

SHARS ID:

**NEIGHBORHOOD AND RURAL
PRESERVATION PROGRAM AGREEMENT**

This AGREEMENT made as of July 1 2016, by and between the HOUSING TRUST FUND CORPORATION (“Corporation”), a public benefit corporation created and existing as a subsidiary of the New York State Housing Finance Agency pursuant to Section 45-a of the New York Private Housing Finance Law (the “PHFL”) with an office at 38-40 State Street, Albany, New York 12207, and (“Recipient”), a not-for-profit corporation organized pursuant to the Not-For-Profit Corporation Law of the State of New York, having its principal place of business at

WITNESSETH:

WHEREAS, the Corporation has been allocated funds from the State of New York Mortgage Agency for use in the New York State fiscal year 2016 in connection with the Neighborhood Preservation Program/Rural Preservation Program (“N/RPP”) Article XVI or XVII of the Private Housing Finance Law, and the regulations promulgated thereunder (the “Statute”).

WHEREAS, the Recipient has submitted an application to administer a local N/RPP to provide neighborhood or rural preservation activities (as defined in the Statute) with respect to land and community development improvements located in the approved service area, as more fully described in the Program Summary and Description of Target Area attached hereto as Exhibit A (such activities herein referred to as the “Program”); and

WHEREAS, the Corporation wishes to provide funds to the Recipient for eligible costs to complete the Program ("Program Costs") in an amount not to exceed _____ for the Term and such additional amounts, if any, as determined by the Corporation for any Renewal Term (each as hereinafter defined) in consideration of, among other things, the Recipient undertaking to comply with all the terms and conditions of this Agreement, the Statutes, New York State Homes and Community Renewal’s

Office of Community Renewal (“OCR”) and the Corporation’s applicable rules, regulations, policies and procedures, as amended from time to time.

NOW, THEREFORE, in furtherance of the Program and the Statute, and for the consideration herein provided, the parties do mutually covenant and agree as follows:

1. **Contents of Agreement.** The following documents are attached or 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 OCR or the Corporation;
 - b) the N/RPP program requirements (as now in effect and as may be revised from time to time);
 - c) applicable New York State laws and regulations, as may be amended, including, but not limited to, the Statute;
 - d) Documents attached hereto, as amended from time to time (including in connection with any Renewal Term):

- Exhibit A Program Summary and Description of Target Area
- Exhibit B Program Budget
- Exhibit C Payment and Reporting Schedule
- Exhibit D Work Plan
- Exhibit E Vendor Questionnaire
- Exhibit F Board Resolution
- Exhibit G Participation by Minority Group Members and Women Requirements

2. **Goals and Objectives.** The Recipient shall (a) complete the Program in accordance with the Recipient's approved Work Plan as modified by the terms of this Agreement or any subsequent amendment approved by the OCR or the Corporation, (b) adhere to the Program Budget, and (c) adhere to the Payment and Reporting Schedule.

3. **Term.** The Term of this Agreement shall run from July 1, 2016 through June 30th, 2017 (“Term”). The Corporation may extend the Agreement Term for up to two additional one year Terms (each a “Renewal Term”) upon satisfaction of the following conditions:

(i) Recipient shall:

(a) affirm that the representations and warranties contained in Section 10 hereof remain true and correct as of the date of the Renewal Term;

(b) affirm it has substantially completed the Work Plan and Program for the prior Term or Renewal Term, as applicable; and

(c) provide such renewal documentation as requested by OCR or HTFC, including but not limited to an updated Work Plan and Program Budget.

(ii) The Corporation shall, in its sole discretion, have been allocated adequate funding from the New York State legislature, the New York State Mortgage Agency or such other adequate source, in order for the N/RPP to adequately fund the Renewal Term.

4. **Bank Account.** All disbursements paid to the Recipient shall be deposited in an account established by the Recipient in a bank authorized to do business in the State of New York and insured by the Federal Deposit Insurance Corporation.

5. **Regulatory Period.** The Recipient, for a period of five (5) years from the end of the Term hereof, or Renewal Terms, as applicable, shall maintain records to be made available for review by the Corporation and OCR program staff during normal business hours. All Program related contracts and documents must be maintained in the Recipient’s office and shall include the following: 1) housing and community renewal records; 2) current needs assessments and strategic plans; 3) accounting records and supporting backup documentation; 4) time records of all employees and consultants receiving salaries, wages, or compensation from funds provided pursuant to this Agreement; 5) documentation of funded activities; 6) financial records to verify the required one-half match; 7) insurance documentation; 8) conflict of interest forms; consultant agreements; and 9)

copies of N/RPP applications, contracts, Work Plan modifications, Annual Performance Reports; and any other documents related to N/RPP Program, OCR or the Corporation.

