

**NEW YORK STATE
COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES)**

Project No. 8CVHR33-21

AGREEMENT, made effective as of the 10th day of November 2021, between the Housing Trust Fund Corporation (HTFC), represented by the Office of Community Renewal (collectively the "Corporation"), with offices at 38-40 State Street, Hampton Plaza, 4th Floor, Albany, New York, 12207, and Albany County ("Recipient"), a unit of general local government with offices at 112 State Street, Room 900 , Albany, New York 12207

WHEREAS, pursuant to Title I of the Housing and Community Development Act of 1974, as amended ("Act"), the Corporation is authorized to administer and distribute Community Development Block Grant ("CDBG") funds to units of general local government located in the State of New York ("State"); and

WHEREAS, The Coronavirus Aid, Relief and Economic Security Act (CARES Act) (Public Law 116-136), signed into law on March 27, 2020, made available supplemental Community Development Block Grant (CDBG-CV) funding to prevent, prepare for and respond to the effects of the coronavirus pandemic; and

WHEREAS, The Corporation has made CDBG-CV funding available to help communities throughout the State to safely reopen and restart their local economies in the wake of the coronavirus pandemic; and

WHEREAS, the Recipient has applied to the Corporation for CDBG funds to finance the community development activities ("Project"), as described in the Recipient's CDBG-CV Grant application ("Application"); and

WHEREAS, the Corporation has selected the Recipient to receive an award in an amount not to exceed \$1,389,890 ("Grant Funds").

NOW, THEREFORE, the parties agree that the Grant Funds will be administered in accordance with the following terms and conditions:

1. Contents of Agreement. The following documents are incorporated by reference into this Agreement as if fully set out herein: **a)** the Recipient's approved Application and accompanying submissions, as modified by the terms of this Agreement or any subsequent amendment approved by the Corporation; **b)** the Corporation's CDBG Grant Administration Manual and its Program Guidelines (as now in effect and as may be revised from time to time); **c)** applicable Federal and State law and regulations, as may be amended, including, but not limited to, Department of Housing and Urban Development ("HUD") regulations found at 24 CFR Part 570; **d) Schedule A**, "Special Conditions", and **Schedule B**, "Awarded Budget and Projected Accomplishments", attached hereto.

2. Recipient Performance. **a)** The Recipient agrees to utilize Grant Funds only to implement the activities described in, and in accordance with the terms of: **(i)** the Recipient's application, as amended by the Special Conditions attached as Schedule A; **(ii)** this Agreement; and **(iii)** all applicable State and Federal laws and regulations. This provision shall survive the termination or expiration of this Agreement. **b)** The period of performance for all activities (with the exception of

those activities required for the close out and final audit) assisted pursuant to this Agreement shall commence on the effective date of this Agreement and shall end **November 9, 2022**.

3. Grant Funds. **a)** The amount of Grant Funds that the Corporation has agreed to provide the Recipient under this Agreement is expressly conditioned upon the Corporation's receipt of CDBG funds from HUD pursuant to the Act and the CARES Act. **b)** The Grant Funds to be disbursed hereunder shall not exceed the amount first set forth in this Agreement, and any additional funds required to complete the Project will be the sole responsibility of the Recipient. **c)** The Grant Funds are based upon the cost estimates provided by the Recipient in its Application. The Corporation reserves the right to reduce the Grant Funds: **(i)** to conform to any revision to which the parties may agree with respect to the Recipient's Application; or **(ii)** if the actual costs for the approved activities are less than those budgeted for in the Recipient's Application.

4. Disbursement of Grant Funds. **a)** The Recipient is authorized to request Grant Funds only in accordance with the provisions of this Agreement and the procedures established by the Corporation. No payment by the Corporation of an improper or unauthorized request shall constitute a waiver of the Corporation's right to: **(i)** challenge the validity of such payment; **(ii)** enforce all rights and remedies set forth in this Agreement; or **(iii)** take corrective or remedial administrative action including, without limitation, suspension or termination of the Recipient's funding under this Agreement. **b)** The Recipient shall certify with each request for Grant Funds that: **(i)** all statements and representations previously made regarding this Agreement are correct and complete and **(ii)** the funds do not duplicate reimbursement of costs and services from any other source. **c)** The use of Grant Funds is conditioned upon the Recipient incurring costs permitted under the terms of this Agreement or as otherwise approved by the Corporation in writing. The Recipient shall not incur costs to be charged against Grant Funds until all Environmental Conditions of 24 CFR Part 58 have been fully satisfied and the Corporation has issued the environmental clearance required thereunder, unless the activity is exempt under section 58.34 or falls under a categorical exclusion listed in section 58.35(b).

