

**MEMORANDUM OF AGREEMENT AND  
SUBRECIPIENT AGREEMENT**

**BETWEEN**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**THE NEW JERSEY TRANSIT CORPORATION**

**FOR REBUILD BY DESIGN**

**HUDSON RIVER PROJECT ("RESIST, DELAY, STORE, DISCHARGE")**

**UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT –  
DISASTER RECOVERY PROGRAM**

**I. PARTIES AND PURPOSE**

**WHEREAS**, this Memorandum of Agreement ("MOA" or "Agreement") constitutes an agreement between the New Jersey Department of Environmental Protection ("DEP") and the New Jersey Transit Corporation ("NJ TRANSIT"), which are collectively referred to as "the Parties"; and

**WHEREAS**, in the aftermath of Superstorm Sandy, the United States Congress, through the Disaster Relief Appropriations Act of 2013, Public Law 113-2, appropriated approximately Sixteen Billion Dollars (\$16,000,000,000) to the U.S. Department of Housing and Urban Development ("HUD") to be allocated by HUD as Community Development Block Grant-Disaster Recovery ("CDBG-DR") funds to states, including the State of New Jersey, and other eligible entities that experienced Presidentially declared disasters between 2011 and 2013, for the purpose of providing funding to address recovery needs not met by other recovery resources; and

**WHEREAS**, the New Jersey Department of Community Affairs ("DCA") has been designated by HUD to administer the State's Sandy CDBG-DR funds, which are subject to federal statutes and regulations governing CDBG-DR grants, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD; and

**WHEREAS**, the State of New Jersey (the "State") submitted to HUD, and on April 29, 2013, HUD approved, a "Community Development Block Grant Disaster Recovery Action Plan" ("Action Plan"), which was subsequently amended via various Action Plan Amendments, detailing a suite of programs to address New Jersey's substantial unmet recovery and rebuilding needs after Superstorm Sandy; and

**WHEREAS**, based on the approved Action Plan and subsequent Amendments, the State has received from HUD CDBG-DR funding for Sandy disaster recovery programs and projects; and

**WHEREAS**, pursuant to FR-5696-N-01 (March 5, 2013) the State received a first CDBG-DR allocation of \$1,829,520,000; pursuant to FR-5696-N-06 (November 18, 2013) the State received

a second allocation of \$1,463,000,000; and pursuant to FR-5696-N-11 (October 16, 2014), the State received a third allocation of \$501,909,000, plus an additional allocation of \$380,000,000 for a specific program known as “Rebuild by Design”; and

**WHEREAS**, the Rebuild by Design (“RBD”) program began as a HUD-sponsored design competition that utilized a collaborative process to find effective ways to increase resilience in the Sandy-affected region as part of recovery from the storm; and

**WHEREAS**, HUD engaged multi-disciplinary teams made up of architects, designers, planners and engineers and charged them with proposing regional and community-based projects in Sandy-affected areas that would promote resilience; and

**WHEREAS**, at the conclusion of this process, HUD selected “winning” projects to be funded with available RBD CDBG-DR funds, including two projects located in New Jersey; and

**WHEREAS**, of the \$380 million in RBD funds allocated to New Jersey by HUD, \$230 million was provided to implement the first phase of the RBD flood mitigation project in the Hudson River Region known as “Resist, Delay, Store, Discharge” (the “Hudson River RBD Project” or the “Project”), which Project encompasses the City of Hoboken, as well as parts of Weehawken and Jersey City, including a number of NJ TRANSIT assets in that area; and

**WHEREAS**, on April 20, 2015, HUD approved New Jersey’s Action Plan Amendment No. 12, which among other things allows the State to access the \$230 million of CDBG-DR funds approved by HUD to implement the Hudson River RBD Project; and

**WHEREAS**, CDBG-DR funds are subject to the Federal statutes and regulations governing the use of CDBG-DR monies, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD; and

**WHEREAS**, given DEP’s long and successful history of implementing projects similar to the Project, DCA will transfer the RBD funds to DEP pursuant to the terms of an MOA/Subrecipient Agreement between DCA and DEP, for DEP’s use in implementing the Project, and in accordance with New Jersey Action Plan Amendment No. 12; and

**WHEREAS**, NJ TRANSIT has developed an interdisciplinary program utilizing both in-house staff and consulting firms to manage the design and construction of the projects identified as critical to restoring and improving NJ TRANSIT’s infrastructure, and its 2012 Task Order Consultant Contracts were procured through a publicly advertised Request for Proposals and utilized for that purpose; and

**WHEREAS**, in March 2013, Dewberry Engineers, Inc. (“Dewberry”) was awarded NJ TRANSIT Task Order Contract No. 13-002D to supplement staff for both on-going environmental work as well as Superstorm Sandy Disaster Recovery Program related work, subject to the availability of funds; and

**WHEREAS**, DEP has determined that the most effective way to undertake Phase I of the Project (the Feasibility Study and Environmental Impact Statement) is through coordination with NJ TRANSIT and utilization of NJ TRANSIT Task Order Contract No. 13-002D;

**WHEREAS**, on February 25, 2015, Dewberry was sent a proposed Scope of Work to complete a feasibility study and Environment Impact Statement (“EIS”) and certain related work for the

Project (collectively, the “Work”), which Scope of Work was subsequently revised and finalized on May 8, 2015; and

**WHEREAS**, on May 11, 2015, Dewberry submitted final technical and cost proposals to complete the Work; and

**WHEREAS**, on May 13, 2015, the NJ TRANSIT Board of Directors (the “NJ TRANSIT Board”) authorized the retention of Dewberry to complete the Work, subject to the availability of CDBG-DR funds; and

**WHEREAS**, the purpose of this MOA is to set forth the terms and conditions pursuant to which NJ TRANSIT will provide assistance in connection with the Program and DEP will provide CDBG-DR Program funding to NJ TRANSIT, including but not limited to use of and payments to NJ TRANSIT’s consultant, Dewberry, to complete the Work; and

**WHEREAS**, implementation of the Project, including the Work, shall be undertaken in compliance with all applicable Federal, State and local laws and regulations, including without limitation the statutory and regulatory requirements governing the use of CDBG-DR funds, including Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”), which ensures that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, and Federal cross-cutting requirements including the National Environmental Policy Act of 1969 (“NEPA”), as amended; and

**WHEREAS**, the payment of CDBG-DR funds to NJ TRANSIT and/or its consultant requires that NJ TRANSIT be designated a CDBG-DR Subrecipient of DEP; and

**WHEREAS**, the Parties wish to set forth their mutual understanding regarding their respective roles and responsibilities, including but not limited to funding for, and oversight of, the Work to be performed by Dewberry pursuant to Task Order Contract No. 13-002D.

**NOW, THEREFORE**, in consideration of the principles, assurances and promises contained herein, DEP and NJ TRANSIT hereby agree on the following terms and conditions to govern the funding, administration, and oversight of this Agreement, through which DEP will allocate CDBG-DR RBD funds, and oversee the funding, administration, and oversight of any and all work done in connection with the Program, including but not limited to all Task Order(s) assigned to Dewberry to complete the Work or otherwise associated with the Project:

## **II. DEFINITIONS AND LIST OF APPENDICES**

### **A. Definitions**

Unless specifically provided otherwise or the context otherwise requires, when used in this MOA/Subrecipient Agreement:

“**Act**” means the Disaster Relief Appropriations Act of 2013 (PL 113-2).

“**Activity**” means any project, program or portion thereof that: (1) receives Grant Funding under this MOA; (2) is CDBG-eligible or has received a waiver (See 78 FR 14329, March 5, 2013 for

an explanation of waivers); (3) meets a “national objective” as set forth in 24 CFR 570.482; and (4) addresses a direct or indirect impact from Sandy.

**“Activity Delivery Costs”** (also referred to as Program Delivery Costs) means the actual delivery costs, including staff and overhead costs, directly related to carrying out Eligible Activities.

**“Action Plan”** means the New Jersey Department of Community Affairs’ Community Development Block Grant Disaster Recovery Action Plan, as amended, under the Disaster Relief Appropriations Act of 2013 and Title I of the Housing and Community Development Act of 1974 (“HCD Act”), as approved by HUD, including all approved amendments to the plan.

**“Agreement”** and **“MOA”** mean this Memorandum of Agreement and Subrecipient Agreement entered into and between DEP and NJ TRANSIT.

**“Contracting Officer”** means the person designated by NJ TRANSIT as the point of contact for contract issues.

**“Contractor”** and **“Consultant”** refer to any contractors or consultants retained to perform services in connection with the Program and paid with CDBG-DR funds; these terms do not include DEP or NJ TRANSIT.

**“Dewberry”** refers to Contractor Dewberry Engineers, Inc.

**“Draw Down”** means the process of requesting and receiving CDBG-DR funds.

**“Duplication of Benefits”** means financial assistance under any other program or from insurance or any other source, as set forth by governing federal regulations, for any part of a loss for which an otherwise eligible applicant or Subrecipient has received assistance through CDBG-DR funds for programmatic activities.

**“Eligible Activity”** means any project, program or portion thereof that receives financial assistance under this Agreement consistent with the State’s Action Plan, Action Plan Amendments, and Federal Register Notices applicable to Superstorm Sandy allocations and otherwise compliant with applicable Federal laws and regulations, and therefore is eligible to receive CDBG-DR funding. RBD Projects are Eligible Activities.

**“Eligible Costs”** and **“Eligible Expenses”** mean costs that are acceptable under 2 CFR Part 200, Subpart E, Cost Principles and all other applicable Federal regulations, and associated with Eligible Activities, in furtherance of the intent of this MOA and the goals and objectives as set forth herein.

**“Environmental Requirements”** mean all applicable environmental requirements, including the HUD regulations found at 24 CFR Parts 50 & 58, implementing the National Environmental Policy Act (“NEPA”), 42 U.S.C. §4321 *et seq.*

**“Environmental Studies”** means all Eligible Activities necessary to produce an “environmental document,” as that term is defined at 40 CFR §1508.10, or to comply with the Environmental Requirements, including NEPA.

**“Grantee,” “Recipient”** and **“DCA”** mean the New Jersey Department of Community Affairs, the State agency designated to administer the State’s CDBG-DR Program and oversee the distribution of the State’s CDBG-DR funds.

**“Integrity Monitor”** refers to integrity oversight monitors appointed pursuant to the Integrity Monitoring Act, P.L. 2013, ch. 37.

**“National Objectives”** means the following policy objectives of Title I of the HCD Act, of which at least one (1) must be approved by HUD for application and therein complied with in using CDBG-DR funds to carry out CDBG-DR funded programs: (a) urgent need, such that the

activity addresses existing conditions that pose a serious and immediate threat to the health or welfare of the community in the aftermath of a disaster and other financial resources are not available to meet such needs; (b) benefit to low- and moderate-income persons, either directly, or to a geographical area with a population concentration of low- and moderate-income persons that HUD determines would satisfy the aims of the HCD Act; or (c) to prevent or eliminate slums or blight.

**“Program”** means the RBD Program, as described in the Action Plan and amendments thereto, and approved by HUD.

**“Program Costs”** mean costs to accomplish the RBD Program.

**“Project”** means the RBD flood mitigation project in the Hudson River Region known as “Resist, Delay, Store, Discharge”.

**“Project Manager”** means the individual designated by DEP as responsible for managing the Project.

**“Subcontractor”** means an individual, business, or entity which a Contractor or Consultant retains per an agreement to carry out activities or services related to the Program, either as a subcontractor or subconsultant.

**“Subrecipient”** means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized to receive CDBG-DR funds from DCA or another Subrecipient to undertake activities eligible for such assistance. The term excludes an entity receiving CDBG funds from the recipient under the authority of 24 CFR 570.204, unless the Grantee explicitly designates it as a Subrecipient. The term does not include Contractors providing supplies, equipment, construction, or services.

**“Work”** means the services to be performed by Dewberry in connection with the Project, pursuant to Task Order Contract No. 13-002D.

#### **B. List of Appendices**

The following Appendices are attached hereto and incorporated herein by reference:

**Appendix A: Statement of Assurances**

**Appendix B: MOU between DCA and DEP for Implementing RBD**

### **III. IMPLEMENTATION OF AGREEMENTS AND ASSURANCES**

All work performed under this MOA must comply with applicable CDBG-DR requirements and must be implemented in a manner satisfactory to the DCA and HUD. Subject to the terms and conditions of this MOA and requirements imposed by HUD on CDBG-DR funding, DEP will allocate CDBG-DR funds to NJ TRANSIT to perform certain services in connection with the Program, specifically including funds needed to pay Dewberry to complete the Work or to reimburse NJ TRANSIT for payments made by NJ TRANSIT to Dewberry for Eligible Expenses incurred in connection with the Program. The funds must be expended within three (3) years of the effective date of this MOA. This deadline may be extended through a written Amendment to this MOA. All contracts with third parties relating to this MOA must clearly stipulate the period of performance or the date of completion.

The Parties are responsible for administering the Project services in compliance with all applicable State and federal laws and regulations and ensuring that all Contractors, and all tiers of their Subcontractors, adhere to all applicable State and federal laws and regulations, and to conduct all necessary monitoring for such compliance. Attached hereto as Appendix A is a Statement of Assurances, which lists federal CDBG-DR requirements and cross-cutting statutes and regulations. The Parties agree to comply therewith to the extent applicable, subject to waivers referenced in the Federal Register, including FR-5696-N-01, FR-5696-N-06, and FR-5752-N-32, and subject to any other exceptions and waivers previously granted and which may hereinafter be granted by HUD.

DEP is responsible for ensuring compliance with laws and regulations applicable to the use of CDBG-DR funds and for implementing the Program in a manner satisfactory to DCA and HUD and consistent with any applicable guidelines and standards that may be required as a condition of funding, including but not limited to all applicable CDBG Program Administration and Compliance requirements as set forth in the MOU between DCA and DEP for implementing RBD (attached hereto as Appendix B). DEP shall be responsible for conducting all necessary monitoring of Contractors and Subcontractors to ensure compliance with such laws and regulations, including but not limited to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended and as implemented by the regulations set forth in 24 CFR Part 135, and applicable laws and regulations concerning contracting with small and disadvantaged businesses, and minority, veteran and women's business enterprises. DEP shall be responsible for coordinating with the New Jersey Department of the Treasury to ensure compliance with the Integrity Monitor Act, P.L. 2013, ch. 37, to the extent applicable. DEP and NJ TRANSIT shall be jointly responsible for complying with applicable provisions of Executive Order No.125 (Christie).

Failure to expressly reference any applicable federal or State law will not exempt either Party from compliance therewith; all applicable laws not included herein will be deemed inserted. Likewise, execution of this MOA will not obligate either Party to comply with any law if that law is not otherwise applicable, even if that law is referenced in this MOA or the Appendices.