6. **Use of Funds.** Funds provided by the Corporation pursuant to this Agreement shall be restricted to sums required for payment of salaries and wages to employees who are engaged in rendering neighborhood preservation activities, fees to consultants and professionals retained by them for planning and performing such activities and other costs and expenses directly related to such employees, consultants and professionals, including, but not limited to office rent, office equipment, fringe benefits, office expenses or other administrative expenses. Notwithstanding the above, all such administrative expenses and executive compensation are subject to the limitations established by Executive Order #38.

7. **Reports and Access to Records.** During the Term, or Renewal Terms as applicable, and the Regulatory Period, the Recipient shall file progress reports with the Corporation in a form and containing such information as the Corporation may require. The Recipient further agrees to provide the OCR or the Corporation with reports, records, financial statements and accounts in such form, content and frequency as required by OCR or the Corporation. These reports shall include, but not be limited to: a final report in the form of the Annual Performance Report. Upon the request of OCR or the Corporation, the Recipient shall, by no later than July 31 of the current Term, or Renewal Term as applicable, provide a final report setting forth the Work Plan and Program work performed pursuant to the Work Plan and this Agreement and provide such other information as may be requested by OCR or the Corporation.

8. **Supporting Documentation.** All expenditures made from funds disbursed pursuant to this Agreement shall be supported by written bids, written contracts, billings, invoices, bank documents and any other documentation that OCR or the Corporation may request in order to establish that such funds have been used in accordance with the terms of this Agreement, the Statute, and OCR and the Corporation's applicable rules, regulations,

policies and procedures as amended from time to time.

9. **Disbursement.** The Recipient shall submit to OCR and the Corporation requests for disbursements in such form and manner and at such times as OCR and the Corporation may require. Each such request shall (a) state the amount requested to be disbursed; (b) be certified by an officer of the Recipient; and (c) constitute an affirmation that the representations and warranties contained in Section 10 hereof remain true and correct on the date thereof.
10. **Representations and Warranties.** The Recipient represents and warrants to the Corporation that:
 - (a) Recipient (i) is a not-for-profit corporation validly existing under the law of the State of New York, (ii) has the power under its organizational documents and applicable law to execute, and perform its obligations under, this Agreement, (iii) has taken all action necessary under its organizational documents and applicable law to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder and has duly executed and delivered this Agreement.
 - (b) There is no pending or threatened litigation that might affect the Recipient's ability to comply with this Agreement or complete the Program.
 - (c) The transactions contemplated hereby do not violate any applicable law or the certificate of incorporation, charter, by-laws or any other legal instrument affecting the Recipient.
 - (d) The Program has obtained all necessary governmental approvals from authorities that have jurisdiction over the Recipient, the Program or any activity performed in connection therewith.
 - (e) All Program activities will be performed within the perimeter of the approved service area, in accordance with the Work Plan and in accordance with all laws, ordinances, rules, orders, regulations and requirements of any governmental authority having jurisdiction over the Recipient, the Program or any construction performed in connection therewith.
 - (f) The Work Plan and any other information contained herein or heretofore

provided to OCR and the Corporation by the Recipient (i) is true and correct in all respects and accurately represent the condition of the Program and of the Recipient as of the respective date thereof, and (ii) no materially adverse change has occurred in the condition of the Program or Recipient or the financial conditions of the Program or Recipient since the respective dates thereof.

- (g) There is no default on the part of the Recipient under this Agreement or under any other instrument executed in connection with the Program or with any other program funded by New York State Homes and Community Renewal or the Corporation, and no event has occurred and is continuing which notice or the passage of time would constitute an event of default thereunder.
- (h) This Agreement and all other instruments executed in connection with the Program will be, upon execution thereof, legal, valid and binding instruments enforceable against the Recipient in accordance with their terms.
- (i) All contracts entered into by the Recipient for any services to be paid for, in whole or in part, with funds pursuant to this Agreement, are in accordance with all applicable laws, rules and regulations.
- (j) There are no outstanding or overdue payments owed for any taxes including but not limited to, workers' compensation and unemployment insurance in connection with the Program.
- (k) The Recipient represents that it has obtained the managerial and technical capability necessary to undertake and perform the Work Plan in a satisfactory manner.
- (l) Recipient's officer's directors and members are fairly representative of the residents and other legitimate interest of the service area. If the Recipient is an NPP, at least one-third of the directors of the Recipient are residents of the approved service area. If the Recipient is an RPP, at least one-half of the directors of the Recipient are residents of the approved service area.
- (m) Any fees received or proposed to be received by the Recipient from the management of housing accommodations are fair and reasonable;
- (n) Recipient has secured commitments for such additional funds sufficient to complete the Program, including the required one-half match.

