grant Funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between HTFC and Subrecipient. Subrecipient shall at all times remain

an “independent contractor” with respect to the efforts to be performed under this Agreement. HTFC shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance, and Workers' Compensation Insurance, as Subrecipient is an independent entity.

C. Hold Harmless. Subrecipient shall and hereby agrees to hold harmless, defend (with counsel acceptable to HTFC) and indemnify HTFC and each and all of its successors, affiliates, or assigns, and any of their employees, officers, directors, attorneys, consultants, agents, directors, officers, managers, and affiliates, from and against any and all third party damages, costs, attorneys’ fees, claims, expenses, injuries, property damage, causes of action, violations of law, violations of this Agreement, and losses of any form or nature arising from or related to the conduct of Subrecipient in the performance of the efforts called for in this Agreement, resulting from Subrecipient’s negligence or malfeasance in its performance hereunder. This indemnity shall expressly include, but is not limited to, the obligation of Subrecipient to indemnify and reimburse HTFC for any and all reasonable attorneys’ fees and other litigation or dispute resolution reasonable costs incurred or to be incurred in HTFC's enforcement of this Agreement or any portion thereof against Subrecipient or otherwise arising in connection with Subrecipient's obligation to indemnify HTFC under this Section IV(C). This clause shall survive indefinitely the termination of this Agreement for any reason.

D. Workers’ Compensation. Subrecipient shall provide Workers’ Compensation Insurance coverage for all of its employees involved in the performance of this Agreement unless granted an exemption by the State of New York.

E. Insurance.

1. Subrecipient is required to provide and maintain, at its sole cost and expense, the required insurance coverage, at the minimum limits specified herein, during the term of the Agreement and for two years after completion of work. All required insurance policies must be maintained with insurance companies licensed within the State of New York and holding an AM Best rating of no less than A- VIII. In addition, companies writing insurance intended to comply with the requirements should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. HTFC may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.
2. Subrecipient shall deliver to HTFC evidence of the insurance required by this Agreement in a form satisfactory to HTFC. Policies must be written in accordance

- with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by HTFC does not, and shall not be construed to relieve the Subrecipient of any obligations, responsibilities or liabilities under this Agreement. The Subrecipient shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Agreement.
3. The Subrecipient shall provide HTFC with a Certificate or Certificates of Insurance, in a form satisfactory to HTFC as detailed below. Certificates shall name The Housing Trust Fund Corporation, Hampton Plaza, 38-40 State Street, Albany, NY 12207 as the certificate holder. Within 30 business days of receipt of any notice of cancellation or non-renewal of insurance, the Subrecipient shall provide HTFC with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Agreement.
 4. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from HTFC. Such approval shall not be unreasonably withheld, conditioned or delayed. Subrecipient shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Subrecipient is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
 5. Prior to the commencement of any work by a Subcontractor, the Subrecipient shall require such Subcontractor to procure policies of insurance as required herein and maintain the same in force during the term of any work performed by that Subcontractor, unless otherwise approved by HTFC. HTFC reserves the right to set minimum insurance limits in any subcontracting agreement between the Subrecipient and its subcontractor(s). An Additional Insured Endorsement CG 20 38 04 13 (*or the equivalent*) evidencing such coverage shall be provided to the Subrecipient prior to the commencement of any work by a subcontractor and shall be provided to HTFC upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
 6. Commercial general liability and business automobile insurance policies shall provide that the required coverage be primary and non-contributory to other insurance available to the HTFC and its officers, agents, and employees. Any other

insurance maintained by the HTFC and its officers, agents, and employees shall be excess of and shall not contribute with the Subrecipient's insurance.