5. Use of Grant Funds to Make Loans. If the Recipient utilizes Grant Funds to make loans and this Agreement are terminated, or if there is a finding by the Corporation of deficient performance or inadequate management capacity by the Recipient, the Corporation shall have the right to require that all payments due under the loan be paid directly to the Corporation, and the Corporation shall be entitled to all rights and remedies under any loan documents between the Recipient and the borrower. The following language must be inserted into every Promissory Note that evidences a loan of Grant Funds by the Recipient:

"The Lender, in consideration of the Community Development Block Grant ("CDBG") awarded to it by the Housing Trust Fund Corporation ("HTFC"), assigns all of its rights and remedies under this Promissory Note to HTFC. In the event (i) the CDBG Agreement entered into between the Lender and HTFC is terminated for any reason, or (ii) HTFC, in its sole and absolute discretion, finds deficient performance, any wrongdoing on the part of Recipient, sub-recipient or "borrower, or inadequate management capacity on the part of the Lender, HTFC shall have the right to notify the Debtor under this Promissory Note to make payment directly to HTFC, and to enforce any and all obligations of the Debtor under this Promissory Note or any other loan instrument executed in connection herewith. Until such time as HTFC elects to exercise such rights by mailing to Lender and Debtor written notice thereof, Lender is authorized to collect payments and enforce all rights under this Promissory Note."

6. Award Increases and Extensions. The Corporation may, at its sole discretion, provide need-based awards to commit additional CDBG funds specifically for the continuance of the CDBG

eligible activities. The Corporation may, at its sole discretion, also provide multi-year grant agreements based on the Corporation's available CDBG funds. Additional funds and amendments are subject to board approval.

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

8. Program Income. Program Income is defined as the gross income, which includes principal and interest, of the Recipient or its Subrecipients that was generated from the use of CDBG funds when such total exceeds \$35,000 as provided in 24 CFR 570.489(e). When the income is generated by an activity that is only partially funded with CDBG funds, the income must be prorated to reflect the percentage of CDBG used.

The gross income from the CDBG funds must be accumulated in a separate local account. If during the State's fiscal year (April 1 - March 31), the gross income does not exceed \$35,000, the funds are considered miscellaneous revenue and may be retained by the Recipient and moved to its general account at the end of the State's fiscal year. However, prior to moving the funds to the general account, the Recipient must submit the account bank settlements to OCR, for the State's fiscal year, to demonstrate that the gross income did not exceed \$35,000. The OCR will provide written approval to transfer. However, if during the State's fiscal year, the gross income exceeds \$35,000, then all funds received, including the initial \$35,000, are considered Program Income and must be returned to HTFC at the end of the State's fiscal year with a Program Income Report. Nevertheless, no Program Income may be directly disbursed to activities by the Recipient or Subrecipients without HTFC written consent.

Gross income accrued after the grant has been closed out by the HTFC may still be Program Income if it exceeds \$35,000 during the State's fiscal year, in which case it must be returned to the HTFC.

Real property sold within five (5) years from the date of closeout by the HTFC, must be included in gross income for the purposes of determining Program Income. However, after five (5) years from the date of closeout by the HTFC, any proceeds from the sale of real property purchased or improved with CDBG funds are not considered Program Income and may be retained by the Recipient.

Notwithstanding any other provisions of this clause, all revolving loan fund income, both of principal and interest, is Program Income. Revolving loan fund income must be returned monthly upon receipt to the HTFC. Revolving loan fund income is not included in the total gross income calculation when determining program income.

9. Environmental Compliance. This project is subject to environmental review under the National Environmental Policy Act (NEPA) and State Environmental Quality Review Act (SEQRA). An Environmental Review Record (ERR) and a Request for Release of Funds (RROF) or concurrence must be approved by the Corporation prior to incurring any project costs. Exempt costs that are directly associated with the completion of the ERR and obtaining approval for release of funds or concurrence and incurred prior to the release of funds will be eligible for reimbursement from Grant Funds. However, Recipients incurs such costs for exempt activities at their own risk. Any non-exempt

activities will not be eligible for reimbursement from Grant Funds and incur such at their own risk and expense. All Environmental Review requirements, can be found in Chapter 2 of the Corporation's CDBG Grant Administration Manual.

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

11. Records. The Recipient shall keep and maintain complete and accurate books, records and other documents as shall be required under applicable Federal and State rules and regulations, including, but not limited to, the Corporation's Grant Administration Manual, and as may be requested by the Corporation to reflect and fully disclose all transactions relating to the receipt and expenditure of Grant Funds and administration of the Project. All such books, records and other documents shall be available for inspection, copying and audit at all reasonable times by any duly authorized representative of the State or Federal government. All such records shall be maintained and available for inspection, copying and audit during the term and for seven years following the final disbursement of the Grant Funds.

12. Reports. The Recipient, at such times and in such form as the Corporation may require, shall furnish the Corporation with such periodic reports as it may request pertaining to the Project, the costs and obligations incurred in connection therewith, and any other matters covered by this Agreement. Such reporting requirements can be found in Corporation's CDBG Grant Administration Manual and correspondence laws, regulations, and statutes.

