



Agenda Date: 7/23/14  
Agenda Item: 9A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/Board/](http://www.nj.gov/Board/)

IN THE MATTER OF THE NEW JERSEY ENERGY ) ORDER  
RESILIENCE BANK - INITIAL SUBRECIPIENT )  
AGREEMENT BETWEEN THE BOARD OF PUBLIC )  
UTILITIES AND THE ECONOMIC DEVELOPMENT ) DOCKET NO. QO14060626  
AUTHORITY )

**Party of Record:**

**Michele Brown, Chief Executive Officer, New Jersey Economic Development Authority**

**BY THE BOARD:**

This Order memorializes action initiated by the New Jersey Board of Public Utilities ("Board") at its July 23, 2014 public meeting whereby the Board considered the initial Subrecipient Agreement ("Agreement") between the Board and the New Jersey Economic Development Authority ("EDA") to create and operate the New Jersey Energy Resilience Bank ("ERB") program. A copy of the Agreement is included with this Order.

**BACKGROUND AND PROCEDURAL HISTORY**

Since approximately 2001, in implementing the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 to 109 ("EDECA"), the Board has provided incentive programs to encourage the development of New Jersey Class I renewable energy and energy efficient power systems. These incentive programs are designed in accordance with the mandates of EDECA and the policies and goals of the 2011 New Jersey Energy Master Plan. Following the destruction caused by Superstorm Sandy, Board Staff began working with other state and federal agencies to explore opportunities to mitigate the detrimental effects of prolonged service disruptions by encouraging investment into energy resilience technologies, including renewable energy and energy efficient systems, at critical facilities.

**A. The Impact of Superstorm Sandy**

On October 29, 2012, Superstorm Sandy made landfall in New Jersey and delivered 90-MPH winds as well as overland, tidal and river flooding that caused "extraordinary and catastrophic damage" to the state's utility infrastructure and disrupted electric, natural gas or water service for extended periods of time. In the Matter of the Board's Establishing a Generic Proceeding to Review The Prudency of Costs Incurred by NJ Utility Companies in Response to Major Storm

Events in 2011 and 2012, BPU Docket Number EO11090543 ("March 2013 Order"). Superstorm Sandy caused more than 2.9 million customers to lose electric power, requiring critical facilities to activate emergency contingency plans and testing the emergency management capabilities of communities throughout the State. In the Matter of the Board's Review of the Utilities' Response to Hurricane Sandy, Docket EO12111050 ("May 2013 Order").

The Community Development Block Grant Disaster Recovery Action Plan ("Action Plan"), prepared by the New Jersey Department of Community Affairs ("DCA") and approved by the U.S. Department of Housing and Urban Development ("HUD") on April 29, 2013, provides extended discussion of the impact of the storm. The sizeable damage to the State's electrical transmission and distribution infrastructure prevented wastewater treatment plants from operating and forced hospitals, shelters and other healthcare facilities to consider evacuations. Action Plan at 2-18. The detrimental effects of the electrical service disruption also extended to liquid fuel refineries, terminals and gas stations, which disrupted fuel distribution across the region and limited the benefit of back-up generators. Id.

## **B. Response to the Storm**

In the aftermath of Superstorm Sandy, the federal government issued a disaster declaration for the State that enabled New Jersey individuals and certain entities to access specified federal programs, including the Hazard Mitigation Grant Program. The federal government also enacted the Disaster Relief Appropriations Act of 2013 on January 29, 2013. Public Law 113-2, 42 U.S.C. 5189 (2013). The law appropriated additional funding through the Community Development Block Grant Disaster Recovery ("CDBG-DR") program for communities that experienced natural disasters during 2011, 2012 or 2013. Id. HUD would initially allocate \$1.829 Billion in CDBG-DR monies for New Jersey. 78 Fed. Reg. 14329 (Mar. 5, 2013). A second tranche of CDBG-DR funding to serve New Jersey's unmet needs, in the amount of \$1.463 Billion, was subsequently announced. 78 Fed. Reg. 69104 (Nov. 18, 2013).