11. **Covenants of the Recipient.** The Recipient covenants as follows:

- (a) It will comply promptly with all OCR and Corporation requirements and furnish OCR and the Corporation, upon request, with official searches, certificates or permits issued by any governmental authority.
- (b) It will cause all conditions hereof to be satisfied in a timely manner.
- (c) It will, upon demand, correct any defect in the Program or any departure from the Work Plan or Program Budget not approved by OCR or the Corporation. The disbursement by the Corporation of any funds hereunder shall not constitute a waiver of the Corporation's rights to require compliance with this covenant with respect to any such defects or departures from the Work Plan or Program Budget.
- (d) It will execute all such instruments and documents that OCR or Corporation may require for the purpose of effectuating the provisions of this Agreement.
- (e) The Recipient will, to the extent possible, give priority when hiring new employees to residents of the approved service area who are either unemployed or not fully employed;

12. **Insurance.** During the Term, the Recipient shall take all adequate measures to safeguard against the risk of liability for injuries or death of employees of the Recipient, contractors and subcontractors, and of any other persons. The Recipient shall provide the Corporation with an insurance certificate for comprehensive general liability coverage in a minimum amount of one million dollars naming the Corporation and the State of New York as additional insured, and fidelity bond/crime coverage in an amount not less than the largest anticipated disbursement request for Program funds naming the Corporation as loss payee, together with certificates for automobile insurance (if applicable), worker's compensation and disability benefits. Disbursements requested in excess of the fidelity bond coverage will be reduced to the maximum amount of the fidelity bond in effect. 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 OCR and 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 shall 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.

13. **Required Cooperation.** The Recipient agrees to cooperate with the Corporation for all of the purposes of this Agreement in order to assure the expeditious and satisfactory completion of the Program. The Recipient also agrees to complete promptly all forms and reports as may from time to time be required by OCR or the Corporation in the proper administration and performance of said services. The Recipient further agrees that the Corporation may modify this Agreement as is deemed necessary by the Corporation to best make use of the Corporation's funding sources available for this Program.
14. **Contract Supervision.** It is agreed that the services to be performed under this Agreement shall be subject to the overall administration, supervision and direction of OCR and the Corporation and that OCR and the Corporation may periodically call meetings which shall be attended by Recipient.
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 funds shall, if the Corporation so elects, terminate and the Corporation may, in its discretion, exercise any of the remedies set forth herein or at law; provided, however, that the Corporation may make any payments after the happening of an Event of Default without thereby waiving the right to exercise such remedies, and without becoming liable to make any further payment.
 - (b) The following shall constitute an Event of Default hereunder:
 - (i) if the Recipient fails, in the opinion of OCR or the Corporation, to comply with or perform any provision, condition or covenant contained in this Agreement, the Statute, any applicable New York State or Federal law or regulation, or the program policies and

- procedures established by OCR or the Corporation;
 - (ii) if at any time any representation or warranty made by the Recipient shall be incorrect or materially misleading; or
 - (iii) if the Recipient has failed to commence the Program in a timely fashion or has failed to complete the Program within the Term or Renewal Term, as applicable.
- (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 forty five (45) days prior written notice of its intent to terminate. Recipient may request an opportunity to appear and be heard by OCR and the Corporation with respect to the reasons for such proposed termination, non-renewal or non-extension.
 - (ii) Commence a legal or equitable action to enforce performance of this Agreement;
 - (iii) Withhold or suspend payment of 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 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 Program, unless the Recipient obtains the prior written consent of the Corporation to the contrary, all unspent 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 funds, the expenditure or use of 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 funds which are unspent, expended or used in an unauthorized manner or for an unauthorized purpose.

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

17. **Assignment.** The Recipient may not assign any right granted to it under this Agreement or delegate any obligation imposed on the Recipient herein without the prior written consent of the Corporation, and any purported assignment or delegation without the Corporation's prior written consent shall be void. No such assignment or delegation shall be effective until the proposed assignee or delegatee (the "Assignee"), as the case may be, shall execute, acknowledge and deliver to the Corporation an agreement or Assignee shall assume the obligations imposed on the Recipient by this Agreement, and ensure that the Assignee will comply with all of its obligations under this Agreement. This Agreement shall inure to the benefit of the successors and permitted assigns of the parties hereto.

18. **Miscellaneous.**

(a) All notices with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when personally delivered or sent by certified mail, return receipt requested, to the parties at

the addresses first set out herein, or at such other address of which the receiving party shall have notified the sending party, except that notice of such change or address shall be deemed to have given when it is received.

(b) No action shall lie or be maintained against the State of New York or the Corporation upon any claim based upon or arising out of this Agreement or the work performed hereunder or anything done in connection herewith, unless such action shall be commenced with six (6) months after the termination of this Agreement, or one year from the accrual of the cause of action, whichever is earlier.

(c) If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and enforceable to the fullest extent permitted by law.

(d) Any action to be taken or consents to be given by the Corporation hereunder may be taken or given by a representative or agent designated by the Corporation for such purpose. All consents and approvals to be given by the Corporation hereunder must be in writing.

(e) The captions and headings of the various sections herein are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such sections.

19. **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire agreement between the parties and supersedes all prior oral and written agreements with respect to the Program. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York.

[Signature Page Follows]

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

Housing Trust Fund Corporation

By: _____
Christian M. Leo
President

Date: _____

By: _____

Printed Name:

Title:

Date: