

**Schedule A
Awarded Budget & Projected Accomplishments
Village of Tannersville
Downtown Improvement Fund**

SHARS ID: 20230015

Award Budget

<u>Funding Source</u>	<u>Amount</u>
Downtown Revitalization Initiative Award	\$ 600,000
Other Sources	\$ 360,000

DRI Activity Budget Detail

Activity	Amount Not to Exceed
Building renovations and permanent machinery & equipment	\$513,000
<i>Architecture, Engineering & Environmental Testing</i>	\$27,000
Administration	\$60,000
Total:	\$600,000

Target Area

The Village of Tannersville’s Downtown Revitalization Initiative Study Area.

Projected Accomplishments

6 Buildings Improved
4 Businesses Assisted

Program Compliance

The term LPA is used as a placeholder throughout this document to refer to the contracted entity and administrator of the DRI funds.

- The LPA must endeavor to meet the projected accomplishments. Any defect or departure from the proposal must be requested and approved in writing.
- The LPA must follow the processes identified in the Administrative Plan included as Schedule B to the Grant Agreement. Any defect or departure from the Administrative Plan must be requested and approved in writing.
- Prior to commencing the program, the LPA must review the eligible work items, program budget, and program timeline with OCR staff. OCR reserves the right to change or disallow aspects of the program.
- DRI funds may only be requested for reimbursement for eligible program costs incurred within the grant period pursuant to the DRI grant agreement. DRI program operates fully as a reimbursement program and payment will be made only upon satisfactory completion of projects.

- The LPA must abide by the activity limits and match requirements specified in the Schedule B, Administrative Plan.
- DRI funds budgeted for Administrative expenses shall not exceed 10% of the DRI award or the amount noted above under Activity Budget Detail, whichever is less. Administrative funds shall be only for payment of reasonable administration and planning costs related to the DRI contract.
- Soft costs shall be only for payment of reasonable Architecture, Engineering or Environmental Testing costs related to a specific DRI project. Soft costs are allocated on a per-project basis, must be within activity limits, and require matching funds. In-kind match is not eligible.
- Architecture, Engineering or Environmental Testing costs incurred for work on buildings that eventually prove infeasible and do not receive other investments will not be reimbursed.
- The LPA will enter into a contract with the property owner to provide the program financial assistance. The contract must include the requirement to insure the premises for the full (100%) replacement value and to obtain flood insurance coverage if the premises is in a special flood hazard area.
- The LPA will complete a procurement process for all activities to be reimbursed with DRI funds. A minimum of two bids or proposals will be obtained and reviewed for all project costs, including but not limited to purchases, services and renovation, administration or professional service activities. This process is required to establish the reasonableness of project costs.
- All participating contractors must supply references and proof of proper insurance. Proof of insurance must include general liability coverage in a minimum amount of one million dollars and workers' compensation coverage. The LPA, State of New York, and the Housing Trust Fund Corporation must be listed as additional insured.
- Perceived or actual conflicts of interest may arise when certain individuals have access to inside information regarding the award of a contract or property assistance. The LPA must have a formal, written Conflict of Interest policy. At a minimum, the policy must outline which parties are covered and what measures will be taken to allow eligible parties access to program benefits while avoiding actual and perceived conflicts of interest. A contractor cannot receive DRI funds for work done on property that s/he owns, or a property that is owned by an immediate family member. Prior to commencing a project where there is a possible conflict of interest, the LPA must review the eligible work items with OCR staff.
- Projects including DRI funds should produce a finished commercial or residential space, ready for occupancy, within the contract term. DRI funds will be disbursed only for completed projects. Work can be completed on part of a building, leaving another part unfinished as a holdover for future use, provided that the project can be completed in compliance with all applicable codes and ordinances, and the unfinished space does not present a hazard to occupants or users of the building.
- Prior to the commitment or expenditure of DRI program funds, the environmental effects of each activity must be assessed in accordance with the State Environmental Quality Review Act (SEQRA) at 6 NYCRR Part 617. The LPA must submit Environmental Review documents as required by Housing Trust Fund Corporation in a timely manner following grant agreement execution. Housing Trust Fund Corporation will issue a notice to proceed following the submission of complete and accurate Environmental Review documents.
- Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law of 1980 requires publicly-funded projects to be reviewed for their potential impact/effect on historic properties. The LPA must submit proposed project scopes of work for each participating project to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP or SHPO) for review.