7. For the Commercial general liability, business automobile liability, and workers' compensation insurance required below, the Subrecipient shall cause to be included in its policies insuring against loss, a waiver of the insurer's right of subrogation against the HTFC and its officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Subrecipient waives or has waived before the casualty, the right of recovery against the HTFC and its officers, agents, and employees or (ii) any other form of permission for the release of the HTFC and its officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
8. Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in the Agreement shall be delivered to HTFC. If, at any time during the term of the Agreement, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Agreement, or proof thereof is not provided to HTFC, the Subrecipient shall immediately cease work. The Subrecipient shall not resume work until authorized to do so by HTFC
9. The Subrecipient must furnish to HTFC evidence of the insurance requirements indicated below prior to execution of this Agreement. Subrecipient shall obtain and maintain in full force and effect, throughout the term of the Agreement, at its own expense, the following insurance with limits not less than those described below and as required by the terms of the Agreement, or as required by law, whichever is greater. HTFC reserves the right to modify these insurance requirements.

a. Commercial General Liability Insurance, including Contractual Liability of liability of no less than One Million Dollars U.S. Dollars (\$1,000,000) per occurrence, Two Million Dollars U.S. Dollars (\$2,000,000) aggregate and Products and Completed Operations. The limits of liability may be provided in a combination of a Commercial General Liability policy and an Umbrella Liability policy, which is written on a no less than follow form basis. The policy should be written on the current edition of ISO occurrence form CG 00 01, or its equivalent, and must not include any exclusions or limitations other than those incorporated in the standard form.

The Subrecipient shall include coverage for on-going work and operations naming as additional insureds (*via ISO coverage forms CG 20 10 04 13 or CG 20 38 04 13, or a form or forms that provide equivalent coverage*): The Housing Trust Fund Corporation, its Affiliates and their officers, agents, and employees. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. If Subrecipient is self-insured, Subrecipient shall be obligated to defend and indemnify the above-named additional insured, in the same

manner that the Subrecipient would have been required had the Subrecipient obtained such insurance policies.

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed the Agreement;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the Agreement.

b. Data Breach and Privacy/Cyber Liability Insurance, in an amount not less than One Million U.S. Dollars (\$1,000,000) for each claim, Subrecipient is required to maintain coverage during the term of the Agreement and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Subrecipient's computer systems due to the actions of the Subrecipient which results in unauthorized access of the data. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies.

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (*e.g., medical, financial, or personal in nature in electronic or non-electronic form*);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property including, but not limited to, money and securities.

If the policy is written on a claims made basis, the Subrecipient must submit to HTFC an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

c. Bond Coverage or Employee Dishonesty in an amount not less than One Million U.S. Dollars (\$1,000,000) for each claim. The Subrecipient shall maintain, during the

term of the Agreement, employee dishonesty through a bond or insurance coverage. If coverage is through an insurance policy, it must be on a “loss sustained form” or “loss discovered form,” and coverage must include the following:

- The coverage must allow for reporting of circumstances or incidents that might give rise to future claims;
- The coverage must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy;
- Any warranties required by the Subrecipient’s insurer as a result of this Agreement must be disclosed and complied with. Said coverage shall extend coverage to include the principals (*all directors, officers, agents and employees*) of the Subrecipient as a result of this Agreement;
- The coverage shall include coverage for third party fidelity and name the “Housing Trust Fund Corporation and its officers, agents, and employees” as “Loss Payees” for all third party coverage secured. This requirement applies to both primary and excess liability policies, as applicable; and
- The policy shall not contain a condition requiring an arrest and conviction.

d. Professional Errors and Omissions for no less than One Million U.S. Dollars (\$1,000,000) for each claim and Two Million U.S. Dollars (\$2,000,000) in the aggregate. The coverage must include the following:

- Insure loss arising from any claim or claims made arising out of the scope of services during the policy period by reason of any covered error, omission or negligent act committed in the conduct of the insured’s professional business during the policy period;
- If coverage is written on a claims-made policy, the Subrecipient warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under the Agreement is completed; Written proof of this extended reporting period must be provided to HTFC prior to the policy’s expiration or cancellation; and
- The policy shall cover professional misconduct or lack of ordinary skill for the positions defined in the scope of services of the Agreement.
- This policy requirement applies to both primary and excess liability policies, as applicable.

e. Automobile Liability, such insurance shall cover liability arising out of an automobile used in connection with performance under this Agreement including owned, leased, hired and non-owned automobiles bearing, or under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear license plates in the amount not less than One Million U.S. Dollars (\$1,000,000) per accident.

f. Workers' Compensation and Disability Benefits - Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and State entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Subrecipient's proposal or any agreement renewal. This Agreement will not be awarded unless proof of workers' compensation and disability insurance is provided to HTFC. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

Proof of Compliance with Workers' Compensation Coverage Requirements:

- CE-200 – Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required; or
- C-105.2 – Certificate of Workers' Compensation Insurance (*or U-26.3 if insured through the State Insurance Fund*); or
- SI-12 – Certificate of Workers' Compensation Self-Insurance (*or GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance*); or
- Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- CE-200 – Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required; or
- DB-120.1 – Certificate of Disability Benefits Insurance; or
- DB-155 – Certificate of Disability Benefits Self-Insurance.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation

Board's website at <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>.