#### **IV. CONTRACT MANAGEMENT**

##### **A. Dewberry Task Order Contract No. 13-002D**

1. In consultation with NJ TRANSIT, DEP developed the Scope of Work for services to be performed under Task Order Contract No. 13-002D, as amended, for the Project. That Scope of Work was sent to Dewberry on February 25, 2015, and subsequently revised and finalized on May 8, 2015. On May 11, 2015, Dewberry submitted final technical and cost proposals to complete the Work.
2. On May 13, 2015, NJ TRANSIT's Board approved the use and amendment of Task Order Contract No. 13-002D for the RBD Project. After the expiration of the Governor's veto period pursuant to N.J.S.A. 27:25-4(f) (and assuming no veto), NJ TRANSIT and DEP shall execute an Addendum to Task Order Contract No. 13-002D, which shall amend that contract to ensure and require compliance with all laws applicable to CDBG-DR funded contracts.
3. No Work may begin and no costs may be incurred unless and until NJ TRANSIT has issued a Notice to Proceed ("NTP") or Limited Notice to Proceed ("LNTP"). Work shall commence upon NJ TRANSIT's issuance of a NTP or LNTP and shall be completed within 24 months, unless the Parties agree otherwise.

4. DEP shall be responsible for managing Dewberry's Work, ensuring Dewberry completes the Work in accordance with the terms of Task Order Contract No. 13-002D, including but not limited to the Scope of Work, technical proposal, cost proposal and schedule, and requiring Dewberry (including all tiers of its Subcontractors) adhere to all applicable State and Federal laws and regulations, including but not limited to laws applicable to CDBG-DR funded contracts. DEP shall also be responsible for ensuring that work assigned and performed by Dewberry is within Dewberry's approved scope of work and will not require a change order, unless a change order is deemed necessary and is developed in the manner contemplated in Paragraph 5. DEP does not have authority to direct Dewberry to perform work outside the approved Scope of Work.
5. To the extent necessary, DEP shall, in consultation with NJ TRANSIT, develop the Scope of Work for any Change Orders to be issued to Dewberry for services to be performed under Task Order Contract No. 13-002D, as amended, for the Project. No Change Orders may be implemented unless and until DEP has provided an independent cost estimate and a written recommendation from the Project Manager, NJ TRANSIT's Board has approved the Change Order (if required), and NJ TRANSIT has issued either a Notice to Proceed or Limited Notice to Proceed.
6. NJ TRANSIT shall direct Dewberry to submit invoices for all services performed under Task Order Contract No. 13-002D, as amended, for the Project, to NJ TRANSIT for review, approval and payment.
7. Pursuant to Section 3.C of Task Order Contract No. 13-002D, "Limitation of Funds," NJ TRANSIT shall direct Dewberry to notify DEP, as well as the Contracting Officer, in writing whenever Dewberry has reason to believe that the costs it will incur will exceed 75% of the task amount allotted.
8. Pursuant to Section 3.C of Task Order Contract No. 13-002D, "Status Reports," NJ TRANSIT shall direct Dewberry to send to DEP copies of all written status reports submitted to NJ TRANSIT.
9. Through the duration of the performance period, NJ TRANSIT shall notify DEP if NJ TRANSIT Board approvals are necessary to continue delivery of services under Task Order Contract No. 13-002D, as amended, for the Project, and, if so, shall bring such items to the NJ TRANSIT Board for approval.
10. DEP shall work with the Department of Treasury to secure an Integrity Monitor for work on the Project under Task Order Contract No. 13-002D, to the extent that law is applicable.

B. Other Contracts

1. If the Parties opt to procure or utilize other NJ TRANSIT contracts in connection with the Program, the Parties will utilize NJ TRANSIT's procurement authority, procurement policies and Procurement Manual (to the extent applicable), and shall work together to develop the solicitation document(s) (e.g., Request for Proposal (RFP), Request for Qualifications (RFQ), or Scope of Work), and evaluate all bids/proposals received. All such contracts shall include provisions to ensure and require compliance with all laws applicable to CDBG-DR funded contracts.

2. No Work may begin and no costs may be incurred unless and until DEP has provided to NJ TRANSIT an independent cost estimate and written recommendation from the Project Manager, NJ TRANSIT's Board has approved the contract/Task Order, and NJ TRANSIT has issued a Notice to Proceed or Limited Notice to Proceed.
  3. DEP shall be responsible for managing each such contract and ensuring the Contractor completes the work in accordance with the terms of the contract/Task Order, including but not limited to the RFP/RFQ/Scope of Work, technical proposal, cost proposal and schedule, and requiring Contractors (including all tiers of its Subcontractors) adhere to all applicable State and Federal laws and regulations, including but not limited to laws applicable to CDBG-DR funded contracts. DEP shall also be responsible for ensuring that work assigned and performed by the Contractor is within the Contractor's approved scope of work and will not require a change order, unless a change order is deemed necessary and is developed in the manner contemplated in Paragraph 4. DEP does not have authority to direct the Contractor to perform work outside the approved Scope of Work.
  4. To the extent necessary, DEP shall, in consultation with NJ TRANSIT, develop the Scope of Work for any Change Orders to be issued to the Contractor. No Change Orders may be implemented unless and until DEP has provided an independent cost estimate and a written recommendation from the Project Manager, NJ TRANSIT's Board has approved the Change Order (if required), and NJ TRANSIT has issued either a Notice to Proceed or Limited Notice to Proceed.
  5. NJ TRANSIT shall direct each Contractor to submit invoices for all services performed under Task Order Contract No. 13-002D, as amended, for the Project to NJ TRANSIT for review, approval and payment.
  6. NJ TRANSIT shall direct Contractors to send to DEP copies of all written status reports submitted to NJ TRANSIT.
  7. NJ TRANSIT shall direct Contractors to notify DEP, as well as the Contracting Officer, in writing whenever the Contractor has reason to believe that the costs it will incur will exceed 75% of the task amount allotted.
  8. Through the duration of the performance period, NJ TRANSIT shall notify DEP if NJ TRANSIT Board approvals are necessary to continue delivery of services under any NJ TRANSIT contract related to the Program and, if so, shall bring such items to the NJ TRANSIT Board for approval.
  9. For each contract, DEP shall work with the Department of Treasury to secure an Integrity Monitor to extent required under the Integrity Monitor Act.
- C. Disputes: Nothing herein shall be deemed to amend Section 33 of Task Order Contract No. 13-002D (Disputes). The Contracting Officer retains the right to decide disputes, in accordance with that section.

## **V. FUNDING AND PAYMENT PROCESS**

### **A. Budget**



The estimated budget for funding of activities under this MOA is \$8,587,526.68 (Eight Million Five Hundred Eighty-Seven Thousand Five Hundred Twenty-Six Dollars And Sixty-Eight Cents), excluding any costs incurred by NJ TRANSIT.

The Parties may agree, in writing, to a revision of the Budget or a reallocation of funds between categories within the Budget without the need to amend this Agreement; provided however, that in no case shall any such revisions or reallocations exceed the total allocation of funds under the Agreement without prior written consent of both Parties, and any other State and/or federal consent that may be required.

NJ TRANSIT is not responsible for cost overruns or paying Dewberry or any other Contractors beyond the agreed upon amount.

#### **B. Funding Use**

Funds shall be used for Eligible Costs associated with implementing the Program and to accomplish the Project, in accordance with FR-5696-N-11 (October 16, 2014), as well as the Action Plan and all Amendments thereto. Specifically, funds shall be used for:

1. Project costs of Dewberry and its Subcontractors;
2. Project costs of other Contractors and their Subcontractors, to the extent necessary and applicable, pursuant to contracts procured to implement the Project; and  
NJ TRANSIT costs, such as staff costs, costs for temporary employees, administrative costs, and auditing costs, if required. DEP shall be responsible for distinguishing and documenting all such costs as either Administrative Expenses (e.g., Board support, audits) or Program Costs (e.g., direct project/Contract management costs); NJ TRANSIT shall provide whatever information and back-up documentation may be needed to enable DEP to accurately characterize such costs and obtain reimbursement from HUD.

#### **C. Payment Process**

1. Contractor Costs: Contractors shall submit invoices for all services performed in connection with the Program to NJ TRANSIT. Both NJ TRANSIT and DEP shall review and approve all such invoices, utilizing checklists approved by both Parties. NJ TRANSIT shall communicate its approval to DEP within two (2) weeks of receipt of invoice, barring any special handling. DEP will complete its review of Contractor invoices within one (1) week after NJ TRANSIT's approval. After both Parties have approved a Contractor's invoice, NJT will pay the Contractor in accordance with the timeframes set forth in the Prompt Payment Act, N.J.S.A. 52:32-32 et seq., notify DEP of same and provide DEP with proof of payment including such documentation as may be required by DCA or HUD for compliance or other purposes. DEP shall promptly submit payment information and other required information utilizing SIROMS, as required to meet the reporting needs of DCA and the required entry of data into HUD's Disaster Recovery Grants Reporting (DRGR) System. DEP shall endeavor, within two weeks of receiving acceptable documentation from NJ TRANSIT, to reimburse NJ TRANSIT for Eligible Expenses, including payments made to Contractors for Eligible Activities, up to the budgeted amount.
2. NJ TRANSIT Costs: On a quarterly basis, NJ TRANSIT shall provide DEP with an estimate of any costs expected to be incurred as a result of this Project for the ensuing quarter for DEP review and approval. After the end of the quarter, NJ TRANSIT will provide DEP with an invoice, including information and back-up for its actual costs, in

compliance with CDBG-DR requirements and in a format capable of uploading to SIROMS. Approved costs will be reimbursed quarterly upon submission of acceptable documentation to DEP.

## **VI. FINANCIAL MANAGEMENT SYSTEM**

NJ TRANSIT shall be responsible for maintaining an adequate financial management system and will notify DEP as soon as practicable if NJ TRANSIT cannot comply with the requirements established in this section of the MOA. NJ TRANSIT shall maintain accurate, current, and complete reports for disclosure of financial results in a format which conform with generally accepted principles of accounting, and reporting.

DEP shall properly track CDBG-DR funding received from HUD and other relevant factors within their purview based on the MOU with DCA. DEP must notify NJ TRANSIT in writing if and when project funds are 75% (seventy-five percent) expended.

In the event any of the CDBG-DR funding received from HUD is de-obligated, NJ TRANSIT will pay Contractors for all authorized services properly performed, and DEP shall remain responsible for reimbursing NJ TRANSIT.

## **VII. RECORD KEEPING**

The State and its funded entities are required to retain records pertaining to CDBG-DR funded projects for a period of at least five (5) years after the fiscal year the Program is closed out by the State. NJ TRANSIT shall be responsible for maintaining the procurement and invoicing/payment files associated with Task Order Contract No. 13-002D, as well as the procurement and invoicing/payment files associated with any other contract procured pursuant to this MOA. DEP shall be responsible for maintaining all other records, including but not limited to project files and all reports, work product and other deliverables produced by Contractors, and shall maintain records in accordance with CDBG-DR requirements (including specifically 24 CFR 570.506), and the MOU between DEP and DCA.

The Parties shall provide DCA, the Office of the State Comptroller, HUD and the U.S. Inspector General with access to all such records for the purpose of audits, examinations, and making excerpts and transcriptions. The Parties shall also provide citizens with reasonable access to records regarding the use of CDBG-DR funds, consistent with State laws pertaining to public records, privacy and obligations of confidentiality. The Parties obligations shall not end until all close-out requirements as set forth in 24 CFR 570.509 are completed.

The Parties agree to cooperate with HUD and DCA in connection with the administration and audit of the Program, and in terms of compliance with various operating and reporting procedures, including those which may hereafter be promulgated. Pursuant to HUD's waiver of 24 CFR 570.492, DEP and DCA shall make reviews and audits, including onsite reviews, of Subrecipients as may be needed to meet the requirements of 42 U.S.C. 5304(e)(2), as amended. In the event of noncompliance, DEP shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence.

NJ TRANSIT's Internal Audit Department may elect, and shall have the right, to audit any contracts executed pursuant to this MOA.

In addition to any other audit requirements, the Parties agree to comply with applicable provisions of 2 C.F.R. Part 200 and NJ Circular No. 15-08-OMB ([http://www.nj.gov/infobank/circular/cir1508\\_omb.pdf](http://www.nj.gov/infobank/circular/cir1508_omb.pdf)). Any deficiencies noted in audit reports must be fully cleared within thirty (30) days after receipt of a deficiency notice.

## **VIII. PROCUREMENT**

All procurement activities shall adhere to the principles and standards governing federal grant distribution or their equivalent in State law, and all applicable State procurement laws, including but not limited to Executive Order 125 (Christie 2013).

HUD's procurement standards were codified at 24 C.F.R. § 85.36(a), which provided that "a State will follow the same policies and procedures it uses for procurements from its non-Federal funds." *See also* 24 C.F.R. § 570.489(g) (when procuring goods and services using CDBG funds, "the state *shall* follow its procurement policies and procedures"). Pursuant to FR-5696-N-01 (Mar. 5, 2013), the State submitted a written procurement policy to HUD, noting that all procurements using CDBG-DR funds would be processed through the Division of Purchase and Property ("DPP"), and certified that those procedures were equivalent to the federal procurement requirements set forth in 24 C.F.R. § 85.36 insofar as procurements will comply with 24 C.F.R. § 85.36(a). By Memorandum dated April 29, 2013, HUD indicated that it had "reviewed the financial control materials submitted by the State" and that "the State of New Jersey has demonstrated adequate financial controls, procedures and processes," and HUD certified that "the State of New Jersey has in place proficient financial controls and procurement processes." On February 17, 2015, the State inquired and HUD confirmed that the State can procure goods and services through other State agencies that have procurement authority (e.g., NJ TRANSIT) so long as applicable procurement processes are substantially similar to those certified by HUD. NJ TRANSIT's procurement processes are substantially similar to those utilized by DPP.

Effective December 26, 2014, HUD amended 24 CFR Parts 84 & 85 (including the procurement standards) and adopted the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 CFR Part 200, which applied thereafter to Federal Awards made by HUD to non-Federal entities, except for procurement standards, for which HUD permitted a transition period. Pursuant to 2 CFR §200.110, HUD Transition Notice SD-2015-01, and HUD's April 29, 2013 certification as to the proficiency of the State's procurement procedures, the State will use State procurement standards (certified by HUD) for the transition period and for all following periods.

DEP has verified that neither Dewberry nor any of the Subcontractors listed in Dewberry's proposal dated May 11, 2015 are on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR Part 24. To the extent that Dewberry proposes any additional Subcontractors or the Parties procure goods or services from any additional Contractors, DEP will verify that all Contractors and Subcontractors are not on the List of Parties Excluded from Federal Procurement or Non-procurement Programs prior to retention. No Contractors or Subcontractors that are on the List may receive any CDBG funds.

## **IX. NOTICES**

Any notice required or permitted to be given under or in connection with this MOA shall be in writing through mail, email or facsimile. All such communications shall be transmitted to the

contact information set forth below, or such other address or numbers as may be hereafter designated by either Party in written notice to the other Party compliant with this Section.