Schedule B
Downtown Revitalization Initiative (DRI) Administrative Plan
Village of Tannersville
Downtown Improvement Fund

SHARS ID: 20230015

1. Program Development

1. a. Administrative Structure

A maximum of 10% of the DRI Grant program funds may be used for administration of the program.

- **LPA** – The Village of Tannersville is the lead administrator for the DRI Program Fund. The Village of Tannersville is responsible for the overall program administration and all program financial transactions.
- **Consultant Services** – The LPA will procure the services of a consultant to assist in project management and grant administration tasks. A minimum of two bids or proposals will be received and reviewed to determine reasonableness of costs. A formal contract that outlines roles and responsibilities will be executed. The consultant will:
 - Manage the DRF and grant and implement the procedures contained in Tannersville’s DRF Administrative Plan.
 - Manage the implementation of a variety of projects (TBD) such as building and façade renovations and business expansions after individual awards are made.
 - Manage the grant budget by overseeing project expenditures, making payments, and submitting reimbursement documentation to NYS.

More specifically, the consultant will:

- Publicize funding availability to property/business owners in the DRI area, explain program requirements, and hold public information meeting(s).
- Review project applications for eligibility and completeness, and review with Tannersville’s Village Board to make recommendations to the State.
- Notify property/business owners of funding approval and prepare funding contracts.
- Explain specific program requirements and assist business/property owners and their architect/engineers with preparing scopes of work.
- Review property/business owners’ cost estimates, financing plans, SEQR documentation, and project designs.
- Assist property/business owners with obtaining Village and SHPO approvals.
- Establish a list of contractors, solicit and review construction bids for projects.
- Assist the Village Building Inspector with periodic oversight of construction work.
- Review owners’ expenses, pay invoices, and submit documentation for reimbursement by NYS.
- Submit a final report on program accomplishments to NYS.

1. b. Marketing Plan

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

- The LPA will develop and distribute informational materials to market program availability and explain program requirements. These will be distributed to property and business owners in the target area.
- Instructions on how to apply for assistance and required forms will be available at the offices of the DRI Community.
- Public informational meetings will be held at one or more locations within the Community to present information and answer questions.
- The LPA will retain distribution lists, public notices and other documentation of marketing and outreach efforts in program files.

1. c. Financing Structure

The LPA will offer funding assistance to eligible projects that enhance and strengthen the Downtown Revitalization Initiative area.

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

- Individuals
- For-profit entities
- Not-for-profit entities
- Current on all taxes (Town/County, Village, School) and water bills

1.c.2 Eligible Activities

- Building Renovation Improvements
 - Façade enhancement
 - Exterior building renovations for commercial and mixed-use spaces
 - Permanently affixed signage and awnings
 - Residential improvements intended for use as permanent, year-round units
 - Commercial interior fit-out
 - Green building improvements
 - Building murals may be included if part of a larger renovation project
 - Soft Costs – architectural, engineering, environmental
- Small Business Assistance
 - Permanent commercial machinery and equipment

1.c.3 Ineligible Activities

- Ineligible uses of funds include: acquisition costs; improvements to structures owned by religious or private membership-based organizations; improvements to municipally owned and municipally operated buildings; furnishings, appliances, electronics, tools, disposable supplies, business equipment, non-permanent fixtures, temporary artwork.
- Funds may not be used for site work or ancillary activities on a property including but not limited to: septic systems/laterals, grading, parking lots, sidewalks, patios, decks, garages, sheds, landscaping, fences, free standing signs, general maintenance or repairs.
- Funds may not be used for creation or renovation of residential units intended for less than permanent, year-round occupancy.
- Ineligible business activities include: inventory lease expenses, working capital or other undefined expenses that do not sustain business operations.
- Funds cannot be used for participant, participant's family or participant's staff labor. In-kind labor and the reimbursement for materials only is also not eligible.
- Funds cannot be used for the build out of short-term rentals. If an applicant is awarded funds for housing, there will be a restriction implemented of no short-term rental for a period of 5 years from date of completion.