F. HTFC Recognition. Unless otherwise directed by HTFC, Subrecipient shall ensure recognition of the role of HUD and HTFC in providing funding, services, and efforts through this Agreement. Unless otherwise directed by HTFC, all activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to role of HUD and of HTFC. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. See Attachment A for general guidance for recognition of HUD and HTFC. Note, notwithstanding the terms of this subsection or Attachment A, HTFC reserves the right to direct specific reasonable recognition requirements on a case-by-case basis, including by not limited, to the size and content, waiver, removal or addition of such recognition.

G. Amendments. HTFC may, in its sole discretion, amend this Agreement to conform with Federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. Enterprise shall provide Subrecipient immediate written notice of such amendments. If such amendments result in a change in the Grant Funds or the Work Plan, such modifications will be incorporated in a written amendment signed by Enterprise and Contractor.

H. Suspension or Termination. Subrecipient acknowledges and agrees that this Agreement may be suspended or terminated based on the HTFC suspending or terminating the Prime Agreement as it relates to Enterprise as follows:

1. Termination for Cause. As set forth in the Prime Agreement. In such event, Subrecipient shall be entitled to receive equitable compensation for any eligible services satisfactorily completed hereunder including services satisfactorily completed by Subrecipient's sub-subrecipients and/or subcontractors up to the date of termination.
2. Termination for Convenience. As set forth in the Prime Agreement. In such event, Subrecipient's right to perform services under this Agreement shall terminate effective as of fifteen (15) calendar days after the giving of a termination notice. Notwithstanding the foregoing, in the event the termination for convenience is due solely to a withdrawal of funds by HUD, the termination shall be effective as of five (5) business days after the giving of a termination notice.
3. Suspension. HTFC may, in its reasonable discretion, order Subrecipient to suspend performance for a reasonable period of time. In the event of such suspension, Subrecipient shall be given a formal written notice. Upon issuance of such notice, Subrecipient shall comply with the particulars of the notice. HTFC shall have no obligation to reimburse Subrecipient's expenses during such suspension period. Activities may resume at such

time as HTFC issues a formal written notice authorizing a resumption of performance under this Agreement.

4. Ineligible Activity. Should HUD determine at any time that work done pursuant to this Agreement, whether completed or not completed, is ineligible for HCV funding, HTFC may recapture the award from Subrecipient, for an amount commensurate with the ineligible work.

I. Proprietary Information. All memoranda, analyses, spreadsheets and other pertinent documents or writings, including reports and financial statements developed or prepared by, or for, Subrecipient in connection with the performance of this Agreement are “Proprietary Information” and shall be, and remain, the property of HTFC. All original documents constituting Proprietary Information shall be delivered to HTFC by Subrecipient, or any sub-subrecipient, or any other person possessing them, upon the termination of this Agreement or upon the earlier request of HTFC, except that Subrecipient may retain copies for its files. Proprietary Information may not be utilized, disclosed or otherwise made available to other persons by Subrecipient without the prior written approval of the HTFC’s Senior Vice President and Counsel. Notwithstanding the foregoing, Subrecipient may disclose Proprietary Information to its sub-subrecipients and/or subcontractors subject to a non-disclosure agreement between Subrecipient and its sub-subrecipients and/or subcontractors that restricts the sub-subrecipients and/or subcontractors from using Proprietary Information after expiration of this Agreement and for any other purpose other than the performance of work in support of this Agreement. The provisions of this section shall be in addition to, and not in derogation of, any duty imposed upon Subrecipient by any law, regulation or rule governing professional conduct respecting confidentiality.

J. Identifying Information and Privacy Notification.

1. **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices submitted for payment for the sale of goods or services or the lease of real or personal property to HTFC must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice, must give the reason or reasons why the payee does not have such number or numbers.