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

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

15. Default. **a)** If an Event of Default as defined below shall occur, all obligations on the part of the

Corporation to make any further payment of Grant Funds shall, if the Corporation so elects, terminate and the Corporation may, in its discretion, exercise any of the remedies set forth herein; provided, however, that the Corporation may make any payments after the happening of an Event of Default without thereby waiving the right to exercise such remedies, and without becoming liable to make any further payment(s). **b)** The following shall constitute an Event of Default hereunder: **(i)** if the Recipient fails, in the opinion of the Corporation, to comply with or perform any provision, condition or covenant contained in this Agreement, any applicable State or Federal law or regulation, or the program policies and procedures established by the Corporation; **(ii)** if at any time any presentation or warranty made by the Recipient shall be incorrect or materially misleading; **(iii)** if a lien for the performance of work or the furnishing of labor or materials is filed against the Program or any improvement financed thereunder and remains unsatisfied, undischarged or unbonded at the time of any request for disbursement or for a period of twenty (20) days after the date of filing of such lien; **(iv)** if the Recipient shall fail to comply with any of the terms of any mortgage, deed of trust, security agreement, loan agreement, credit agreement or other instrument executed in favor of any other party; **(v)** if the Recipient has failed to commence the Project in a timely fashion or has failed to complete the Project on or before the Completion Date, or any wrongdoing on the part of Recipient, sub-recipient or "borrower. **c)** Upon the happening of an Event of Default, the Corporation may, in its discretion, exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of such remedies shall not preclude the Corporation from pursuing any other remedies contained herein or otherwise provided at law or in equity: **(i)** terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice; **(ii)** commence a legal or equitable action to enforce performance of this Agreement; **(iii)** withhold or suspend payment of Grant Funds; **(iv)** exercise any corrective or remedial action, to include, but not be limited to, advising the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or requiring the Recipient to reimburse the Corporation for the amount of Grant Funds expended or used in an unauthorized manner or for an unauthorized purpose. **d)** In the event this Agreement is terminated by the Corporation for any reason, or upon the closeout of the Project, unless the Recipient obtains the prior written consent of the Corporation to the contrary, all unspent Grant Funds held by the Recipient shall immediately be turned over to the Corporation, and the Corporation shall have no further liability or obligation under this Agreement; provided, however, that nothing herein is intended to relieve the Corporation of its obligation to pay for services properly performed by the Recipient prior to such termination. Notwithstanding any such termination or closeout, the Recipient shall remain liable to the Corporation for any unspent Grant Funds, the expenditure or use of the Grant Funds in a manner or for a purpose not authorized by this Agreement, or damages as a result of any breach of this Agreement by the Recipient. The Corporation shall have the right, at any time prior or subsequent to any such termination or closeout, to pursue any and all available remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this Agreement and to recover Grant Funds which are unspent, expended or used in an unauthorized manner or for an unauthorized purpose.

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

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

18. Non-Liability. Nothing contained in this Agreement or elsewhere shall impose any liability or duty whatsoever on the State, the Corporation, or any agency or subdivision of the foregoing except as otherwise expressly stated in this Agreement.

19. Statute of Limitations. No action shall lie or be maintained against the State or the Corporation upon any claim based upon or arising out of this Agreement or the work performed hereunder or anything done in connection therewith, unless such action shall be commenced within one (1) year from the termination or expiration of this Agreement or six (6) months from the accrual of the cause of action, whichever is earlier.

20. Service of Process. In addition to the methods of service allowed by the State's Civil Practice Law & Rules, the Recipient hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Recipient's actual receipt of process or upon the Corporation's receipt of its return by the United States Postal Service marked "refused" or "undeliverable". The Recipient must promptly notify the Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Corporation to the last known address shall be deemed sufficient. The Recipient shall have thirty (30) calendar days after service is complete in which to respond.

21. Notices. All notices, requests, approvals and consents of any kind made pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date it is sent by certified mail, return receipt requested. Such written communications shall be mailed to the respective party's address first set out herein or at such other address as may be provided in writing, except that notice of such change of address shall be deemed to have been given the date it is received.

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

23. Nonwaiver. The Corporation's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, will not constitute a waiver of any of its rights under this Agreement.

24. Assignment. No right, benefit or advantage inuring to the Recipient, and no obligation imposed on the Recipient, under this Agreement may be assigned without the prior written approval of the Corporation.