**To DEP:**

Attn: Deputy Commissioner  
Department of Environmental Protection  
Mail Code 401-07 P.O. Box 402  
Trenton, New Jersey 08625  
E-mail: david.glass@dep.nj.gov [or such other designated address]  
Phone: 609-292-2908  
Facsimile: 609-292-7695

**To NJ TRANSIT:**

ATTN: Assistant Executive Director, Capital Planning & Programs  
NJ TRANSIT  
One Penn Plaza East  
Newark, NJ 07105  
E-mail: ssantoro@njtransit.com [or such other designated address]  
Phone: 973-491-8960  
Facsimile: 973-491-4483

**X. TERM OF AGREEMENT; TERMINATION OR SUSPENSION OF AGREEMENT**

**A. Term of Agreement**

This MOA shall be deemed effective as of the date of the last signature and shall continue until 60 days after the Project is completed or 60 days after the last payment under this MOA is made, whichever occurs last.

**B. Termination for Convenience**

Either Party may terminate this MOA in whole or in part at any time by giving at least 30 days' written notice to the other Party. If notice is given, NJ TRANSIT shall promptly give notice to any Contractors and both Parties shall discontinue all activities encompassed by this MOA, except as may otherwise be legally required.

**C. Termination Due to Unavailable Funding**

This MOA is contingent upon the appropriation and release of sufficient funds through the Grantee to DEP to fulfill the requirements of this MOA. Failure of the appropriate authorities to approve and provide an adequate budget to DEP for fulfillment of this MOA shall constitute reason for termination of the MOA by either Party. DEP shall reimburse NJ TRANSIT for all authorized services properly performed prior to termination, including amounts paid to each Contractor for work undertaken pursuant to this MOA.

**D. Post Termination Obligations**

Termination of this MOA shall not affect the Parties' obligations to comply with laws applicable to CDBG-DR funds, including but not limited to those imposing obligations to maintain and provide access to records and to monitor and report on use of funds. Unless otherwise agreed upon by the Parties, upon termination of this MOA, funds committed but unused shall be released

within 30 days. DEP will ensure that no CDBG-DR funds are allocated for projects beyond the scope of this MOA.

**E. Non-Compliance with Grantee**

In the event that the Grantee finds non-compliance with this Agreement on the part of the Parties, and the Grantee withholds approval of funding requests for payment of Project expenses due to non-compliance, then DEP shall be responsible for reimbursing the Grantee and shall reimburse NJ TRANSIT for all authorized services properly performed prior to termination, including amounts paid to each Contractor for work undertaken pursuant to this MOA.

**XI. CONFLICT OF INTEREST**

Conflict of interest rules, as set forth in 24 CFR 570.489, 24 CFR 570.611, and 2 CFR 200.112, apply. Subrecipients must maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Subrecipients must establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Except for approved eligible administrative and personnel costs, none of NJ TRANSIT's designees, agents, members, officers, employees, consultants, and no other public official who exercises or who has exercised any functions or responsibilities with respect to the Program during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Program, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program or in any activity, or benefit there from, which is part of this MOA at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to NJ TRANSIT, DEP and DCA, and all three have approved such conflict of interest exception. The procedures for requesting, documenting, and submitting a request for an exception shall include the applicable procedures delineated at 24 CFR 570.489(h)(4) and in the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order No. 189.

**XII. OTHER REQUIREMENTS**

DEP will provide all assistance, guidance and information required by NJ TRANSIT to ensure its compliance with the Act, the CDBG-DR Program, or any other applicable standards in its performance under the MOA.

DEP will maintain responsibility to meet the obligations and requirements of the CDBG-DR Program including reporting, project performance goals, plan submittal, coordination, and other procedural requirements imposed by the Grantee or HUD.

All financial management and procurement performed for the Project or the Programs covered under this MOA will be in compliance with applicable provisions of OMB Circular A-87, A-102, OMB Circular A-133, and OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200) (except as described hereinabove with respect to procurement).

**XIII. BINDING EFFECT**

All of the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to and binding upon their several successors and assigns, as the case may be.

**XIV. AUTHORITY**

By the signatures below, the Parties execute the MOA and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization by all provisions contained herein.

The Parties have executed and delivered this MOA on the date set forth next to their respective signatures below, but the MOA is effective as of the date of the last signature.

**STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Signature: \_\_\_\_\_

Name: Bob Martin

Title: Commissioner

Date: 6/1/2015

**NEW JERSEY TRANSIT CORPORATION**

Signature: \_\_\_\_\_

Name: Veronique Hakim

Title: Executive Director

Date: \_\_\_\_\_

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Signature: \_\_\_\_\_

Name: Bob Martin

Title: Commissioner

Date: \_\_\_\_\_

#### **NEW JERSEY TRANSIT CORPORATION**

Signature: Veronique Hakim

Name: Veronique Hakim

Title: Executive Director

Date: 6/2/15

# Appendix A



**STATEMENT OF ASSURANCES FOR**  
**MEMORANDUM OF AGREEMENT AND**  
**SUBRECIPIENT AGREEMENT**  
**BETWEEN**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**AND**  
**THE NEW JERSEY TRANSIT CORPORATION**  
**FOR REBUILD BY DESIGN**  
**HUDSON RIVER PROJECT (“RESIST, DELAY, STORE, DISCHARGE”)**

The purpose of this Statement of Assurances is to list requirements applicable to Programs funded in whole or in part by Community Development Block Grant-Disaster Recovery (“CDBG-DR”) funds. Not all of the requirements listed herein shall apply to all activities or work under the MOA. The Parties agree to comply with all *applicable* federal CDBG-DR and cross-cutting statutes and regulations, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD. If two or more applicable rules, regulations, or procedures are in conflict with one another, the most proscriptive rule, regulation, or procedure shall apply.

The parties acknowledge the following general requirements applicable to CDBG-DR funded Programs:

- Programs using CDBG-DR funds must be implemented so as to give maximum feasible priority to activities to benefit low- and moderate-income families in accordance with the HUD-approved CDBG-DR Action Plan for the State of New Jersey and Action Plan Amendments.
- Section 312 of the Stafford Act and 76 FR 71060 (November 16, 2011), imposes various requirements to ensure no duplication of benefits in the use of CDBG-DR funds. A duplication of benefits occurs when a beneficiary receives assistance, from multiple sources, where the assistance amount exceeds the need for a particular recovery purpose; under such circumstances, repayment is required.
- Under provisions of the Hatch Act that limit the political activity of employees and HUD regulations governing political activity (24 CFR 570.207), CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

- No federally appointed funds shall be used for lobbying purposes regardless of level of government.
- HUD rules prohibit the use of CDBG funds for inherently religious activities, as set forth in 24 CFR 570.200(j), except for circumstances specified in the Department of Housing and Urban Development Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG Disaster Recovery Funds in Response, 78 FR 14329 (March 5, 2013).
- HUD rules impose drug-free workplace requirements in Subpart B of 2 CFR part 2429, which adopts the government-wide implementation (2 CFR Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988.
- Citizens will be provided with an appropriate address, phone number, and times during which they may submit complaints regarding activities carried out utilizing these CDBG-DR funds. The State will provide a written response to every citizen complaint within fifteen (15) working days of the complaint.

*To the extent applicable, the Parties agree to comply with the following:*

A. **PERSONALLY IDENTIFIABLE INFORMATION:** To the extent the Parties receive personally identifiable information, they will comply with the Privacy Act of 1974 and HUD rules and regulations related to the protection of personally identifiable information. The term “personally identifiable information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc., alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc. See 2 CFR 200.79 & OMB M-07-16.

**B. FINANCIAL MANAGEMENT AND PROCUREMENT**

1. The Parties shall comply with all applicable laws pertaining to financial management and procurement, including 2 CFR Part 180 and 24 CFR Part 2424, which prohibit the making of any award or permitting any award (sub grant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
2. *To the extent applicable*, the Parties shall comply with 24 CFR Part 570 regarding the management and disposition of cash, real and personal property acquired with CDBG-DR funds.
3. *To the extent applicable*, the Parties shall comply with 24 CFR 570.489(j) regarding change of use of real property. These standards apply to real property within a Party’s control (including activities undertaken by subcontractors, subconsultants and third parties). These standards apply from the date CDBG-DR funds are first spent until five years after the closeout of the Program.

**C. RECORDS AND RECORDS RETENTION**

1. DEP and NJ TRANSIT shall each be responsible for maintaining certain records, as specified in the MOA, in accordance with 24 CFR 570.506 and 570.502.

2. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required five-year record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

**D. FEDERAL LABOR STANDARDS:** *To the extent applicable*, the Parties shall comply with Federal Labor Standards, including:

1. The labor standards requirement set forth in 24 CFR 570.603 and any other regulations issued to implement such requirements. This includes payment of prevailing wages to laborers and mechanics employed in the performance of construction work, except that these requirements do not apply to the rehabilitation of residential property if such property contains less than 8 units;
2. Section 110 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5310, and the requirements set forth in 24 CFR 570.603 to ensure that all laborers and mechanics employed by Consultant, including its subcontractors and subconsultants for CDBG-related services, are paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Davis-Bacon Act, as amended, except that these requirements do not apply to the rehabilitation of residential property if such property contains less than 8 units;
3. The Davis-Bacon Act, as amended (40 U.S.C. 3141 *et seq.*). Davis-Bacon applies to all construction contracts over \$2,000 involving CDBG funds. Davis-Bacon requires that all laborers and mechanics, as defined at 29 CFR 5.2, be paid at least the minimum wages provided by the Department of Labor and also requires compliance with state prevailing wage rules;
4. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts of \$100,000 or greater be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work-week;
5. The Federal Fair Labor Standards Act (29 U.S.C. 201 *et seq.*), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;
6. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR 3), which requires payment of wages once a week and allows only permissible payroll deductions;
7. HUD regulations and/or guidance:
  - a. 24 CFR 570.489(I): Debarment and suspension
  - b. 24 CFR 570.603: Labor standards
  - c. 24 CFR 570.609: Use of debarred, suspended, or ineligible Consultants or subrecipients
  - d. HUD Handbook 1344.1 Federal Labor Standards Requirements in Housing and Urban Development Programs, as revised;
8. Department of Labor regulations in parallel with HUD requirements above:
  - a. 29 CFR 1: Procedures for Predetermination of Wage Rates

- b. 29 CFR 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)
- c. 29 CFR 6: Rules of Practice for Administrative Proceedings Enforcing Labor Standards In Federal and Federally Assisted Construction Contracts and Federal Service Contracts
- d. 29 CFR 7: Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts.

**E. SECTION 3 REQUIREMENTS**

1. *To the extent applicable*, the Parties shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (“Section 3”). Section 3 is intended to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to the greatest extent feasible to low- and very low-income persons, and to businesses that employ these persons, within their community. Section 3 applies to grantees and subrecipients that receive assistance exceeding \$200,000 in certain types of HUD funding, including CDBG funding, and to contractors and subcontractors that enter into contracts in excess of \$100,000 funded by certain types of HUD funding, including CDBG funds, for any activity that involves housing construction, rehabilitation, and demolition, or other public construction. A guide to Section 3 applicability and compliance requirements is located at HUD’s website, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/section3/section3](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3), under Frequently Asked Questions (FAQs).
2. **Pursuant to 24 CFR 135.38, the following language shall be included in all contracts and subcontracts:**
  - a. *The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
  - b. *The parties to this contract agree to comply with HUD’s regulations in 24 CFR 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with 24 CFR 135.*
  - c. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*
  - d. *The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 135, and agrees to take appropriate action, as*

*provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR 135. The contractor shall not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 135.*

- e. The contractor shall certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 135.*
- f. Noncompliance with HUD's regulations in 24 CFR 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*

#### **F. FAIR HOUSING AND NON-DISCRIMINATION**

1. *To the extent applicable, the Parties shall comply with fair housing and non-discrimination laws, including:*
  - a. *Title VI of the Civil Rights Act of 1964 and as amended in 1988, 42 U.S.C. §200d et seq., as amended, and the regulations issued pursuant thereto (24 CFR 1), which provide that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which it receives federal financial assistance and shall immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to it this assurance shall obligate it, or in the case of any transfer of such property, and transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.*
  - b. *Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619), which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.*
  - c. *Title II of the Civil Rights Act of 1968 (25 U.S.C. 1301-1303).*
  - d. *Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 et seq. The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term “building” does not include privately owned residential structures not leased by the government for subsidized housing programs.*

- e. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, which prohibits discrimination on the basis of sex in any federally funded education program or activity.
- f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which provides that no otherwise qualified individual shall, solely by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination under any program or activity receiving federal funding assistance.
- g. Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794d, which requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities, and applies to all federal agencies when they develop, procure, maintain or use electronic and information technology.
- h. Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR 6.
- i. Section 104(b)(2) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(b), which requires communities receiving community development block grants to certify that the grantee is in compliance with various specified requirements.
- j. Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.
- k. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.*, which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies or other instrumentalities.
- l. Housing for Older Persons Act of 1995 ("HOPA") (42 U.S.C. 3607), which governs housing developments that qualify as housing for persons age 55 or older
- m. Accessibility requirements contained in Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181 *et seq.*).
- n. Executive Order 11063: Equal Opportunity in Housing, November 20, 1962, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertains to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
- o. Executive Order 11246: EEO and Affirmative Action Guidelines for Federal Contractors Regarding Race, Color, Gender, Religion, and National Origin, September 25, 1965 and Executive Order 11375: Amending Executive Order No. 11246, October 13, 1967, which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. Further contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training and apprenticeship.
- p. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978.

- q. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994.
- r. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
- s. Executive Order 13166: Improving Access To Services For Persons With Limited English Proficiency, August 11, 2000.
- t. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001.
- u. Executive Order 13330: Human Service Transportation Coordination, February 24, 2004.
- v. Implementing regulations for the above:
  - i. 24 CFR 1: Nondiscrimination in Federally Assisted Programs of HUD.
  - ii. 24 CFR 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance.
  - iii. 24 CFR 5.105: Other Federal Requirements.
  - iv. 24 CFR 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974.
  - v. 24 CFR 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
  - vi. 24 CFR 50.4(l) and 58.5 (j): Environmental Justice.
  - vii. 24 CFR 91.225(a)(1): Affirmatively Furthering Fair Housing.
  - viii. 24 CFR 91.325(a)(1): Affirmatively Furthering Fair Housing.
  - ix. 24 CFR 91.325(b)(5): Compliance with Anti-discrimination laws.
  - x. 24 CFR 91.520: Performance Reports.
  - xi. 24 CFR 100-125: Fair Housing.
  - xii. 24 CFR 107: Non-discrimination and Equal Opportunity in Housing under Executive Order 11063 (State Community Development Block Grant Grantees).
  - xiii. 24 CFR 121: Collection of Data.
  - xiv. 24 CFR 135: Economic Opportunities for Low- and Very Low-Income Persons.
  - xv. 24 CFR 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.
  - xvi. 24 CFR 570.206(c): Fair Housing Activities.
  - xvii. 24 CFR 570.487(b): Affirmatively Furthering Fair Housing.
  - xviii. 24 CFR 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant Grantees).
  - xix. 24 CFR 570.490(a)-(b): Recordkeeping requirements.