2. **PRIVACY NOTIFICATION.** (a) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to HTFC is mandatory. The principal purpose for which the information is collected is to enable the State of New York to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and

Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (b) The personal information is requested by HTFC to purchase the goods or services or lease the real or personal property covered by this Contract or lease. The information is maintained by Disbursement Manager at the Agency or Agencies, 641 Lexington Avenue, New York, New York 10022, under the name "Vendor Federal Social Security and Federal Employee Identification Numbers."

V. ADMINISTRATIVE REQUIREMENTS

In addition, to the Standard Clauses for Contracts with HTFC as set forth in Attachment 2 hereto, the following provisions apply. In the event of a conflict between the Standard Clauses and the provisions below, the Standard Clauses shall prevail.

A. Financial Management.

1. **Accounting Standards.** Subrecipient agrees to comply with 2 CFR Part 200, and to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
2. **Cost Principles.** Subrecipient shall administer the program in conformance with 2 CFR Part 200, Subpart E. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis (if allowed).

B. Documentation and Record Keeping.

1. **Record Maintenance.** Subrecipient shall maintain all records required by applicable law to be maintained, including but not limited to the Federal regulations specified in (1) 2 CFR Part 200; (2) 24 CFR § 982.158; and (3) the applicable HUD Notices that are pertinent to the activities to be funded under this Agreement, as well as any additional records required by HTFC.
2. **Retention.** Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of six (6) years after termination of this Agreement. The retention period begins on the date of the submission of HTFC's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the six-year period, then all such records must be retained until completion of the actions and resolution of all issues, or the expiration of the six-year period, whichever occurs later. HTFC shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) Subrecipient shall timely inform the Agencies' Senior Vice President and Counsel, in writing, that said

records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the HTFC's right to discovery in any pending or future litigation.

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

4. Disclosure. Subrecipient understands that data collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Parties' responsibilities with respect to efforts provided under this Agreement are subject to the provisions of Article 6-A, "Personal Privacy Protection Law", of the New York State Public Officers Law, as well as all other applicable State and Federal privacy laws (e.g., the Federal Privacy Act, 5 U.S.C. § 552a).

5. Close-out. Subrecipient's obligation to HTFC shall not end until all close-out requirements are completed. Close-out activities and requirements are subject to (1) 2 CFR Part 200; and (2) applicable HUD Notices. Activities during this close out-period shall include, but are not limited to: making final payments, disposing of assets, balances, and accounts receivable to HTFC, and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over HCV funds.

6. Audits & Inspections. All Subrecipient records with respect to any matters covered by this Agreement shall be made available to HTFC, HUD, and the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments and/or termination. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current HTFC policy concerning Subrecipient audits and 2 CFR Part 200, Subpart F.

C. Reporting and Payment Procedures.

1. Program Assets. All Program assets (property, equipment, etc.), if any, shall revert to HTFC upon termination of this Agreement in accordance with applicable Federal, laws, regulations, HUD Notices, policies, and guidelines.

2. Indirect Costs. Indirect costs will not be compensated for under this Agreement, except to the extent that (a) such indirect costs are set forth in the Budget, and (b) final or provisional billing rates based on indirect costs have been approved by a federal agency.

3. Progress Reports. [intentionally omitted]

4. Payment Procedures. [intentionally omitted]

D. Sub-granting.

1. Approvals. Subrecipient shall not enter into any agreements with any agency or individual to assist in effectuating the activities of this Agreement without the written consent of HTFC prior to the execution of such agreement.

2. Monitoring. In accordance with Federal, State, and local laws, regulations, HUD Notices, program guidelines, and the policies and procedures to be issued by HTFC, Subrecipient will monitor any and all sub-subrecipient efforts on a regular basis to assure compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to collect areas of noncompliance, information detailing credible evidence of waste, fraud or abuse, shall be immediately reported to HTFC, followed by a written report within ten (10) calendar days.

3. Selection Process. Subrecipient shall undertake to ensure that all sub-subrecipients utilized to effectuate this Agreement shall be awarded on a fair and reasonable basis in accordance with applicable Federal, State, and local laws, regulations, and HUD Notices, including the HUD Reform Act codified at 42 U.S.C. § 3537a (referred to as Section 103). Executed copies of all sub-subrecipient agreements shall be forwarded to HTFC along with documentation concerning the selection process.