In response to an overwhelming number of applications to the federal Hazard Mitigation Grant Program for backup generators, Board Staff began collaborating with other state and federal agencies as well as the National Renewable Energy Laboratory ("NREL"), to identify opportunities that would enable critical facilities, such as hospitals, wastewater treatment facilities and shelters, to continue to operate despite prolonged electrical service disruption. See National Renewable Energy Laboratory, *Alternative Energy Generation Opportunities in Critical Infrastructure, New Jersey* (November 2013) ("NREL Report").

The NREL Report examined potential methods for enhancing energy resilience at critical facilities by combining distributed generation ("DG") technologies with microgrid technologies. DG technology generates power at or near the site where the power is consumed. State of New Jersey, *2011 New Jersey Energy Master Plan* at 84 (Dec. 6, 2011). Microgrid technology is a combination of a subsection of an electrical distribution system that can be isolated from the surrounding electrical grid and an adequate DG resource that allows an electrical load to be satisfied irrespective of the status of the surrounding electrical grid. NREL Report at 9. As part of evaluating greater energy resiliency, NREL also identified and discussed potential DG technologies, including Solar Photovoltaic, Fuel Cells, Combined Heat and Power, Combined Cycle and Waste to Energy systems. Id. at 10-13. The NREL Report also included an overview of the types of programs available to leverage funding to support renewable energy and energy efficiency technologies, including the concept of an energy bank. Id. at 17-18.

### **C. The New Jersey Energy Resilience Bank**

In the course of applying for the second tranche of CDBG-DR funding, DCA submitted to HUD *Action Plan Amendment Number 7, Substantial Amendment for the Second Allocation of CDBG-DR Funds* ("Amendment Number Seven") on March 25, 2014. Board Staff assisted in the drafting of Amendment Number Seven that detailed the unmet needs of New Jersey's energy infrastructure, including the damage to the electrical distribution and transmission systems and the absence of resilience technology to mitigate a cascading collapse of critical equipment and services. Amendment Number Seven proposed the creation and capitalization of the New Jersey Energy Resilience Bank ("ERB") with \$200 Million of CDBG-DR funds in order to provide technical guidance and financial instruments to encourage investment in distributed generation and microgrid technologies for the purpose of enhancing energy resilience at critical facilities. Amendment Number Seven at 3-29.

Amendment Number Seven to the Action Plan outlined two main goals for the ERB: to provide financial and technical assistance for individual projects that will enhance resiliency and to further develop a market that would encourage additional investments in energy resilience projects. To achieve these goals, Amendment Number Seven provided several types of financial instruments that the ERB could offer in order to incentivize critical facilities to install energy resilience improvements, including but not limited to, early stage grants, direct loans, principal forgiveness and loan loss reserve coverage for private lenders. Id. at 3-33, 3-34. On May 30, 2014, HUD approved Amendment Seven to the Action Plan.

In anticipation of the approval of Amendment Seven, Board Staff began to identify potential partners with which to jointly operate the ERB. The EDA's proficiency with financial products and investments were identified as attributes that would complement the Board's technical expertise and experience with energy issues. Preliminary discussions between Board and EDA Staff, with input from DCA and the Governor's Office of Recovery and Rebuilding, evolved into the development of the Agreement that the EDA Board approved, in substantially final form, on July 10, 2014.

### **KEY TERMS OF THE SUBRECIPIENT AGREEMENT**

#### **A. Joint Responsibilities of the Board and EDA**

While the comprehensive roles of the Board and EDA in the development and management of the ERB are set forth in the Agreement, among the key joint responsibilities are the following: The Board and the EDA agree to jointly develop and operate the ERB program, including the financial products, eligibility criteria, guidelines and protocols, project scoring methodology and funding agreements. Completed applications shall be reviewed, approved, modified or rejected by the EDA and the Board, where appropriate. The Board and EDA shall also determine and manage an appeals process for unsuccessful applicants. An annual budget for the ERB shall be jointly developed and presented to the Board and to the EDA for approval. In addition, the Board and the EDA shall jointly publicize and market the technical and financial services offered by the ERB.