- xx. 24 CFR 570.491: Performance Reviews and Audits.
- xxi. 24 CFR 570.495(b): HCDA Section 109 nondiscrimination.
- xxii. 24 CFR 570.506(g): Fair Housing and equal opportunity records.
- xxiii. 24 CFR 570.601: Affirmatively Further Fair Housing.
- xxiv. 24 CFR 570.608 and Part 35: Lead-Based Paint.
- xxv. 24 CFR 570.614: Architectural Barriers Act and Americans with Disabilities Act.
- xxvi. 24 CFR 570.904: Equal Opportunity and Fair Housing Review
- xxvii. 24 CFR 570.912: Nondiscrimination compliance

**G. Contracting with Small and Minority Firms and Women's Business Enterprises**

Pursuant to 49 CFR §26.3(d), NJ TRANSIT's Disadvantaged Business Enterprise (DBE) goals are not applicable to projects funded through Community Development Block Grant-Disaster Recovery funds. However, the Parties agree to take affirmative steps and use best efforts to afford small and disadvantaged businesses, minority business enterprises, and veteran and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, 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 that is at least fifty-one percent (51%) owned and controlled by minority group members or women. For purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Consultant may rely on written representations by businesses regarding their status as minority and women business enterprises in lieu of an independent investigation.

**H. Limited English Proficiency**

All services must be made available to persons with Limited English Proficiency (LEP), in accordance with the State's Language Access Plan (LAP) and HUD requirements. Services should be provided in any languages for which the Parties have qualified translators. For all other languages, the Parties must have a process for using DCA's *I Speak* Cards (to be provided by DCA) and referring LEP households to DCA's language line and other translation services. DCA translation services will only be available to CDBG-DR funded programs. All LEP services provided pursuant to this MOA will be reported to DCA monthly by the number and type of those services, so that DCA may report to HUD.



**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS**  
**AND**  
**THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**FOR**  
**IMPLEMENTING REBUILD BY DESIGN**  
**UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER**  
**RECOVERY (CDBG-DR) PROGRAM**

**I. PARTIES AND PURPOSE**

**WHEREAS**, this Memorandum of Understanding ("MOU" or "Agreement") constitutes an agreement between the New Jersey Department of Community Affairs ("DCA" or "Grantee") and the New Jersey Department of Environmental Protection ("DEP" or "Department") and collectively referred to as "the Parties"; and

**WHEREAS**, in the aftermath of Superstorm Sandy, the United States Congress, through the Disaster Relief Appropriations Act of 2013, Public Law 113-2, appropriated nearly sixteen billion dollars (\$16,000,000,000) to the U.S. Department of Housing and Urban Development ("HUD") to be allocated as disaster recovery community development block grants among States, including the State of New Jersey, and other eligible government entities to provide crucial funding for recovery efforts involving housing, economic development, infrastructure and the prevention of further damage to affected areas; and

**WHEREAS**, the State of New Jersey (the "State") submitted to HUD, and HUD on April 29, 2013 approved a "Community Development Block Grant-Disaster Recovery Action Plan" ("Action Plan"), and later approved ensuing Action Plan Amendments detailing a range of programs to address New Jersey's substantial unmet needs and recovery relief after Superstorm Sandy; and

**WHEREAS**, based on the approved Action Plan and subsequent Amendments, the State has received HUD Community Development Block Grant-Disaster Recovery ("CDBG-DR") funding for Superstorm Sandy ("Sandy") disaster recovery and other eligible events in calendar years 2011, 2012, and 2013 and is a grantee for such purposes; and

**WHEREAS**, pursuant to 24 CFR 570.501, DCA has been designated to administer the State's CDBG-DR Program, which is subject to the Federal statutes and regulations governing CDBG grants, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD; and

**WHEREAS**, consistent with the State's status as a grantee of Sandy disaster recovery funding, DCA is referred to as "Grantee" under this MOU; and

**WHEREAS**, pursuant to FR-5696-N-01 (March 5, 2013) the State received a first allocation of \$1,829,520,000; pursuant to FR-5696-N-06 (November 18, 2013) the State received a second allocation of \$1,463,000,000; and pursuant to FR-5695-N-11 (October 16, 2014) the State received a third allocation of \$501,909,000 and an additional \$380,000,000 Rebuild by Design allocation.

**WHEREAS**, the purpose of this MOU is to set forth the terms and conditions by which DCA will provide DEP with the CDBG-DR Program funding for DEP's use in implementation of the Rebuild by Design (RBD) program, as set forth in the HUD-approved New Jersey Action Plan Amendment Number Twelve; and

**WHEREAS**, pursuant to the terms and conditions set forth in this MOU, including the Appendices hereto, implementation of RBD will be undertaken by DEP, which has a long and successful history of implementation of such programs; and

**WHEREAS**, implementation of the RBD program shall be undertaken in compliance with the Federal, State and local laws and regulations as well as the requirements of the CDBG-DR Program and Federal cross-cutting requirements including the National Environmental Policy Act of 1969 ("NEPA"), as amended; and

**WHEREAS**, activities undertaken under this MOU and benefits determined for recipients shall not duplicate programs or benefits provided to the State of New Jersey through other Federal recovery programs, private benefits or benefits gained from non-profit entities, including those run by Department of Homeland Security and the Federal Emergency Management Administration ("FEMA"), and will be coordinated with such resources; and

**WHEREAS**, the Parties wish to set forth their mutual understanding regarding their respective roles and responsibilities in implementing the RBD program.

**NOW, THEREFORE**, in consideration of the principles, assurances and promises contained herein, DCA and DEP hereby agree on the following terms and conditions to govern the funding, administration, implementation and oversight of the MOU, through which DCA will allocate Rebuild by Design (RBD) funds to DEP.

## II. DEFINITIONS AND LIST OF APPENDICES

### A. Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this MOU:

**“Act”** means the Disaster Relief Appropriations Act of 2013 (PL 113-2).

**“Activity”** means any project, program or portion thereof that: (1) receives Grant Funding under this MOU; (2) is CDBG-eligible or has received a waiver (See 78 FR 14329, March 5, 2013 for an explanation of waivers); (3) meets a “national objective” as set forth in 24 CFR 570.482; and (4) addresses a direct or indirect impact from Sandy.

**“Activity Delivery Costs”** (also referred to as Program Delivery Costs) means the actual delivery costs, including staff and overhead costs, directly related to carrying out activities under 24 CFR 570.201 through Part 570.204; these costs are considered part of such activities and are specifically excluded from the definition of administrative costs set forth in 24 CFR 570.206. All ADCs are allocable to a CDBG activity, including direct and indirect costs integral to the delivery of the final CDBG-assisted activity.

**“Action Plan”** means the New Jersey Department of Community Affairs’ Community Development Block Grant Disaster Recovery Action Plan, as amended, under the Disaster Relief Appropriations Act of 2013 and Title I of the Housing and Community Development Act of 1974 (“HCD Act”), as approved by HUD.

**“Administrative Expenses”** means those costs as authorized by 24 CFR 570.206, and 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards), Subpart E, Cost Principles. Administrative costs are not directly related to a specific activity.

**“Agreement”** means this Memorandum of Understanding (“MOU”) entered into and between DCA and DEP.

**“Allowable Costs”** (also referred to as “Eligible Costs” or “Eligible Expenses”) means costs that are acceptable under 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards), Subpart E, Cost Principles, all other applicable Federal regulations, and approved as part of an activity in this Agreement or DEP agreements related thereto.

**“Carrying Charges”** means costs included in administrative costs pursuant to 24 CFR 570.206 related to Program planning and execution but does not include staff or overhead costs.

**“Contractor”** means a Contractor paid with CDBG funds in return for a specific service (e.g., construction management services, design, feasibility consultant, etc.). A Contractor is a third-party firm the Grantee or DEP contracts with through a formal procurement process to perform specific functions; DEP is not a Contractor.

**“Draw Down”** means the process of requesting and receiving CDBG funds.

**"Duplication of Benefits"** means financial assistance under any other program or from insurance or any other source for any part of a loss for which an otherwise eligible applicant or Subrecipient has received assistance through CDBG funds for programmatic activities.

**"Eligible Activity"** means any project, program or portion thereof that receives financial assistance under this Agreement consistent with the State's Action Plan, Action Plan Amendments, and Federal Register Notices applicable to Superstorm Sandy allocations and otherwise compliant with applicable Federal laws and regulations, and therefore is eligible to receive CDBG-DR funding.

**"Environmental Requirements"** means the requirements described in 24 CFR Part 58.

**"Environmental Studies"** means all eligible activities necessary to produce an "environmental document," as that term is defined at 40 CFR 1508.10, or to comply with the requirements of 24 CFR Part 58.

**"Grant Funding Sub-Recipient Agreement"** means the agreement executed between DEP and an eligible public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 24 CFR 570.201(o) for purposes of implementing approved Action Plan projects as set forth in this MOU.

**"Grantee"** means the New Jersey DCA. Even though DCA and DEP are divisions within the same legal entity, because DCA controls the distribution of CDBG-DR funds, it shall be construed as the Grantee for purposes of this MOU.

**"Indirect Costs"** means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective. See 2 CFR 200.416.

**"National Objectives"** means the following policy objectives of Title I of the Housing and Community Development Act of 1974 (the HCD Act), of which at least one (1) must be approved by HUD for application and therein complied with in using CDBG-DR funds to carry out CDBG-DR funded programs: (a) urgent need, such that the activity addresses existing conditions that pose a serious and immediate threat to the health or welfare of the community in the aftermath of a disaster and other financial resources are not available to meet such needs; (b) benefit to low- and moderate-income persons, either directly, or to a geographical area with a population concentration of low- and moderate- income persons that HUD determines would satisfy the aims of the HCD Act; or (c) to prevent or eliminate slums or blight.

**"Program"** means the designated RBD projects, as approved by HUD in the New Jersey Department of Community Affairs' Community Development Block Grant Disaster Recovery Action Plan Amendment Number Twelve and any related ensuing amendments thereto.

**"Program Costs"** means costs to accomplish the RBD activity;

**"Subcontractor"** means an individual, business, or entity with whom a Contractor retains per an agreement to carry out activities or services related to CDBG projects.

**"Subrecipient"** means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. The term excludes an entity receiving CDBG funds from the recipient under the authority of 24 CFR 570.204, unless the Grantee explicitly designates it as a Subrecipient.

#### **B. List of Appendices**

All Appendices are attached hereto and made a part hereof:

**Appendix A:** Statement of Assurances

**Appendix B:** Disaster Recovery Grant Reporting System

**Appendix C:** Records and Records Retention

### **III. IMPLEMENTATION OF AGREEMENT AND ASSURANCES**

- A.** DEP is responsible for complying with all applicable Federal CDBG-DR Program and CDBG regulations and for implementing the Program in a manner satisfactory to the Grantee and HUD and consistent with any applicable guidelines and standards that may be required as a condition of the Grantee's providing the Grant Funds, including but not limited to all applicable CDBG Program Administration and Compliance requirements set forth by this Agreement and the Statement of Assurances (attached hereto as Appendix A) executed by DEP and made a part hereof. The Grantee's providing of Grant Funds under this Agreement is specifically conditioned on DEP's compliance with this provision and all applicable CDBG-DR Program and CDBG regulations, guidelines and standards, including compliance with 24 CFR 570.900 et seq., governing performance reviews and remedial action.
- B.** DEP shall be responsible for requiring that all of its grantees, borrowers, and Contractors (and all tiers of their Subcontractors) adhere to all applicable State and Federal laws and regulations, and to conduct all necessary monitoring for such compliance. As to laws and regulations applicable to the use of CDBG funds, DEP is concurrently executing the Statement of Assurances, attached hereto as Appendix A, which shall be deemed to be requirements of this Agreement to the extent that they are applicable. As to any other laws and regulations that may apply to construction projects, DEP is responsible for determining the applicable laws and regulations and ensuring compliance therewith.
- C.** Notwithstanding the foregoing, Grantee is responsible for environmental review, decision-making, and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law. DEP agrees that it will not commit any Grant Funds to a project until it has received the proper clearances, including exemptions if applicable, in compliance with environmental laws and release of funds.

- D. DEP agrees to comply with all applicable Federal CDBG-DR, and cross-cutting statutes and regulations as more fully detailed in Appendices A, B, and C, and as noted in the follow Federal Register notices under the Department of Housing and Urban Development, including applicable waivers: FR-5696-N-01, March 5, 2013; FR-5696-04, August 2, 2013; FR-5696-N-06, November 18, 2013; ; FR-5696-08, March 27, 2014; FR5696-10, July 11, 2014; FR-5696-N-11, October 16, 2014; FR-5696-N-15, April 2, 2015.

#### **IV. REBUILD BY DESIGN (RBD) PROGRAM OVERVIEW**

The RBD program originated from a design competition sponsored by HUD that utilized a collaborative process to find effective ways to protect people, homes, businesses and infrastructure, and to increase resilience in Sandy-affected regions as part of recovery from the storm. At the conclusion of the RBD competition, HUD selected two winning projects for New Jersey, with designs that will help densely populated communities with repetitive flooding challenges. For project number one, the State will receive \$150 million in CDBG-DR funds to implement "Pilot Area 1" of the flood mitigation project known as the "New Meadowlands - Protect, Connect, Grow" ("New Meadowlands") project. Pilot Area 1 encompasses portions of Carlstadt, Little Ferry, Moonachie, South Hackensack and Teterboro. For project number two, the State will receive \$230 million in CDBG-DR funds to implement the first phase of the flood mitigation project in the Hudson River Region known as the "Resist, Delay, Store, Discharge" project.

The New Meadowlands project proposes an integrated vision of protecting, connecting and growing the Meadowlands. The project will consist of two principal pieces of new infrastructure: the "Meadowpark" and the "Meadowband." The Meadowpark is a large natural reserve made accessible to the public that will also offer flood risk reduction. It will connect and expand marshland restoration efforts by the New Jersey Meadowlands Commission. The Meadowband, a raised berm that will minimize or prevent storm surge that could also potentially include transportation across the top, lies at the edge of the Meadowpark. It should be noted that funding from HUD has only been provided for "Pilot Area 1" which only includes a section of the larger concept and is comprised of the towns of Little Ferry, Carlstadt, Moonachie, Teterboro and South Hackensack.

The Hudson River project (Resist, Delay, Store and Discharge) is a comprehensive urban water strategy that contemplates using hard infrastructure and soft landscape for coastal defense, while also addressing systemic rainfall-related drainage issues. It could also include a park landscape at Weehawken Cove; green infrastructure measures, such as permeable paving and rain gardens; a range of rainwater storage initiatives; and a variety of flood risk reduction infrastructure that will be built along the Hudson River, stopping flood waters from intruding into Hoboken and parts of Weehawken and Jersey City. This new infrastructure will be coordinated with resilience measures already under development and/or being considered in the area by New Jersey Transit, as well as the Hoboken Long Slip Flood Protection project, which will fill the Long Slip (a 2,000-ft. east-west penetration of the

Hudson River into Hoboken Rail Yard which acted as a conduit for surge waters and contributed to the inundation of both Hoboken Terminal and its adjacent rail yard during Superstorm Sandy).