E. Procurement/Contracting.

1. General. Subrecipient shall not enter into any contract for goods or services with any entity without the written consent of HTFC prior to the execution of such contract. Unless specified otherwise within this Agreement, Subrecipient shall procure all materials, property, equipment, or services in accordance with the requirements of 2 CFR Part 200, as applicable. Only when HTFC's procurement policies are more stringent than those found at 2 CFR Part 200, as applicable, will Subrecipient be required to comply with current HTFC policy concerning the acquisition of materials, property, equipment, or services.

2. Supplementary Conditions. Subrecipient shall include HTFC's Supplementary Conditions (as revised from time to time by HTFC in accordance with applicable law, rule or regulation), attached hereto as Attachment 2, in any contract entered into under

this Agreement. Subrecipient shall require all contractors to flow down the HTFC's Supplementary Conditions to all subcontractors as well as the requirement to flow down such terms to a lower-tiered subcontractor. These Supplementary Conditions include HUD General Provisions, Participation by Minority Group Members and Women Requirements and Procedures for Contracts with HTFC, Standard Clauses for Contracts with the HTFC and required diversity forms. Notwithstanding the above, Subrecipient is not subject to the requirements set forth in Attachment 2, except to the extent that any such requirements are specifically set forth in the terms of this Agreement.

3. Travel. Travel costs are not allowed unless authorized by HTFC. In the event that HTFC authorizes travel, Subrecipient shall comply with HUD's Travel Regulations (Travel Handbook 2300.2). Subrecipient shall obtain prior written approval from HTFC for any travel.

F. Use of Grant Funds to Make Loans. Grant Funds under this Agreement cannot be used to make loans.

VI. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights.

1. Compliance. Subrecipient agrees to comply with the New York State Human Rights Law and with Title VI of the Civil Rights Act of 1964, as amended (the "Human Rights Law"), Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.

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

3. Violence Against Women Act. The Agreement incorporates by reference the Violence Against Women Act, set forth at 24 C.F.R. Part 5, Subpart L.

B. Affirmative Action

1. Minority- and Women-Owned Businesses (M/WBE)

a. Federal Requirements. Subrecipient shall comply with the small and

minority firms, women's business enterprise, and labor surplus area requirements as set forth at 2 CFR Part 200, as applicable.

Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women.

b. HTFC Requirements. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development Division of Minority and Women's Business Development
633 Third Avenue New York, New York 10017
Telephone: 212-803-2424
Email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or Agreement, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

2. Equal Employment Opportunity (“EEO”) and Non-Discrimination

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

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

c. Fair Housing Act and the Equal Credit Opportunity Act. Subrecipient shall require any party receiving a subgrant a funds hereunder whether a sub-Subrecipient or sub-Subcontractor to provide their express agreement not to use Grant Funds for any purpose or in any manner that could be deemed to violate the Fair Housing Act, 42 U.S.C. § 3601 et seq., or the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., or any regulation promulgated thereto.

d. Sexual Harassment in the Workplace. Subrecipient certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law and that the Subrecipient will abide by HTFC’s Sexual Harassment in the Workplace Policy. The Sexual Harassment in the Workplace Policy can be viewed at the following address: <https://hcr.ny.gov/procurement-and-contract->

information. This certification does not affect institutional policies or practices that are protected by existing law including, but not limited to, the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

3. Access to Records. Subrecipient shall furnish and cause each of its own sub-subrecipients, contractors, and subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by HTFC, HUD or its agent, the Comptroller General of the United States, or other-authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

4. Contract Provisions. Subrecipient will include the provisions of Paragraphs XI. A., Civil Rights, and B., Affirmative Action, in every subsequent sub-subrecipient agreement, contract, subcontract, or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own sub-subrecipients, contractors, or subcontractors.