25. Successors. This Agreement shall be binding upon the successors in office of the respective parties.

26. Assurance of Authority. The Recipient hereby assures and certifies that: **a)** The Recipient is duly organized and validly existing under the laws of the State, and has all the requisite power and

authority to enter into this Agreement and to assume the responsibilities for compliance with all Federal and State laws and regulations. **b)** A resolution, motion, order or ordinance has been duly adopted, passed or enacted as an official act of the Recipient's governing body, authorizing the execution and delivery of this Agreement by the Recipient and authorizing and directing the person executing this Agreement to do so for and on behalf of the Recipient, said acts being done in such manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of the Recipient. **c)** There is no action, proceeding, or investigation now pending, nor any basis therefore, known or believed by the Recipient to exist, which **(i)** questions the validity of this Agreement, or any action taken or to be taken under it, or **(ii)** is likely to result in any material adverse changes in the authorities, properties, assets, liabilities, or conditions (financial or otherwise) of the Recipient which would materially and substantially impair the Recipient's ability to perform any of the obligations imposed upon the Recipient by this Agreement. **d)** The representations, statements, and other matters contained in the Recipient's Application were true and complete in all material respects as of the date of filing. The Recipient is aware of no event that would require any amendment to the Application that would make such representations, statements, and other matters true and complete in all material respects and not misleading in any material respect. The Recipient is aware of no event or other fact that should have been, and has not been, reported in the Application. **e)** Insofar as the capacity of the Recipient to carry out any obligation under this Agreement is concerned, **(i)** the Recipient is not in material violation of its Charter, or any mortgage, indenture, agreement, instrument, judgment, decree, order, statute, rule or regulation and **(ii)** the execution and performance of this Agreement will not result in any such violation.

27. Photography Release. Recipient shall require any Third Party to execute a photography release, an example of which is available in the OCR website at <https://hcr.ny.gov/community-development-block-grant> or a release in substantially similar form thereof.

28. Expenditure of Funds. Recipient shall complete the Environmental Review Record, obtain approval for a Request for Release of Funds and submit the first request for funds to the OCR within 270 days of the date of the grant award.

29. Project Completion. Recipient shall submit the Final Annual Performance Report and report all accomplishments within six (6) months of the final request for funds or within thirty (30) days of the termination date of this agreement, whichever occurs first.

30. Entire Agreement. This Agreement, including the attached schedules, constitutes the entire agreement between the parties and supersedes all prior oral and written agreements with respect to this Grant. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State.

IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of the parties.

Housing Trust Fund Corporation

By: _____
Name: Crystal Loffler
Title: President
Office of Community Renewal

County of Albany

By: _____
Name: Daniel McCoy
Title: County Executive

STATE OF NEW YORK)

COUNTY OF _____) ss.:

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

NOTARY PUBLIC

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

SCHEDULE A
SPECIAL CONDITIONS

As a condition necessary to execute the NYS CDBG grant agreement, Albany County must:

N/A

Schedule B

2020 Awarded Budget & Projected Accomplishments

Project Number: 8CVHR33-21

Community	C/T/V	County	Type	Awarded Amount
Albany	County	Albany	CV Housing Rehabilitation	\$1,389,890

Award Budget:

Funding Source	Amount
CDBG-CV	\$1,389,890.00
Projected Total Funding:	\$1,389,890.00

Activity Budget Detail:

Activity(ies)	Projected Use	Amount
Albany County Grant Administration		
	Grant Administration	\$40,953.00
Albany County Housing Remediation		
	Program Delivery	\$959,047.00
Albany County Mental Health Services		
	Program Delivery	\$389,890.00
		\$1,389,890.00

Projected Accomplishments:

8CVHR3321-01 Albany County Housing Remediation

Persons

Owner	6
LMI Owner	6

Units

Owner	6
LMI Owner	6

8CVPS3321-02 Albany County Mental Health Services

Public Facilities

% of LMI in Project Area	62
LMI Persons in Project Area	54875

Source Key:

AHC - Affordable Housing Corp, RESTORE - Residential Emergency Services to Offer Repair to Elderly, ARC - Appalachian Regional Commission Area Development Program, ANCCP - Adirondack North Country Community Enhancement Program, DASNY - Dormitory Authority of the State of New York, EDA - US Economic Development Administration, EFC CW - Environmental Facilities Corp. ; Clean Water Act SRF, EFC DW - Environmental Facilities Corp. ; Safe Drinking Water Act SRF, FHLB - Federal Housing Loan Bank, IDA - Industrial Development Agency, LDC - Local Development Corp., NCA - North Country Alliance, NYBDC - New York State Business Development Corp., NYSCA - New York State Council of the Arts, , NYSEDA - New York State Energy Research and Development Authority, NYS OCFS - NYS Office of Children and Family Services, NYS OTDA - NYS Office of temporary and Disability Assistance, NYS Strategic Invest Fund, RUS - USDA Rural Development, Rural Utilities Service, Water and Wastewater Disposal Loan and Grant Program, SBTIF - Small Business Technology Investment Fund, US HHS - Department of Health and Human Services (federal)