## V. BUDGET

The total allocation from HUD (FR-5696-N-11) for RBD is \$380,000,000, with an allocation to two projects titled: "New Meadowlands" and "Resist, Delay, Store and Discharge." The funds allocated for RBD are intended for use only on implementation of RBD activities. This includes applicable costs for Administrative Expenses<sup>1</sup> and Activity Delivery. A portion (initially 2.5%) of the allocation will be maintained by the Grantee for eligible Administrative expenses associated with RBD administration and monitoring, with the remaining portion to DEP. The portion retained by the Grantee will be revisited one year after execution of this agreement for potential adjustment, to be agreed upon by both Parties, based on actual administrative expenses and updated forecasts.

The total budget authorized under this MOU to DEP is \$370,500,000.

Activity/Item	Maximum Amount
Rebuild by Design – "Resist, Delay, Store and Discharge"- Hudson River Region	\$218,500,000
Rebuild by Design – "New Meadowlands"	\$142,500,000
Administrative (DEP)	\$9,500,000
<b>TOTAL</b>	<b>\$370,500,000</b>

### A. Funding Use

Funds shall be used to accomplish the RBD projects in accordance with FR-5696-N-11 (October 16, 2014) and approved Action Plan, Action Plan Amendment Number Twelve and all applicable Amendments.

### B. Administrative Expenses

DCA agrees to provide funding for DEP's administrative expenses up to the amount set forth in the above-referenced budget. These costs include: funds for general management, oversight and coordination that crosses programs and is not assignable to a particular program, along with monitoring and compliance; such as, administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, integrity monitoring and audit services.

<sup>1</sup>The State is allowed to expend a maximum of 5% on Administrative expenses from the entire Sandy CDBG-DR allocation. The initial estimation is that RBD will not exceed \$19 million or 5% of the RBD allocation in administrative costs.

Administrative Expenses may also include costs for goods and services required for administration of the Program, including such goods and services as rental or purchase of equipment to the extent allowable under 24 CFR 570.207, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

**C. Program Expenses**

DCA agrees to provide funding to cover program costs for each of the projects included under this MOU, in accordance with HUD regulations and requirements and all applicable OMB circulars.

Activity delivery costs are included within the project budget and include those allowable costs incurred for implementing and carrying out the RBD Project and Program activities, to include the allocated percentage for cost of the Sandy Integrated Recovery Operations and Management System (SIROMS) for financial management, performance management and reporting in compliance with HUD requirements.

**D. Performance Requirements**

Subject to the terms and conditions of this Agreement, DCA, as Grantee and administrator of the CDBG-DR Program, shall make available to DEP disaster recovery funds up to the maximum amount of Three Hundred Seventy Million, Five Hundred Thousand Dollars (\$370,500,000) (the "Grant Funds") for the purpose of funding activities under the Action Plan, as amended from time to time, related to the stated RBD projects. The Grant Funds must be expended by DEP within two years of the date that the funds are obligated by HUD to DCA, unless an extension is hereinafter granted in writing by HUD or as approved by DCA.

DEP is required to ensure all contracts with Subrecipients, units of local government and Contractors clearly stipulate the period of performance or the date of completion.

DEP will provide to DCA financial and performance projections, to be updated on a periodic basis as defined by DCA.

**E. Eligible Costs**

Eligible Costs for Grant Funds under this MOU include those applied to RBD project activities, as defined in the current, pending and future applicable Action Plan and Action Plan Amendment(s), including Action Plan Amendment 12, that are recovery-related, and are otherwise in furtherance of the intent of this MOU and the goals and objectives as set forth herein, when approved by DCA in accordance with eligibility rules under CDBG guidelines and subject to limitations established by DCA.

DEP will, as part of each project Feasibility Analysis, per the scope of work, establish and implement processes and procedures to prevent any duplication of benefits as defined by



Section 312 of the Stafford Act. Guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011). DEP agrees as a condition for cost funding to repay the funding if it later receives other disaster assistance funding for the same purposes herein.

DEP shall require any Subrecipient, as a condition for the Subrecipient receiving cost reimbursement, to repay DCA any funding the Subrecipient has or later receives from any other disaster assistance funding source for the Activities it will be receiving cost reimbursement under its Grant Fund Sub-Agreement with DEP.

Additionally, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR Activity, if there is no duplication of benefits of Federal funds. This includes programs or activities administered by the Federal Emergency Management Agency ("FEMA"), the United States Environmental Protection Agency ("EPA"), the United States Department of Transportation ("DOT"), or the U.S. Army Corps of Engineers ("USACE").

## **VI. PAYMENT PROCESS: COMPENSATION**

- A.** The Grantee shall provide DEP with spending authority equal to the amount of funds obligated under the program. DEP shall submit funding requests through the Sandy Integrated Recovery Operations and Management System (SIROMS) for payment of eligible expenses payable under this Agreement to DCA-Sandy Recovery Division for approval. Such requests shall be made on a schedule formatted and provided by Grantee, clearly identifying what documentation is required to be provided by DEP to render the funding requests complete. Funding requests submitted to the Grantee shall be approved in all cases, provided that such requests are deemed to be complete and, for eligible expenses, in accordance with program, State and Federal guidelines. Funding requests not approved by the Grantee shall be returned to DEP for further processing, together with a written explanation as to why the requests were denied and what steps DEP must take to have the requests rendered complete.
- B.** The Grantee shall be responsible for submitting draw down requests to the federal funding agency to reimburse the State for expenditures made on behalf of the program. To facilitate the draw down process, DEP will provide the Grantee, in a format and timeline prescribed by the Grantee, with a report of program expenditures.
- C.** DEP will maintain full documentation of Administrative Expenses and Program costs for all expenses incurred. DEP agrees that this documentation will be kept in a manner which is readily accessible to the Grantee, the federal funding source, or any other monitoring agency upon request.

- D. In the event of non-compliance with this Agreement, the Grantee may withhold approval of funding requests for payment of DEP expenses until the Grantee determines DEP has brought the Program into compliance. Non-compliance on any aspect funded under this Agreement may serve as a basis to withhold approval on other funds payable under this Agreement.

## **VII. FINANCIAL MANAGEMENT SYSTEM**

DEP shall be responsible for maintaining an adequate financial management system and will notify DCA as soon as practicable if DEP cannot comply with the requirements established in this section of the MOU.

DEP's financial management system shall be consistent with the standards set forth at 2 CFR Part 200, Subpart D, Post Federal Award Requirements Standards for Financial and Program Management, and the requirements for the Disaster Recovery Grant Reporting System in Appendix B below, and the requirements for Records and Records Retention in Appendix C below.

DEP shall maintain accurate, current, and complete reports for disclosure of financial results in a format which conform with generally accepted principles of accounting, and reporting:

### **A. Accounting Records**

Maintain records that adequately identify the source and application of the Grant Funds.

### **B. Internal Control**

Maintain effective internal and accounting controls overall Grant Funds provided DEP under this MOU. DEP shall adequately safeguard all such funds and assure that they are used solely for authorized purposes. DEP records shall distinguish Grant Funds for its Activities from those to be reimbursed to any Subrecipient.

### **C. Budget Control**

Provide for the comparison of the actual expenditures or outlays with budgeted amounts.

### **D. Allowable Costs**

Implement procedures to determine the reasonableness and acceptability of costs consistent with this MOU.

#### **E. Source Documentation**

Maintain accounting records that are supported by source documentation (such as purchase orders, invoices, and canceled checks).

#### **F. Disbursement Management**

DCA may review the adequacy of the financial management system of DEP under this MOU at any time subsequent to the signing of the MOU. If DCA determines that DEP's accounting system under the MOU does not meet the standards described in this section, additional information to monitor the MOU may be required by DCA upon written notice to DEP, until such time as the system meets with DCA approval.

#### **G. Use and Reversion of Assets**

The use and disposition of immovable property, equipment and remaining Grant Funds under this Agreement shall be in compliance with all CDBG regulations, which include but are not limited to the following:

1. DEP shall transfer to the Grantee any Grant Funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. In all cases in which equipment acquired, in whole or in part, with Grant Funds is sold, the proceeds shall be reviewed to determine if Program Income, as defined in 2 CFR Part 200.80. Equipment not needed by DEP for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained by DEP after compensating the Grantee an amount equal to the current fair market value of the equipment less the percentage of any non-CDBG funds used to acquire the equipment.

### **VIII. PROCUREMENT**

All procurement activities shall adhere to the principles and standards governing federal grant distribution or their equivalent in State law, and all applicable State procurement laws, including but not limited to Executive Order 125 (Christie 2013).

HUD's procurement standards were codified at 24 C.F.R. § 85.36(a), which provided that "a State will follow the same policies and procedures it uses for procurements from its non-Federal funds." *See also* 24 C.F.R. § 570.489(g) (when procuring goods and services using CDBG funds, "the state *shall* follow its procurement policies and procedures"). Pursuant to FR-5696-N-01 (Mar. 5, 2013), the State submitted a written procurement policy to HUD, noting that all procurements using CDBG-DR funds would be processed through the Division of Purchase and Property ("DPP"), and certified that those procedures were

equivalent to the federal procurement requirements set forth in 24 C.F.R. § 85.36. By Memorandum dated April 29, 2013, HUD indicated that it had "reviewed the financial control materials submitted by the State" and "the State of New Jersey has demonstrated adequate financial controls, procedures and processes," and certified that "the State of New Jersey has in place proficient financial controls and procurement processes." On February 17, 2015, the State inquired and HUD confirmed that the State can procure goods and services through other State agencies with procurement authority (e.g., Division of Property Management & Construction ("DPMC")) so long as applicable procurement processes are substantially similar to those certified by HUD. DPMC's procurement processes are substantially similar to those utilized by DPP.

Effective December 26, 2014, HUD amended 24 CFR Parts 84 & 85 (including the procurement standards) and adopted the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 CFR Part 200, which applied thereafter to Federal Awards made by HUD to non-Federal entities -- except for procurement standards, for which HUD permitted a transition period. Pursuant to 2 CFR §200.110 and HUD Transition Notice SD-2015-01, and HUD's April 29, 2013 certification as to the proficiency of the State's procurement procedures, the State will continue to use State procurement standards for the transition period and for all following periods. The State will comply with 2 CFR §200.322 "Procurement of recovered materials," and ensure that every purchase order or other contract includes any clauses required by 2 CFR §200.326, "Contract provisions."

DEP shall, to the greatest extent feasible, comply with Section 3 of the Housing and Urban Development Act of 1968, pursuant to 12 USCS 1701u, in the procurement of developers, Contractors, and/or other third party entities for any project or objective outlined in this Agreement, and ensure compliance, to the extent feasible, with the statutory and regulatory requirements of Section 3 of subrecipients and contractors, and report results as required.

DEP shall also comply with all bond requirements and labor laws as referenced under 24 CFR 570.603, and also make efforts to procure when possible minority- or women-owned business enterprises in accordance with Section 8 of the Small Business Act, 15 USC § 637, as amended.

## **IX. GENERAL CONDITIONS**

In addition to applying to this MOU, DEP shall include the provisions of this Section in each Subrecipient Agreement and third party contract as applicable.

### **A. Independent Contractor**

Nothing contained in this MOU is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. In the event that DEP contracts with third parties, including any Subrecipient, to perform any of the services to be performed hereunder, such third parties shall at all times remain an

"Independent Contractor" with respect to the provision of such services. DCA shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, with respect to such third party contracts or Grant Fund Sub-Agreements.

**B. Hold Harmless/Indemnity Contractors/Subcontractor**

To the extent that DEP or Subrecipient is authorized to and utilizes the services of any third parties in performance of its duties and obligations in implementing the programs described in this MOU, any contract entered into shall contain a provision that the Contractor and/or Subcontractor shall hold DEP and DCA harmless and defend and indemnify DEP and DCA against any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor and/or Subcontractor's performance or nonperformance of the services.

**C. Workers' Compensation**

DEP shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this MOU.

**D. Amendments**

This MOU may only be amended in writing and executed by a duly authorized representative of each Party. Amendments shall not invalidate this MOU, nor relieve or release either Party except as may otherwise be provided. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Project or Program, including purpose or beneficiaries; ii) need to extend the availability of Grant Funds; iii) revision that would result in the need for additional funding; iv) a change in the budget as described in Section V of this agreement; and v) expenditures on items for which applicable cost principles see 2 CFR Part 200, Subpart E, Cost Principles require prior approval (see 24 CFR 570.200h for pre-award/pre-agreement costs).

DCA may, in its discretion, require that this MOU be amended to conform to Federal, State or local governmental laws, regulations, guidelines, policies and available funding amounts. If any such amendment would result in a change in the funding, the Activities, or schedule of the Activities to be performed under this MOU or Grant Funding Sub-Agreement, such changes shall be incorporated by written amendment signed by both the Grantee and DEP.

**E. No Assignment**

Neither Party may transfer or assign this MOU or transfer or assign any of its rights or assign any of its duties under the MOU without the express prior written consent of the other Party. However, if the Parties do mutually agree to an assignment, all rights and obligations set forth herein shall inure to the benefit of the Parties and to their respective successors and assigns.

**F. Severability**

The terms and provisions of this MOU are severable. Unless the primary purpose of this MOU would be frustrated, the invalidity or unenforceability of any term or provision of this MOU shall not affect the validity or enforceability of any other term or provision of this MOU. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this MOU, and if such a provision cannot be reformed, enforce this MOU as set forth herein in the absence of such provision.

**G. Entire Agreement**

This MOU and any amendments, exhibits or other formally incorporated documents constitutes the entire understanding and reflects the entirety of the undertakings between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this MOU.

**H. No Authorship Presumptions**

Each of the Parties has had an opportunity to negotiate the language of this MOU prior to its execution. No presumption shall arise or adverse inference be drawn by virtue of authorship. Each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this MOU, including but not limited to any rule of law to the effect that any provision of this MOU shall be interpreted or construed against the Party who (or whose counsel) drafted that provision. The rule of no authorship presumption set forth in this paragraph is equally applicable to any Person that becomes a Party by reason of assignment and/or assumption of this MOU and any successor to a signatory Party.

**I. Applicable Law and Venue**

This MOU shall be governed by and construed in accordance with all applicable Federal and State laws. Any legal action resulting from the implementation of this Agreement shall be brought and adjudicated in the State of New Jersey.

**J. No Personal Liability of Individual Representatives**

No covenant or agreement contained in this MOU shall be deemed to be the covenant or agreement of any official, trustee, officer, agent or employee of either Party in his or her individual capacity, and neither the officers of either Party nor any official executing this MOU shall be personally liable with respect to this MOU or be subject to any personal liability or accountability under this MOU by reason of the execution and delivery of this MOU.

**K. Delay or Omission**

No delay or omission in the exercise or enforcement of any right or remedy accruing to either Party under this MOU shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

**L. Prohibited Activity**

DEP is prohibited from using, and shall require that its Contractors and Subcontractors, if any, are prohibited from using, the Grant Funds provided herein or personnel employed in the administration of the Program for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. DEP will comply with the provision of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of certain employees.

**M. Safety**

DEP shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of its performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1926, shall be observed and DEP shall take or cause to be taken such additional safety and health measures as DEP may determine to be reasonably necessary.

DEP shall require all Contractors, Subcontractors, and Subrecipients to provide safety insurance for their employees.

**N. Fund Use**

DEP agrees not to use proceeds from this MOU to urge any elector to vote for or against any candidate or proposition on an election ballot, nor shall such Grant Funds be used to lobby for or against any proposition or matter having the effect of law being considered by the New Jersey Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the New Jersey Legislature or any local governing authority.

DEP shall ensure that its Contractors, Subcontractors, or Subrecipients seeking reimbursement have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency,

a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. DEP's Contractors, Subcontractors, or Subrecipients shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**O. Subcontractors**

DEP may enter into contracts with third parties for the performance of any part of DEP's duties and obligations in implementing the programs described in this MOU. In no event shall the existence of such a contract operate to release or reduce the liability of DEP to DCA for any breach in the performance of DEP's or any Contractor's duties.

**P. Copyright**

No materials, including but not limited to reports, maps, documents or plans produced as a result of this MOU, in whole or in part, shall be available for copyright purposes to any other person. Any such material produced as a result of this MOU that might be subject to copyright is the property of and all rights shall belong to the Parties, unless the Parties agree otherwise in writing.

Software and other materials owned by DEP or a third party prior to the date of this MOU and not related to this MOU shall be and remain the property of DEP or third-party.

The Parties will, where either Party believes necessary, provide information to undertake their responsibilities described herein. All records, reports, documents and other material delivered or transmitted shall remain the property of the transmitting Party and shall be returned, upon request, at termination, expiration or suspension of this MOU.

**Q. Section 3 Compliance**

DEP shall, to the greatest extent feasible, comply with Section 3 of the Housing and Urban Development Act of 1968, pursuant to 12 USCS 1701u, in the procurement of developers, Contractors, and/or other third party entities for any project or objective outline in this Agreement; and ensure compliance, to the extent feasible, with the statutory and regulatory requirements of Section 3 of subrecipients and contractors; and report results as required.

**R. Drug-Free Workplace Compliance**

DEP hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended and with 2 CFR Part 182 and Part 2429. Further, DEP will endeavor to ensure that Contractors and any third parties providing Program services are in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429.



**S. Labor and Procurement Standards**

DEP shall also comply with all bond requirements and labor laws (as referenced under 24 CFR 570.603) and make efforts to procure, when possible, minority- or women-owned business enterprises in accordance with Section 8 of the Small Business Act, 15 U.S.C. § 637, as amended.

**T. Notices**

Any notice required or permitted to be given under or in connection with this MOU shall be in writing through mail, email or facsimile. All such communications shall be transmitted to the contact information set forth below, or such other address or numbers as may be hereafter designated by either Party in written notice to the other Party compliant with this Section.

**To DCA:**

Attn: Assistant Commissioner  
Department of Community Affairs  
Sandy Recovery Division  
101 South Broad Street  
P.O. Box 813  
Trenton, New Jersey 08625  
E-mail: stacy.bonnaffons@dca.nj.gov  
Phone: 609-633-3647  
Facsimile: 609-984-6696

**To DEP:**

Attn: Deputy Commissioner  
Department of Environmental Protection  
Mail Code 401-07 P.O. Box 402  
Trenton, New Jersey 08625  
E-mail: david.glass@dep.nj.gov  
Phone: 609-292-2908  
Facsimile: 609-292-7695

**U. Applicability of Provisions Included/Excluded from the MOU**

Failure to expressly reference any applicable Federal or State regulation, statute, public law, Executive Order, agency directive or OMB Circular will not exempt either Party from compliance with such applicable law or regulation, and all applicable provisions not included will be deemed as inserted herein.

Likewise, execution of this MOU will not obligate either Party to comply with any regulation, statute, public law, Executive Order, agency directive or OMB Circular, if not

otherwise applicable to the use of the CDBG-DR funds provided herein or to the particular projects performed under this MOU, even though it may be referenced in this MOU or in the Appendices.

**V. No Third Party Beneficiary**

Nothing herein is intended and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this MOU. This provision shall not limit any obligation which either Party has to HUD in connection with the use of CDBG-DR funds, including the obligations to provide access to records and cooperate with audits as provided in this MOU.

**W. Subrogation**

In the event that DEP receives funds from the CDBG-DR program and whether, before, during or after program initiation, funds from other sources are provided to DEP for Activities of the Programs under this MOU resulting in a potential duplication of benefits regarding the program funds, DEP agrees to contact DCA regarding such potential duplication. As provided in this MOU in paragraph E of Section V., DEP agrees to reimburse DCA if it later receives other disaster assistance for the same purposes as under this MOU.

**X. Conflicting Rules or Procedures**

In the occasion that two or more applicable rules, regulations, or procedures related to this Agreement are in conflict with one another, the most proscriptive rule, regulation, or procedure shall apply.

**X. TERM OF AGREEMENT; TERMINATION OR SUSPENSION OF AGREEMENT**

**A. Term of Agreement**

This MOU shall be deemed effective as the date of the last signature and shall continue until two years after final obligation of funds by HUD, or until the expenditure deadline as approved by HUD, or as extended by mutual agreement until such time as neither Party no longer is exercising any supervision or control over any of the Grant Funds, unless terminated prior to such time in accordance with the terms and conditions of this MOU.

**B. Termination/Suspension for Cause**

DCA may, upon forty-five (45) days advance written notice specifying the effective date, suspend or terminate this MOU in whole or in part if DEP materially fails to comply with any term of this MOU, which shall include, but not be limited, to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein,

or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may be applicable at any time;

2. Failure, for any reason, of DEP to fulfill in a timely and proper manner the material obligations under this MOU;
3. Submission by DEP of reports to DCA, HUD, or their auditors, that are incorrect or incomplete in any material respect;
4. Ineffective or improper use of Grant Funds as provided for under this MOU; and

Notwithstanding anything hereinabove to the contrary, DCA agrees that it shall not exercise its right to suspend or terminate this MOU until it shall have given written notice to DEP of the alleged non-compliance, and has given DEP a reasonable amount of time not to exceed thirty (30) days after DEP's receipt of such notice, to correct and/or cure, the alleged non-compliance. DEP may request additional time in writing to correct alleged non-compliance which consent DCA agrees not to unreasonably withhold. If the non-compliance cannot be corrected and/or cured, DEP shall, unless the termination or suspension notice directs otherwise, immediately discontinue all activities relating to this Agreement, except as may otherwise be legally required pursuant to a binding commitment to perform.

#### **C. Termination for Convenience**

DCA may terminate this MOU in whole or in part at any time by giving at least sixty (60) days prior written notice to DEP. Upon receipt of notice, DEP shall, unless the notice directs otherwise, immediately discontinue, or find other sources of funding for the Program Activities set forth in this MOU, except as may otherwise be legally required pursuant to a binding commitment to perform. If the non-compliance cannot be corrected and/or cured, DEP shall, unless the termination or suspension notice directs otherwise, immediately discontinue all activities relating to this Agreement, except as may otherwise be legally required pursuant to a binding commitment to perform.

DEP may terminate the Agreement in whole or in part at any time by giving at least sixty (60) days prior written notice to DCA, with such written notification setting forth the reasons for termination and the effective date.

#### **D. Termination Due to Unavailable Funding**

This MOU is contingent upon the appropriation and release of sufficient funds to DCA to fulfill the requirements of this MOU. Failure of the appropriate authorities to approve and provide an adequate budget to DCA for fulfillment of this MOU shall constitute reason for termination of the MOU by either Party. DEP shall be paid, for all authorized services properly performed prior to termination, including reimbursement to each Subrecipient for completion of a DEP-approved Project undertaken pursuant to a Grant Fund Sub-Agreement,

as well as be permitted to draw Grant Funds in an amount required to fund all essential services, performed prior to termination.

**E. Obligations Governing Use of CDBG-DR Funds Survive Termination**

Termination of this Agreement under any of the foregoing provisions shall not alter or diminish DEP's obligations governing the use of CDBG funds under applicable statutes and regulations or under this Agreement and/or shall not terminate any of DEP's obligations that survive the termination of this Agreement. Such obligations and/or duties may include but are not limited to the following: (1) the duty to maintain and provide access to records; (2) the duty to monitor and report on the use of any Grant Funds expended or awarded to DEP in compliance with all terms, conditions and regulations herein; (3) duty to enforce compliance with terms of grants or loans issued by DEP under this Agreement; and (4) duty to monitor, collect and manage Program Income, if applicable.

**F. Payment upon Termination**

Except as in the event of termination or suspension for cause, DEP shall be entitled to payment on approved invoices submitted to DCA no later than ninety (90) days from the date of termination contained within the notice, to the extent that requests represent Eligible Activities satisfactorily completed during the term of the Agreement and otherwise reimbursable under the terms of this Agreement.

**G. Return of Unused Funds**

Unless otherwise agreed upon by the Parties, upon termination of the Agreement, DEP and any subrecipients shall release the commitment of funds for any unused funds to the Grantee within 30 days and ensure that no CDBG-DR funds are allocated for projects beyond the scope of this Agreement.

**XI. ON-GOING COMMUNICATION**

DCA and DEP recognize the value of cooperation and communication among all State and external partners with regard to these Programs' deliverables and findings and for the need to adherence to HUD/NEPA reviews necessary for HUD and State/local requirements. DCA and DEP agree to confer, by mutual consent, by meeting, teleconference or written report at least once per month, if needed, to review the Program's progression, and to address issues as they may arise.

## **XII. DOCUMENTATION AND RECORD KEEPING**

### **A. Records to be Maintained**

DEP shall maintain all records required by 24 CFR 58, including all State environmental regulatory approvals required under the Program and for each Project approved under a Subrecipient Agreement and make all such records available to DCA.

### **B. Access to Records**

With respect to those records referenced in Appendix A "Statement of Assurances" and Appendix C, Records and Records Retention, DCA and DEP shall comply with the retention and access requirements set forth in 24 CFR 570.506. DCA, the State Comptroller, HUD, the Comptroller General of the United States, and any of their duly authorized representatives or agents, shall have access to any books, documents, papers and records of DCA and DEP created under this MOU for the purpose of audits, examinations, and making excerpts and transcriptions.

DEP and DCA shall provide reasonable access to records regarding the past use of CDBG funds in compliance with applicable State, Federal, and local laws and regulations regarding privacy and obligations of confidentiality.

All records, reports, documents, or other material or data, including electronic data, related to this MOU and/or obtained or prepared by DEP, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the services contracted for herein shall become the property of DCA, and shall, upon request, be returned by DEP to DCA at termination or expiration of this MOU. Personally identifiable information that may be acquired by DEP in the performance of its obligations under this MOU shall be redacted, as allowed by law, by DEP prior to furnishing said information to DCA.

DCA and DEP shall comply with all State mandated record retention policies. Those policies can be reviewed at the Records Management Services main page:

<http://www.state.nj.us/treasury/revenue/rms/recman.shtml>

State General Schedule:

<http://www.state.nj.us/treasury/revenue/rms/pdf/g100000.pdf>

Imaging Certification:

<http://www.state.nj.us/treasury/revenue/rms/imgcertification.shtml>

<http://www.state.nj.us/treasury/revenue/rms/imgcertificationprocess.shtml>

DEP shall comply with Records and Records Retention requirements (Appendix C below), and Disaster Recovery Grant Reporting System (DRGR) requirements (Appendix B below).

**C. Close-outs**

DEP's obligations under this Agreement shall not end until all close-out requirements as set forth in 24 CFR 570.509 are completed. The terms of this Agreement shall remain in effect during any period that DEP is exercising any supervision or control over CDBG-DR funds, including Program Income.

**D. Audits and Inspections**

In addition to any other audit requirements set forth in this Agreement, DEP agrees to comply with 2 CFR Part 200, Subpart F, Audit Requirements, which mandates that a single or program-specific audit be performed by an independent auditor of all Federally-funded awards administered by DEP, including the award covered by this Agreement. It is hereby agreed that the Grantee, the State Comptroller, HUD, the Office of Inspector General, HUD monitors, and auditors contracted by any of them, shall have the option to audit all records and accounts of DEP and/or its Subrecipients, Contractors and Subcontractors that relate to this Agreement at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data upon providing DEP, and/or its Contractor or Subcontractors, as appropriate, with reasonable advance notice. DEP and its Contractors and Subcontractors shall comply with all relevant provisions of State law pertaining to audit requirements, including NJ OMB Circular Letter 98-07 and New Jersey State Grant Compliance Supplement (available on the Internet at <http://www.state.nj.us/treasury/omb/grant.htm>). Any deficiencies noted in audit reports must be fully cleared within thirty (30) days after receipt by DEP, its Subrecipients, Contractors, and/or Subcontractors, as appropriate.

Failure of DEP and/or its Subrecipients, Contractors, and Subcontractors to comply with the above audit requirements will constitute a violation of this Agreement and may, at the Grantee's option, result in the withholding of future payments and/or return of Grant Funds paid under this Agreement and/or termination of this Agreement. DEP and its Contractors hereby agree to have an annual audit conducted in accordance with current State policy concerning DEP and its Contractor's audits.

Property Owner Data: DEP shall maintain property owner data demonstrating client eligibility for services provided. Such data shall include, but not be limited to client name, address, or other basis for determining eligibility, and a description of the service provided. Such information shall be made available to Grantee's monitors or their designees for review upon request.

Disclosure: DEP understands that property owner information collected under this contract is private and that the use or disclosure of such information, when not directly connected with the administration of the Grantee's or DEP's responsibilities with respect to services provided under this Agreement, is prohibited by DEP unless written consent is obtained from such person receiving service or, in the case of a minor, that of a responsible parent/guardian. Notwithstanding the foregoing, DEP shall be required to provide such access to client

information as may be required by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and as may otherwise be required by law. In the event that DEP determines it is required to provide access to client information pursuant to the foregoing, it agrees to provide notification of such disclosure to Grantee.

### **XIII. CONFLICT OF INTEREST**

Except for approved eligible administrative and personnel costs, none of DEP's designees, agents, members, officers, employees, consultants, and no other public official who exercises or who has exercised any functions or responsibilities with respect to the Program during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Program, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program or in any activity, or benefit there from, which is part of this MOU at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to DCA and DCA has approved such exception.

### **XIV. OTHER REQUIREMENTS**

DCA will provide all assistance, guidance and information required by DEP to ensure its compliance with the Act, the CDBG-DR Program, or any other applicable standards in its performance under the MOU.

DCA will maintain responsibility to meet the obligations and requirements of the CDBG-DR Program including reporting, project performance goals, plan submittal, coordination, and other procedural requirements imposed by HUD.