1.c.4 Available Funding

- Activity Limits and Match Requirements for Building Renovation/Improvements
 - The LPA may award between \$50,000 - \$100,000 in DRI program funds, per building, not to exceed 60% of the total eligible project cost. Building renovation funds may be used to renovate facades, storefronts and commercial interiors, with an additional \$25,000 per residential unit up to a per building maximum of \$150,000, not to exceed 60% of the total project cost.
 - The minimum match requirement is 40% of the total project cost.
 - Match requirements must be realized on a building-by-building basis and are calculated using the total project cost
 - In-kind match is not eligible.
 - Costs incurred prior to the effective date of the grant agreement are not eligible for reimbursement and not eligible as a match.

- Small Business Assistance
 - The LPA may award between \$5,000 - \$20,000 in DRI program funds, per project, not to exceed 60% of the total eligible project cost, and not to exceed \$100,000 in DRI program funds.

- Soft Costs
 - Eligible soft costs include Architecture, Engineering, and Environmental Testing expenses.
 - Soft costs must be included within per building activity funding limits identified above and may not exceed 18% of the awarded funds.
 - Soft costs require matching funds, and in-kind match is not eligible.
 - Soft costs incurred for work on buildings that eventually prove infeasible and do not receive other investments will not be reimbursed with DRI funds. Therefore, reimbursements for soft costs may not be requested as part of a partial payment prior to project completion.

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

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

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

1. d. Project Review & Selection Process

The LPA will use the following project selection criteria and project review and selection process. This process will be used consistently throughout the term of the DRI Grant/Loan program.

1.d.1 Project Application

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

1.d.2 Project Review Committee

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

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

- Projects that are visually prominent Downtown;
- Projects that include renovation of upper-story residential units.
- Projects with historic value or historic properties in danger of being lost in part or in total to disrepair or damage;
- Projects that with the assistance of grant funds, will reduce blight, contribute to the economic recovery of the downtown, or realize a stabilization or expansion of a Downtown business;
- Projects where assistance will create jobs;
- Projects where assistance will allow business to expand service offerings.
- Projects that leverage grant funds with private financing.

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

- Readiness- projects that provide proof of overall feasibility and readiness such as proof of ownership, documentation that 100% of the financing for the project is in place, reasonable construction timeline (up to 20 points).
- Physical Impact- projects that are visually prominent downtown, have historic value, are in danger of being lost, bring existing properties into compliance with design guidelines, that are transformative beyond normal maintenance (up to 20 points).
- Economic Impact- projects leveraging grant funds with private investment that with the assistance of grant funds, will reduce blight and vacancies, contribute to the economic recovery of the target area, or realize a stabilization or expansion of downtown tax base, businesses and/or jobs (up to 20 points).
- Quality of Life- projects include renovation of upper-story residential units, energy efficiency or accessibility improvements, solar installations and similar activities that achieve Passive House or similar standards (up to 20 points).
- DRI Priorities- projects that advance the goals and priorities of the DRI Investment Strategy (up to 20 points).

1.d.5 Conflicts of Interest

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

Municipalities must adhere to Article 18, "Conflicts of Interest of Municipal Officers and Employees," of the NYS General Municipal Law

1.d.6 Project Selection Documentation

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

1. e. Design Standards

The LPA will develop design guidelines for exterior renovations if the LPA does not already require participating renovation projects to undergo an architectural or design review process. These guidelines will be consistent with the requirements of the State Historic Preservation Office, Housing Trust Fund Corporation (HTFC), and the DRI Community. The LPA will enforce the standards throughout the development process.

1. f. Housing Trust Fund Corporation Approval

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

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

1.g. Award Letter

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

At a minimum, the letter will specify:

- Projected amount of financial assistance awarded ("Up to" Award Amount)
- Match requirements
- Approved scope of work or eligible activities
- Ineligible activities
- Environmental Review requirements
- Procurement requirements
- Local requirements

- Timeline to accept award and begin project

2. Project Development

2. a. Environmental Review

Prior to the commitment or expenditure of program funds, the environmental effects of each activity will be assessed in accordance with the State Environmental Quality Review Act (SEQR). The LPA will submit all required environmental review paperwork according to the requirements outlined in the HTFC Environmental Compliance Handbook.