#### **B. Responsibilities of the Board**

The Board will be responsible for providing expertise in the areas of energy, resilience benefits and technical considerations concerning the development and operation of the ERB. The Deputy Director of the ERB will be a Board employee and will be hired by the Board with input from the EDA. The Deputy Director will report to both the Board and the EDA. The Board will

also hire, train and manage any additional Board staff to facilitate the ERB program. The Board shall propose eligibility requirements for ERB projects and advise prospective applicants on the benefits and viability of various energy resilience technologies. The Board shall also manage project inspections including pre-construction, construction and post-construction inspections and process HUD construction certifications. In conjunction with the EDA, the Board shall provide all technical based information necessary for the EDA to meet HUD reporting requirements.

### **C. Responsibilities of the EDA**

The EDA will provide its financial expertise in the development and operation of the ERB including capitalization and portfolio management. The Executive Director of the ERB will be an EDA employee and will be hired by the EDA with input from the Board. The Executive Director will report to both the EDA and the Board. The EDA will also hire, train and manage any additional EDA staff to facilitate the ERB. The EDA shall also conduct a financial review of projects that successfully complete a technical review by the Board. In addition, the EDA will finalize the financing agreements and disburse ERB funds in accordance with EDA or Board conditions. EDA will provide customer relationship management including informational, accounting and notification services. The EDA shall also publish reports on the performance of the ERB, including any report or auditable trail required by HUD pursuant to the sub-recipient agreement between DCA and EDA

### **FUNDING**

As set forth in Amendment Number 7 of the Action Plan approved by HUD, \$200 Million from CDBG-DR funds will be used to capitalize the ERB and reimburse program development costs. The Agreement also permits the Board to allocate funding from the Clean Energy Trust Fund to the ERB during Fiscal Years 2015 - 2018 pursuant to the Board's discretion and in compliance with its statutory authority under EDECA.

### **EFFECTIVE DATE AND SIGNATURE**

The Agreement shall be effective upon the execution by both the Board President and Chief Executive Officer of the EDA and the service on the EDA of a Board Order approving the execution of the agreement.

### **PROGRAM'S POTENTIAL BENEFITS**

Board Staff has reviewed the proposed Agreement between the Board and the EDA for the purposes of jointly creating and operating the ERB and believes that the agreement is necessary to jointly implement the ERB program as proposed by the Action Plan. The approval of the Agreement will allow the State to utilize CDBG-DR funds to support DG and microgrid technology investments that will provide greater energy resilience at critical facilities and support the renewable energy and energy efficiency goals of EDECA and the 2011 Energy Master Plan.

### **DISCUSSION AND FINDINGS**

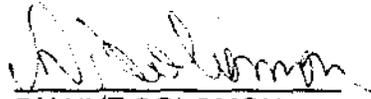
The Board has reviewed the Agreement to develop and operate the New Jersey Energy Resilience Bank in partnership with the EDA. The Board believes that entering into this partnership with the EDA will encourage investment in renewable energy, energy efficient, distributed generation or additional technology that will improve energy resiliency at critical

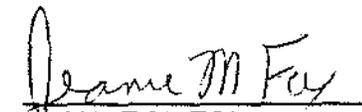
facilities to the benefit of ratepayers. Board approval of this partnership should also strengthen the community's confidence in the renewable energy and energy efficiency incentive programs authorized by EDECA.

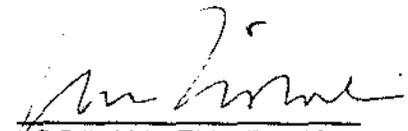
Based on the above, the Board **HEREBY APPROVES** the Agreement between the EDA and the Board and **HEREBY AUTHORIZES** the Board President to execute the Agreement.