C. Employment Restrictions

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

D. Conduct

1. General Responsibility. Subrecipient shall at all times during the Agreement term remain responsible. Subrecipient agrees, if requested by HTFC, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

For purposes of this Agreement, Subrecipient responsibility generally means that the Subrecipient has the integrity to justify the award of public dollars and the capacity to perform the requirements of this Agreement fully. In connection herewith, to the extent that the HTFC may make certain determinations with respect to Subrecipient responsibility, wherein the Agencies determine whether it has reasonable assurances that a Subrecipient is responsible, is an important part of the procurement process, promoting fairness in contracting, mitigating contract issues, and protecting the Subrecipient and HTFC against failed contracts. In making such a responsibility determination, HTFC shall evaluate the Subrecipient's responsibility with respect to four factors: (a) financial and organizational capacity; (ii) legal authority to do business in New York State; (c) integrity; and (iv) previous performance.

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

3. Conflict of Interest

a. Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of this Agreement. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Subrecipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, Subrecipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.

b. No covered persons who exercise or have exercised any functions or responsibilities with respect to HCV assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the HCV assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of HTFC, Subrecipient, or any designated public agency.

4. Lobbying. Subrecipient hereby certifies that:

a. To the best of its knowledge and belief, no Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer

or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, Subrecipient shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

d. Subrecipient will require that the language of paragraphs (a) through (e) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

e. To the extent this agreement is a "procurement contract" as defined by Public Authority Law § 2879, by signing this Agreement the Subrecipient certifies and affirms that all disclosures made in accordance with State Finance Law §§139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete the HTFC may terminate this Agreement by providing written notification to the Subrecipient in accordance with the terms of the Agreement.

5. Copyright. If this Agreement results in any copyrightable material or inventions, HTFC and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes. This clause shall survive indefinitely the termination of this Agreement for any reason.

6. Compliance with Breach Notification and Data Security Laws. Subrecipient 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 commencing March 21, 2020 shall also comply with General Business Law § 899-bb.)

VII. COMPLIANCE WITH LAW

It is the intention and understanding of the Parties hereto that each and every provision of law required to be inserted in this Agreement should be and is inserted herein. Furthermore, it is

hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then this Agreement shall forthwith, upon the application of any Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of any Party.

VIII. SUBROGATION

Subrecipient acknowledges that funds provided through this Agreement are Federal funds administered by HUD under the HCV Program and that all funds provided by this Agreement are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged and subject to Federal regulation, however, Subrecipient shall promptly return any and all funds to HTFC, which are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compensable, no matter the cause. This clause shall survive indefinitely the termination of this Agreement for any reason.

Attachment A

HUD and HTFC Recognition

Please find below guidelines for recognition of HUD and HTFC (collectively referred to herein as the "HTFC") in any work done as a result of this Subrecipient Agreement. Note, any public information and all of the items below must be approved by the HTFC in advance of publication or posting. Note: The following serve as general guidelines, HTFC reserves the right to direct specific reasonable recognition requirements on a case-by-case basis, including but not limited to the size and content, waiver, removal or addition of such recognition.

Written Documents:

All written documents must include the following language, unless otherwise specified in writing by the HTFC:

"This [program/project] is made possible by a grant from the Housing Trust Fund Corporation, which is funded through Section 8 Housing Choice Voucher Program grants from the U.S. Department of Housing and Urban Development."

Written documents should *also* include the HTFC logo(s) and the name of the Governor.

Internet information and e-mail information:

Internet information must include all of the items required for written documentation and a link to the HTFC's website(s).

Offices open to the public providing services funded by the HTFC:

All offices must include a sign including all of the items required for written documentation.

Attachment B

Supplementary Conditions for HTFCs, Contractors and Subcontractors at any Tier

Supplementary Conditions include HUD General Provisions, Participation by Minority Group Members and Women Requirements and Procedures for Contracts with HTFC, and required diversity forms

HUD General Provisions - <https://hcr.ny.gov/system/files/documents/2019/02/appendix-iii-hudprovisionssection8january-2019.pdf>

Participation by Minority Group Members and Women Requirements and Procedures for Contracts with HTFC –
<https://hcr.ny.gov/system/files/documents/2019/02/appendix-i-mwbe-participation.pdf>

Standard Clauses for Contracts with the HTFC -
<https://hcr.ny.gov/system/files/documents/2021/09/appendix-i-agencies-standard-contract-clauses-sept-2021-final-0.pdf>

[MWBE & EEO Policy Statement, Proc 4](#)

[Company Demographic Profile, Proc-7](#)

[EEOC Statement, Proc-8](#)

[Diversity Practices Questionnaire, Proc-9](#)