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

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

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

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

The LPA is responsible for coordinating renovation work write-ups with local code officials, the State Historic Preservation Office, and other regulators. If needed, additional experts must be consulted. Both the LPA and the property owner must sign-off on the formal scope of work.

2. c. Contractor Selection

The LPA may establish a list of contractors able to perform work in compliance with applicable standards. The LPA may choose to develop this list through a formal Request for Qualifications (RFQ) process to provide contractors and professional service providers an equal opportunity for consideration. All participating contractors must supply references and proof of proper insurance. Proof of insurance must include general liability coverage in a minimum amount of one million dollars and workers' compensation coverage. The LPA, State of New York **and** the Housing Trust Fund Corporation must be listed as additional insured. The LPA will use this list to solicit bids or quotes for the project activities. Additional contractors can be added to the list at any time, however, references and proof of proper insurance must be supplied to the LPA and approved.

EEO & MWBE Requirements

The LPA is required to comply with Articles 15-A and 17-B of the New York State Executive Law. These requirements include equal employment opportunities for minority group members and women ("EEO"), and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs") and Service-Disabled Veteran-Owned Businesses ("SDVOBs"). LPA's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. Please visit NYS Empire State Development's Division of Minority & Women Business Development website for a directory of certified Minority and Women-Owned Businesses: <https://ny.newnycontracts.com>

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

Procurement & Bidding

The LPA will complete a procurement process for all activities to be reimbursed with DRI funds. A minimum of two bids or proposals will be obtained and reviewed for all project costs, including but not limited to purchases, services and renovation, administration or professional service activities. This process is required to establish the reasonableness of project costs. The procurement process will be free of collusion or intimidation, and the LPA will exercise appropriate oversight over the entire process to ensure that it is fair, efficient and free of actual and perceived conflicts of interest. A clear, written, scope of work for the project, as outlined in Work Write-up / Scope of Work section, must be the basis for the bids or proposals. All bidders must have equal access to relevant information, including information on the property itself. **The bids or proposals for all activities must be submitted directly to the LPA by the contractor.** The LPA will advise the property owner of acceptability of bids/proposed cost. The LPA shall select the lowest responsible bidder. If the property owner chooses other than the lowest bidder, re-imbursement will be based on the amount of the lowest responsible bid. The LPA will document the bid solicitation, review and selection process, and save such documentation in its project files.

Conflicts of Interest

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

2. d. Contracting Procedures

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

At a minimum, the contract will specify:

- Agreed upon scope of work;
- Projected amount of financial assistance awarded;
- Estimated project timeline;
- Regulatory term or repayment provisions;
- Requirement to sign a photo release form permitting the LPA and HTFC to use photographs of the assisted business or property;
- Requirement to engage a contractor and begin activities within 30 days of formal LPA approval;

- Payment structure, timing;
- LPA has the right to inspect work at any time;
- Disbursement documentation requirements
- LPA may terminate the award and cancel the contract should the work or purchases be inconsistent with the program rules outlined, agreed upon scope of work or project design, stated timeline or if insurance is not maintained by the participating contractor.

3. Construction Management/Quality Control

3. a. Construction Monitoring

The LPA retains the right to inspect or audit work in progress at any point. The LPA must perform periodic inspections of renovation activities to monitor adherence with program rules, environmental hazard compliance, and general project progress. These visits must be documented in LPA project files.

3. b. Final Inspection

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

4. Financial Management

The LPA’s chief financial officer will be responsible for all financial transactions under this contract. The LPA must have a written policy on internal controls, and use this policy to determine the process for review and approval of requests for disbursement of funds from HTFC. An Authorized Signature Form must be completed to designate the representative(s) authorized to sign disbursement requests and must reflect the DRI Community’s written policy on internal controls.