The Parties agree to adhere to all applicable Federal, and State program requirements, including such Federal cross-cutting requirements as may apply to the use and expenditure of CDBG-DR funds, and the CDBG authorizing legislation subject to exceptions noted in the Federal Register for the CDBG-DR allocation. Federal cross-cutting requirements are explained in the HUD publication CPD-13-05 issued July 30, 2013 and entitled "Guidance for Charging Pre-Award Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants".

All financial management and procurement performed by DEP for the Programs covered under this MOU will be in compliance with 2 CFR Part 200, Subpart D, Post Federal Award Requirements Standards for Financial and Program Management.

DEP will verify that its Contractors and/or Subcontractors are not on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension," as set

forth at 2CFR Part 2424, as CDBG funds may not be provided to excluded or disqualified persons, and will require that Subrecipients verify same of its Contractors and/or Subcontractors.

DEP will also comply with 24 CFR 570.489: Program Administrative Requirements; 24 CFR 570.490: Recordkeeping requirements, and with State inter-agency administrative requirements.

#### **XV. BINDING EFFECT**

All of the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to and binding upon their several successors and assigns, as the case may be.

**[Remainder of the page is intentionally left blank].**



## XVI. AUTHORITY

By the signatures below, the Parties execute the MOU and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization by all provisions contained herein.

The Parties have executed and delivered this MOU on the date set forth next to their respective signatures below, but the MOU is effective as of the date of the last signature.

### STATE OF NEW JERSEY, DEPARTMENT OF COMMUNITY AFFAIRS

Signature: 

Name: Charles A. Richman

Title: Acting Commissioner

Date: 5/28/15

### STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION

Signature: 

Name: Bob Martin

Title: Commissioner

Date: 5/28/2015

## **MOU APPENDICES TABLE OF CONTENTS**

**Appendix A:** Statement of Assurances

**Appendix B:** Disaster Recovery Grant Reporting System

**Appendix C:** Records and Records Retention

## **APPENDIX A**

### **STATEMENT OF ASSURANCES**

#### **ADDITIONAL FEDERALLY-FUNDED AGREEMENT PROVISIONS** **COMMUNITY DEVELOPMENT BLOCK GRANT- DISASTER RECOVERY** **FUNDED PROJECTS**

The New Jersey Department of Environmental Protection ("DEP") hereby agrees that:

1. It possesses legal authority to receive, administer, and implement the Community Development Block Grant for Disaster Recovery ("CDBG-DR") Program funding the Rebuild by Design (RBD) Program and identified RBD Projects activities necessitated by the effects of Superstorm Sandy ("Sandy") pursuant to the agreement with the New Jersey Department of Community Affairs ("DCA" or "Grantee") entitled "Memorandum of Understanding between the New Jersey Department of Community Affairs and the New Jersey Department of Environmental Protection for Implementing Rebuild By Design under the Community Development Block Grant-Disaster Recovery Program ("MOU" or "Agreement").
2. It and its agents, employees, assigns, subrecipients, contractors, subcontractors or other third parties receiving funds for CDBG-DR Programs under the Agreement shall be responsible for complying with all applicable CDBG-DR Program and CDBG regulations, guidelines and standards in a manner satisfactory to the State and the U.S. Department of Housing and Urban Development ("HUD"), including all administration and compliance requirements set forth by this Statement of Assurances.
3. It shall require that each subrecipient, contractor and subconsultant/subcontractor as a condition for receiving CDBG-DR Program funding reimbursement, comply with all statutes, regulations, and requirements specified in this and the other appendices to the Agreement, as applicable. Every CDBG-DR funded agreement entered into by DEP shall set forth these requirements.
4. It agrees to comply with all applicable Federal regulations pertaining to CDBG-DR, cross-cutting statutes and regulations, subject to waivers cited in the Federal Register / Vol. 78, No. 43 / Tuesday, March 5, 2013, Department of Housing and Urban Development, [Docket No. FR-5696-N-01] Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG - DR funds in Response to SuperStorm Sandy, and which may hereinafter be granted by HUD.
5. In the occasion that two or more applicable rules, regulations, or procedures related to, incorporated into, or otherwise referenced in the Agreement, or in this and other appendices to the Agreement, are in conflict with one another, the most proscriptive rule, regulation, or procedure shall apply.

**DEP HEREBY AGREES TO THE FOLLOWING PROVISIONS (AS APPLICABLE):**

**I. GENERAL PROVISIONS**

- A. It shall implement the CDBG-DR Program, as specified in the Agreement, using the CDBG-DR funds so as to give maximum feasible priority to activities to benefit low and moderate income households in accordance with the HUD-approved Action Plan and Action Plan Amendments.
- B. It shall adhere to Section 312 of the Stafford Act and 76 FR 71060 (published November 16, 2011), regarding duplication of benefit requirements applicable to the CDBG-DR Program. DEP shall ensure that no Program component supported by CDBG-DR funds is also receiving financial assistance from any other program or from insurance or any other source for the same purpose. DEP agrees as a condition for funding to repay the funding if it later receives other disaster assistance funding for the same purposes herein.
- C. It shall enforce safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties, in accordance with CDBG-DR regulations.
- D. It shall abide by and enforce the conflict of interest requirement set forth in 24 CFR 570.489, 24 CFR 570.611 and 2 CFR Part 200.112. Except for approved eligible administrative and personnel costs, none of DEP's designees, agents, subconsultants, members, officers, employees, subcontractors, and no other public official who exercises or who has exercised any functions or responsibilities with respect to the CDBG-DR funded Program during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Program, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program or in any Activity, or benefit therefrom, which is part of this Agreement at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the DCA for approval.
- E. It shall comply with the provisions of the Hatch Act that limit the political activity of employees and HUD regulations governing political activity at 24 CFR 570.207. CDBG-DR funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG-DR funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

- F. In addition to the lobbying restrictions set forth in the Agreement, DEP certifies that no federally appointed funds shall be used for lobbying purposes regardless of level of government, in accordance with the regulations found at 2 CFR 200.450.
- G. It shall comply with HUD rules prohibiting the use of CDBG-DR funds for inherently religious activities, as set forth in 24 CFR 570.200(j), except for circumstances specified in the Department of Housing and Urban Development Allocations, Common Application, Waivers, and Alternative Requirements for DEP Receiving CDBG-DR Funds in Response, 78 FR 14329 (March 5, 2013).
- H. DEP shall provide the State and HUD, and any of their representatives or agents, access to and the right to examine all records, books, papers, or documents related to the Grant funds.
- I. It shall comply with the provisions in 24 CFR 570.200(c) regarding special assessments to recover capital costs if imposed.
- J. It certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429. Further, it will endeavor to ensure that consultants, subconsultants, and any third parties providing CDBG-DR funded services are in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429.
- K. It shall establish procedures for responding to citizens' complaints regarding activities carried out utilizing these CDBG-DR funds. Citizens will be provided with an appropriate address, phone number, and times during which they may submit such complaints. The DEP will provide a written response to every citizen complaint within fifteen (15) working days of the complaint.

**DEP FURTHER CERTIFIES THAT IT WILL COMPLY WITH THE FOLLOWING MANDATORY CONTRACT PROVISIONS:**

**II. PERSONALLY IDENTIFIABLE INFORMATION**

DEP agrees to comply with the Privacy Act of 1974 and HUD rules and regulations related to the protection of personally identifiable information (PII). DEP shall ensure that all staff, Subrecipients, Consultants, and employees of sub-Contractors that have access to PII shall be provided with, and sign, a Non-Disclosure Agreement to protect any personally identifiable information necessary to complete its scope of work, or DEP shall verify that said persons/entities do not have access to this type of personally identifiable information where the forms are not required. DEP shall also ensure that any Subrecipient or Contractor procured for the design, development, or operation of a system of records on individuals do so in compliance with 48 CFR 24.102, et seq. The term "personally identifiable information" refers to information

which can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. See 2 CFR 200.79 and OMB M-07-16.

### **III. ENVIRONMENTAL REGULATORY COMPLIANCE**

A. DEP shall comply with the following HUD CDBG-DR environmental regulations at 24 CFR Part 58, and other Federal environmental requirements, including but not limited to:

1. Floodplain management and wetland protection:
  - a. Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted by HUD regulations at 24 CFR 55, particularly sections 2 and 5 of the order;
  - b. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order;
2. The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.), as amended, particularly sections 307(c) and (d) (16 U.S.C. §§1456(c) and(d));
3. In relation to water quality:
  - a. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution;
  - b. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) et seq. and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency ("EPA") determines may contaminate an aquifer which is the sole or principal drinking water source for an area (40 CFR 149); and
  - c. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.
4. Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.), as amended, particularly section 7 (16 U.S.C. §1536);
5. The Fish and Wildlife Coordination Act of 1958, as amended;
6. Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.), particularly sections 7(b) and (c) (16 U.S.C. §1278(b) and (c));

7. Executive Order 11738, providing for administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, and EPA regulations (40 CFR 15);
8. The Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)), and 40 CFR 6, 51, 93, which prohibits engaging in, supporting in any way, providing financial assistance for, licensing or permitting, or approving any activity which does not conform to State or Federal implementation plans for national primary and secondary ambient air quality standards.
9. The Farmland Protection Policy Act of 1981, 7 U.S.C.A. §4201 et seq., particularly sections 1540(b) and 1541 (7 U.S.C. §4201(b) and §4202), and Farmland Protection Policy, 7 CFR 658, which require recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses;
10. Noise abatement and control requirements at 24 CFR 51B;
11. Explosive and flammable operations requirements at 24 CFR 51C;
12. Requirements at 24 CFR 58.5(i) relating to toxic chemicals and radioactive materials;
13. Environmental Justice, Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

#### **IV. FINANCIAL AND PROGRAM MANAGEMENT AND PROCUREMENT**

To the extent applicable, DEP shall comply with financial and program management and procurement standards, including:

- A. It shall adhere to the principles and standards governing federal grant distribution set forth in the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200).
- B. It shall comply with the uniform administrative requirements set forth at 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards). Where the New Jersey Local Public Contracts Law is more stringent and applicable, it shall comply with N.J.S.A. 40A:11-1 et seq.
- C. It shall comply with the requirements set forth at 2 CFR Part 200, Appendix II, para (I), by ensuring that any contract made utilizing CDBG funds contains provisions which prohibit the making of any contract award to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR Part 2424. Additional policies concerning debarment and suspension are contained at 2 CFR Part 180 and 2 CFR Part 2424. It shall certify that it and all subconsultants and subcontractors are not listed on the government-wide Excluded Parties List System in the

System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR 2424 (CDBG-DR funds may not be provided to excluded or disqualified persons), <https://www.sam.gov/portal/public/SAM/>.

- D. It shall comply with all requirements imposed by the State concerning special requirements of law, program requirements, and other administrative requirements.
- E. It shall comply with 24 CFR Part 570 and 2 CFR Part 200 regarding the management and disposition of cash, real and personal property acquired with CDBG-DR funds.
- F. It shall comply with 24 CFR 570.489(j) regarding change of use of real property. These standards apply to real property within its control (including activities undertaken by consultants, subcontractors and third parties). These standards apply from the date CDBG-DR funds are first spent until five years after the closeout of the Program.
  - 1. It cannot change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, without first providing citizen review and comment and either:
    - i. The new use meets one of the national objectives (see 24 CFR 570.482) and is not a building for the general conduct of government;
    - ii. The requirements of 24 CFR 570.489(j) are met.
  - 2. If the change of use does not qualify, DEP may retain or dispose of the property if the CDBG-DR Program is reimbursed for the fair market value of the property, less any portion of the value that is attributable to non-CDBG-DR funds.
  - 3. Following the reimbursement the property shall no longer be subject to any CDBG-DR requirements.

#### **V. RECORDS AND RECORDS RETENTION**

- A. DEP shall maintain all Program records required by 24 CFR 570.506 for three (3) years, pursuant to 2 CFR Part 200.333, following the date of submission of the final expenditure report. These records shall include the following as applicable:
  - 1. The executed Agreement;
  - 2. Description, geographic location and budget of each funded Activity;
  - 3. Eligibility and national objective determinations for each Activity;
  - 4. Personnel files;
  - 5. Property management files;
  - 6. HUD monitoring correspondence;



7. Citizen participation compliance documentation;
8. Fair Housing and Equal Opportunity records;
9. Environmental review and regulatory compliance documents;
10. Documentation of compliance with other federal requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint); and
11. Documentation with other State requirements (e.g. the provisions at N.J.S.A. 52:14-34.4 et seq., notice of availability of grant funds).

**B. FINANCIAL RECORDS to be maintained include:**

1. Chart of accounts;
2. Manual on accounting procedures;
3. Accounting journals and ledgers;
4. Source documentation (such as purchase orders, invoices, canceled checks);
5. Procurement files (such as bids, contracts);
6. Status of DEP reimbursements;
7. Real property inventory, if applicable;
8. Bank account records (including revolving loan fund records, if applicable);
9. Draw down requests;
10. Payroll records and reports including timesheets or timecards as applicable;
11. Financial reports;
12. Audit files; and
13. Relevant financial correspondence.

**C. ACTIVITY records should include the following documentation:**

1. Eligibility of the Activity for Grant Funding;
2. Evidence of having met a national objective (See 24 CFR 570.482);
3. Any bids or contracts;
4. Characteristics and locations of the Programs and each Program Activity;
5. Compliance with special program requirements, such as coordination and cooperation with the N.J. Department of Health;
6. Budget and expenditure information (including draw requests); and
- The status of the Program and each Activity thereunder.

D. LITIGATION/CLAIMS: If any litigation, claim, or audit pertaining to any Program activity is started before the expiration of the three (3) record retention period, which starts from the date of project closeout (submission of final expenditure report), the records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

**VI. FEDERAL LABOR STANDARDS:** To the extent applicable, DEP shall comply with Federal Labor Standards, including:

1. The labor standards requirement set forth in 24 CFR 570.603 and any other regulations issued to implement such requirements. This includes payment of prevailing wages to laborers and mechanics employed in the performance of construction work, except that these requirements do not apply to the rehabilitation of residential property containing less than 8 units;
2. Section 110 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5310, and as set forth in 24 CFR 570.603 to ensure that all laborers and mechanics employed by contractors and subcontractors for CDBG-DR related services are paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Davis-Bacon Act, as amended, except that these requirements do not apply to the rehabilitation of residential property containing less than 8 units;
3. The Davis-Bacon Act, as amended (40 U.S.C. § 3141 et seq.). The Davis-Bacon Act does not apply to construction contracts at or below \$2,000 (arbitrarily separating a project into contracts below \$2,000 is not permitted), and the prevailing wage rate provisions of the Act do not apply to rehabilitation or construction of residential property containing less than eight units;
4. The Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701 et seq.), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts of \$100,000 or greater be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work-week;
5. The Federal Fair Labor Standards Act (29 U.S.C. 201 et seq.), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;
6. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in Department of Labor regulations (29 CFR 3), which requires payment of wages once a week and allows only permissible payroll deductions;
7. The following HUD regulations and/or guidance:
  - a. 24 CFR 570.489(I): Debarment and suspension
  - b. 24 CFR 570.603: Labor standards
  - c. 24 CFR 570.609: Use of debarred, suspended, or ineligible contractors or subrecipients
  - d. HUD Handbook 1344.1, as revised, Federal Labor Standards Requirements in Housing and Urban Development Programs;
8. The following Department of Labor regulations in parallel with HUD requirements above:

- a. 29 CFR 1: Procedures for Predetermination of Wage Rates
- b. 29 CFR 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)
- c. 29 CFR 6: Rules of Practice for Administrative Proceedings Enforcing Labor Standards In Federal and Federally Assisted Construction Contracts and Federal Service Contracts
- d. 29 CFR 7: Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts.