5. Ongoing Maintenance / Regulatory Term

All assistance is in the form of a reimbursable grant with a five (5)-year compliance period. Property owners will be required to execute a Declaration document committing to this compliance period. If the property contains residential units that were improved with Grant Assistance, and such improved units become vacant during the Regulatory Period, the property owner will be required to market, and make them affordable, to households with incomes at or below 100% of the area median income, as adjusted for family size. This requirement is met through a rent limit imposed on the assisted unit(s) during the regulatory term. Should the property owner sell the property within the five (5)-year timeframe, they will be responsible for repaying a portion of the grant funding received. A Declaration Form will be filed with the County Clerk to secure this obligation and the following repayment schedule will apply:

Months 0-12:	100% repayment due
Months 13-24:	80% repayment due
Months 25-36:	60% repayment due
Months 37-48:	40% repayment due
Months 49-60:	20% repayment due
Months 60 and beyond:	0% repayment due

6. Program Compliance

6. a. Conditions

Housing Trust Fund Corporation reserves the right to change or disallow aspects of the application and may make such changes conditions of its commitment to provide funding to a project or program. The LPA will address any additional requirements or conditions of approval.

6. b. Covenants of the Recipient

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

Schedule C

Participation By Minority Group Members, Women And Service Disabled Veterans With Respect To State Contracts: Requirements And Procedures

I. General Provisions

- A. The Housing Trust Fund Corporation (HTFC) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”), and New York State Executive Article 17-B and 9 NYCRR Section 252 (“SDVOB Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Recipient agrees, in addition to any other nondiscrimination provision of this agreement and at no additional cost to the HTFC, to fully comply and cooperate with the HTFC in the implementation of New York State Executive Laws Article 15-A and 17-B. These requirements include equal employment opportunities for minority group members and women (“EEO”), and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”) and Service-Disabled Veteran-Owned Businesses (“SDVOBs”). Recipient’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VI of this Schedule or enforcement proceedings as allowed by this Agreement.

II. Contract Goals

- A. For purposes of this Agreement, the HTFC hereby establishes a goal of, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs and SDVOBs on this Agreement and achieving the Contract Goals established in Section II-A, Recipient should reference the directory of New York State Certified MBWEs found online, here:

<https://ny.newnycontracts.com/> and certified SDVOBs found online, here: <https://ogs.ny.gov/veterans>

- C. Additionally, Recipient is encouraged to contact the Division of Minority and Woman Business Development’s assigned Compliance Officer to discuss additional methods of maximizing participation by MWBEs on this Agreement.
- D. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Agreement. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in this Agreement, such a finding constitutes a breach of contract and Recipient shall be liable to the HTFC for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

A. Recipient agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. Recipient shall comply with the following provisions of Article 15-A:

1. Recipient and its subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
2. The Recipient and its subcontractors shall submit an EEO policy statement (form available) to the HTFC with its Bid Solicitation Plan in accordance with the NYS Homes and Community Renewal (HCR)'s Office of Economic Opportunity and Partnership Development procedures. If Recipient or its subcontractors do not have an existing EEO policy statement, a sample form can be found on the HCR website.
3. Recipient's EEO policy statement shall include the following language:
 - a. The Recipient or its subcontractors will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Recipient shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Recipient shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Recipient's obligations herein.
 - d. The Recipient will include the provisions of sections (a) through (c) of this subsection, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Agreement.
4. Recipient or its subcontractors will comply with both Executive Law Article 15A and Executive Law Article 15, including, but not limited to Section 296.

IV. Contractor Bid Solicitation Plan

- A. The Recipient represents and warrants that Recipient will submit a Contractor Bid Solicitation Plan either prior to, or within 60 days of work being assigned and described under this Agreement or subsequent work order hereunder.
- B. Recipient agrees to use such Contractor Bid Solicitation Plan to outline marketing and outreach efforts planned to expand contracting opportunities for certified MWBEs on this project pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix.

C. Recipient further agrees that a failure to submit and/or use such Contractor Bid Solicitation Plan shall constitute a material breach of the terms of this Agreement. Upon the occurrence of such a material breach, the HTFC shall be entitled to any remedy provided herein, including but not limited to, a finding of Recipient non-responsiveness.

V. Request for Waiver

- A. If the Recipient, after making good faith efforts, is unable to comply with the MWBE goals, the Recipient may submit a Request for Waiver (Form PROC-3) documenting good faith efforts by the Recipient to meet such goals. If the documentation included with the waiver request is complete, the Agency(ies) shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- B. If HTFC, upon review of the Bid Solicitation Plan, and other supporting documentation including the Bid Solicitation Log and Certification of Good Faith Efforts Utilization Plan determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regard to such non-compliance, the Agency(ies) may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Liquidated Damages

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

VII. Reporting

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

VIII. Forms

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