## **VII. FAIR HOUSING AND NON-DISCRIMINATION**

To the extent applicable, DEP shall comply with the following fair housing and non-discrimination standards, including:

- 1. Any act of unlawful discrimination committed by DEP or failure to comply with the following obligations when applicable shall be grounds for termination of this Agreement or other enforcement action.
- 2. DEP shall comply with:
- 3. Title VI of the Civil Rights Act of 1964 and as amended in 1988, 42 U.S.C. §200d et seq., as amended, and the regulations issued pursuant thereto (24 CFR 1), which provide that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which it receives federal financial assistance and shall immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to it this assurance shall obligate it, or in the case of any transfer of such property, and transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.
- 4. Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619), which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.
- 5. Title II of the Civil Rights Act of 1968, which prohibits discrimination because of race, color, religion, or natural origin in certain places of public accommodation, such as hotels, restaurants, and places of entertainment.
- 6. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 et seq. The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term

"building" does not include privately owned residential structures not leased by the government for subsidized housing programs.

7. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in any federally funded education program or activity.
8. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which provides that no otherwise qualified individual shall, solely by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination under any program or activity receiving federal funding assistance.
9. Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794d, which requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities, and applies to all federal agencies when they develop, procure, maintain or use electronic and information technology.
10. Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR 6.
11. Section 104(b)(2) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(b), which requires communities receiving community development block grants to certify that the grantee is in compliance with various specified requirements.
12. Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.
13. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies or other instrumentalities.
14. Housing for Older Persons Act of 1995 ("HOPA") (see 42 U.S.C. 3607), which governs housing developments that qualify as housing for persons age 55 or older
15. It shall require that every newly constructed or altered building or facility (other than a privately owned residential structure, and certain other limited exceptions) complies with any accessibility requirements required by Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12181 et seq.), and shall be responsible for conducting inspections to ensure compliance with these specifications by any contractor or subcontractor.

## **VIII. SECTION 3 REQUIREMENTS**

Section 3 of the Housing and Urban Development Act of 1968, as amended, is to ensure that employment and other economic opportunities generated by certain HUD funds, including CDBG funds, shall to the greatest extent feasible be directed to low- and very low-income persons, and to business concerns that provide economic opportunities to low and very low income persons. Each Grantee/Contractor receiving CDBG-DR funding shall ensure that any new employment, training, and contracting opportunities to the greatest extent feasible be made known and available to low- and very low-income persons, and to businesses that employ these persons, within their community. Section 3 applies to grantees and subrecipients that receive assistance exceeding \$200,000 in CDBG-DR funding, and to consultants, contractors and subcontractors that enter into contracts for Section 3 covered projects in excess of \$100,000. Section 3 covered projects include any activity that involves housing construction, rehabilitation, and demolition, or other public construction, and includes professional service contracts arising in connection with such projects.

- A. DEP shall ensure that requirements under Section 3 of the Housing and Urban Development Act of 1968 (HUD Act of 1968) shall apply to all individual properties assisted with these funds, regardless of the actual amount spent on each individual unit/property. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued prior to the execution of this contract, shall be a condition of the CDBG-DR assistance provided under this Agreement and binding upon the DEP and third-party entities.
- B. If DEP has the need to hire new persons to complete the Section 3 covered contract, or needs to subcontract portions of the work to another business, DEP must direct its newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. The same numerical goals (see below) apply to contractors and subcontractors.
- C. DEP shall ensure compliance with the statutory and regulatory requirements of Section 3 in its own operations, and those of covered subconsultants, subcontractors or third parties. These responsibilities include:
  - a. Making efforts to meet the minimum numerical goals found at 24 CFR 135.30;
  - b. Complying with the specific responsibilities at 24 CFR 135.32; and

- c. Submitting quarterly reports on Section 3 projects using HUD Form 60002. Reports will be due within one week of the end of each calendar quarters. Reports shall be submitted to:

Department of Community Affairs  
Sandy Recovery Division  
Monitoring and Compliance Office—6<sup>th</sup> Floor  
101 S. Broad Street  
Trenton, New Jersey 08625-0800

- D. For purposes of CDBG-DR funds received in response to Superstorm Sandy, an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction. See 78 FR 14329, 14346 (March 5, 2013).

**E. The following language shall be included in all contracts and subcontracts:**

1. *The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
2. *The parties to this contract agree to comply with HUD's regulations in 24 CFR 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with 24 CFR 135.*
3. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and shall post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*
4. *The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR 135. The contractor shall not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 135.*
5. *The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2)*

*with persons other than those to whom the regulations of 24 CFR 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 135.*

6. *Noncompliance with HUD's regulations in 24 CFR 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
7. *With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*

#### **IX. NONDISCRIMINATION AND FAIR HOUSING**

In delivering programmatic activity supported by CDBG-DR funds, or in contracting with third parties for services supported by CDBG-DR funds, DEP shall comply with the following:

1. Executive Order 11063: Equal Opportunity in Housing, November 20, 1962, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertains to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
2. Executive Order 11246: EEO and Affirmative Action Guidelines for Federal Contractors Regarding Race, Color, Gender, Religion, and National Origin, September 25, 1965 and Executive Order 11375: Amending Executive Order No. 11246, October 13, 1967, which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. Further contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training and apprenticeship.
3. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978.
4. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994.
5. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
6. Executive Order 13166: Improving Access To Services For Persons With Limited English Proficiency, August 11, 2000.

7. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001.
8. Executive Order 13330: Human Service Transportation Coordination, February 24, 2004.

DEP affirms it shall comply with implementing regulations for the above:

- a. 24 CFR 1: Nondiscrimination in Federally Assisted Programs of HUD.
- b. 24 CFR 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance.
- c. 24 CFR 5.105: Other Federal Requirements.
- d. 24 CFR 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974.
- e. 24 CFR 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
- f. 24 CFR 50.4(f) and 58.5 (j): Environmental Justice.
- g. 24 CFR 91.225(a)(1): Affirmatively Furthering Fair Housing.
- h. 24 CFR 91.325(a)(1): Affirmatively Furthering Fair Housing.
- i. 24 CFR 91.325(b)(5): Compliance with Anti-discrimination laws.
- j. 24 CFR 91.520: Performance Reports.
- k. 24 CFR 100-125: Fair Housing.
- l. 24 CFR 107: Non-discrimination and Equal Opportunity in Housing under Executive Order 11063 (State Community Development Block Grant Grantees).
- m. 24 CFR 121: Collection of Data.
- n. 24 CFR 135: Economic Opportunities for Low- and Very Low-Income Persons.
- o. 24 CFR 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.
- p. 24 CFR 570.206(c): Fair Housing Activities.
- q. 24 CFR 570.487(b): Affirmatively Furthering Fair Housing.
- r. 24 CFR 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant Grantees).
- s. 24 CFR 570.490(a)-(b): Recordkeeping requirements.
- t. 24 CFR 570.491: Performance Reviews and Audits.



- u. 24 CFR 570.495(b): HCDA Section 109 nondiscrimination.
- v. 24 CFR 570.506(g): Fair Housing and equal opportunity records.
- w. 24 CFR 570.601: Affirmatively Further Fair Housing.
- x. 24 CFR 570.608 and Part 35: Lead-Based Paint.
- y. 24 CFR 570.614: Architectural Barriers Act and Americans with Disabilities Act.
- z. 24 CFR 570.904: Equal Opportunity and Fair Housing Review
- aa. 24 CFR 570.912: Nondiscrimination compliance

#### **X. CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES**

- A. Pursuant to State procurement processes, which have been deemed equivalent to Federal procurement standards set forth in Federal regulations and which are a condition for receiving CDBG-DR funds, DEP must take all necessary affirmative steps and use its best efforts to afford small and disadvantaged businesses, minority business enterprises, and veteran and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract.
- B. 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 that is at least fifty-one percent (51%) owned and controlled by minority group members or women. For purposes of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. DEP may rely on written representations by businesses regarding their status as minority and women business enterprises in lieu of an independent investigation.
- C. DEP shall ensure compliance with the statutory and regulatory requirements of this provision in its own operations, and those of covered subconsultants, subcontractors or third parties. Affirmative steps shall include:
  - i. Placing qualified small and disadvantaged businesses, minority firms, veteran- and women-owned businesses on solicitation lists;
  - ii. Ensuring that small and disadvantaged businesses, minority firms, veteran- and women-owned businesses are solicited whenever they are potential sources, for goods and/or services required in furtherance of Sandy recovery programs;
  - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and disadvantaged businesses, minority firms, veteran- and women-owned businesses;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and disadvantaged businesses, minority firms, veteran- and women-owned businesses;
  - v. Using the service and assistance of the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce; and

- vi. Requiring the prime contractor, if sub-contracts are to be let, to take the affirmative steps listed above.

#### **XI. COMPLIANCE WITH LEAD-BASED PAINT REQUIREMENTS**

In delivering programmatic activity pertaining to housing units built before 1978 supported by CDBG-DR funds, or in contracting with third parties for such services supported by CDBG-DR funds, DEP shall comply with the lead-based paint requirements set forth at 24 CFR Part 35, subparts A, B, J, K and R. The regulation implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992.

**APPENDIX B**  
**DISASTER RECOVERY GRANT REPORTING SYSTEM**  
*(Minimum data requirements)*

DEP agrees to provide the following information as requested but not less than quarterly to DCA for the HUD's Disaster Recovery Grant Reporting System, and require any Subrecipient, as a condition for reimbursement, to provide such information to DEP:

**Prior to initiation of Activity:**

1. **Activity Type**
  - a. Rebuild by Design (Defined by HUD for RBD)
2. **National Objective**
  - a. Low and moderate income area
  - b. Alleviate slums and blight
  - c. Urgent need
3. **Grantee Activity Number** – Assigned by DCA
4. **Activity Title** – Assigned by DCA
5. **Activity Status**
  - a. Cancelled
  - b. Completed
  - c. Planned
  - d. Underway
6. **Total Budget**
7. **Total Budget, Disaster Recovery Grant** (Includes all CDBG-DR and other funds)
8. **Projected Start Date**
9. **Projected End Date**
10. **Project** – Project under which Activity shall be created.
11. **Environmental Assessment**
  - a. Exempt (See DEP Determination of Level of [NEPA] Review, dated 9/20/13)
12. **Name and type of all funding sources for an Activity**
  - a. Organization name
  - b. Organization type (for-profit, local government, nonprofit, state, state agency, TA provider, or unknown)
  - c. DUNS number (Dun & Bradstreet provides a DUNS Number, a nine digit identification number, for each physical location of a business)
  - d. Tax or employer identification number
  - e. Address/City/State/ZIP
  - f. Organization contact person and title
  - g. Organization contact person email, address, telephone and fax numbers
13. **Method by which benefit is reported** (area or direct)
  - a. If area, indicate: Census or survey
14. **Proposed accomplishments** (total numeric for activity)
15. **Location in which activity is undertaken** (county/municipality/area name/city/neighborhood)

**Quarterly and Monthly Reporting (Upon obligation of funds):**

**For the Quarterly Performance Report (QPR) due to HUD thirty days after the last day of each Quarter, data must be submitted to DCA by DEP within approximately 10 calendar days after the end of each calendar quarter. DCA will send out the calendar specifying the calendar deadline for each QPR. DEP will submit the reports electronically in SIROMS for DCA approval. *Information reported each quarter is ONLY for accomplishments during ("QPR") reporting period and IS NOT cumulative.***

**HUD also requires a Monthly Performance Report. Data, as defined by DCA must be submitted at the end of each month. This data is cumulative.**

Data to report includes:

- For each activity, actual accomplishments for all performance measure criteria proposed (numeric; only those achieved within QPR reporting period).
- For each activity, brief narrative of each activity status / progress in prior quarter / anticipated progress in next quarter (identifies challenges, if any, and proposed resolution).
- For each activity, total Disaster Recovery funds expended within the QPR reporting period.
- For each activity, total matching funds expended within QPR reporting period.
- For each activity, total leveraging funds expended within QPR reporting period.
- For each activity, total program income, if applicable.

## **APPENDIX C**

### **RECORDS AND RECORDS RETENTION**

A. DEP shall maintain, and require all sub-recipients, grantees, borrowers, contractors and all tiers of subcontractors to maintain, all Program records required by 24 CFR 570.506 for three years following close-out of the MOU or the Grant Fund Sub-Recipient Agreement, as applicable. These records shall include the following as applicable:

12. The executed Agreement;
13. Description, geographic location and budget of each funded Activity;
14. Eligibility and national objective determinations for each Activity;
15. Personnel files;
16. Property management files;
17. HUD monitoring correspondence;
18. Citizen participation compliance documentation;
19. Fair Housing and Equal Opportunity records;
20. Environmental review and regulatory compliance documents;
21. Documentation of compliance with other federal requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint); and
22. Documentation with other State requirements (e.g. the provisions at N.J.S.A. 52:14-34.4 et seq., notice of availability of grant funds).

B. FINANCIAL RECORDS to be maintained include:

14. Chart of accounts;
15. Manual on accounting procedures;
16. Accounting journals and ledgers;
17. Source documentation (such as purchase orders, invoices, canceled checks);
18. Procurement files (such as bids, contracts);
19. Status of DEP reimbursements;
20. Real property inventory, if applicable;
21. Bank account records (including revolving loan fund records, if applicable);
22. Draw down requests;
23. Payroll records and reports including timesheets or timecards as applicable;
24. Financial reports;

- 25. Audit files; and
- 26. Relevant financial correspondence.

**C. PROJECT/ACTIVITY records should include the following documentation:**

- 7. Eligibility of the Activity for Grant Funding;
- 8. Evidence of having met a national objective (See 24 CFR 570.482);
- 9. Grant Funding Sub-Recipient Agreement entered into between DEP and any Subrecipient;
- 10. Any bids or contracts;
- 11. Characteristics and locations of the Programs and each Program Activity;
- 12. Compliance with special program requirements, such as coordination and cooperation with the N.J. Department of Health;
- 13. Budget and expenditure information (including draw requests); and
- 14. The status of the Program and each Activity thereunder.

**D. LITIGATION/CLAIMS:** If any litigation, claim, or audit is started before the expiration of the three year period which starts from the date of submission of the final expenditure report, as reported to the Federal awarding agency or the pass-through entity in the case of a subrecipient, the records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.