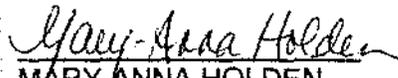
DATED: 8/18/14

BOARD OF PUBLIC UTILITIES  
BY:

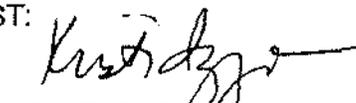
  
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PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

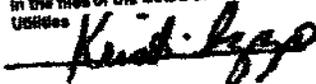
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



IN THE MATTER OF THE NEW JERSEY ENERGY RESILIENCE BANK - INITIAL  
SUBRECIPIENT AGREEMENT BETWEEN THE BOARD OF PUBLIC UTILITIES AND THE  
ECONOMIC DEVELOPMENT AUTHORITY

DOCKET NO. QO14060626

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**SUBRECIPIENT AGREEMENT BETWEEN BOARD OF PUBLIC UTILITIES AND  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

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

This Subrecipient Agreement (“EDA-BPU Subrecipient Agreement” or “Agreement”) is made and entered into on this 19th day of August, 2014 by and between the NEW JERSEY BOARD OF PUBLIC UTILITIES (“BPU”) and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (“EDA”).

The EDA and the BPU may sometimes hereinafter be collectively referred to as the “Parties” and individually as a “Party,” both instrumentalities of the State of New Jersey (the “State”).

**PREAMBLES**

WHEREAS, the New Jersey Department of Community Affairs (“DCA”) and the EDA entered into a subrecipient agreement, effective May 21, 2013, (the “EDA-DCA Subrecipient Agreement”) which made available to EDA up to four hundred sixty million and 00/100 dollars (\$460,000,000.00) in Community Development Block Grant Disaster Recovery (“CDBG-DR”) monies for the purpose of funding EDA’s activities under the Economic Revitalization Program; and

WHEREAS, Action Plan Amendment (“APA”) Number 7 to New Jersey’s Initial Action Plan for the Utilization of CDBG Funds in Response to Superstorm Sandy (“Action Plan”), which Amendment was approved by the U.S. Department of Housing and Urban Development (“HUD”) on May 30, 2014, provides for the use of funds from a second allocation of CDBG-DR monies by DCA; and

WHEREAS, this second allocation includes CDBG-DR funds in the amount of two hundred million and 00/100 dollars (\$200,000,000) to be used by EDA jointly with BPU to develop and maintain the New Jersey Energy Resilience Bank (“ERB”) to address Statewide energy resilience needs (Section 3.5.2 of APA Number 7); and

WHEREAS, the EDA-DCA Subrecipient Agreement was amended accordingly on August 8th, 2014 (the “First Amendment”) (“EDA-DCA Subrecipient Agreement” and “First Amendment” collectively referred to herein as the “Amended Agreement”) to reflect the additional CDBG-DR funds for ERB, as well as other CDBG-DR funding changes which resulted in a total CDBG-DR budget to EDA of five hundred five million and 00/100 dollars (\$505,000,000). The Amended Agreement is attached hereto as Appendix A and is incorporated herein; and

WHEREAS, pursuant to the Amended Agreement and this EDA-BPU Subrecipient Agreement dated August 8th, 2014, the ERB program will be administered by the EDA in conjunction with the BPU; and

WHEREAS, New Jersey's citizens, communities and emergency management personnel were faced with significant challenges when widespread and prolonged electrical outages resulted from Superstorm Sandy's powerful winds and rising flood waters; and

WHEREAS, critical facilities such as water and wastewater treatment plants, hospitals, schools and other public buildings must have access to reliable and resilient energy in order to serve the citizens of New Jersey; and

WHEREAS, distributed generation technologies –such as combined heat and power, fuel cells, and solar cells with storage – when combined with the ability to “island” – i.e., operate independently of the larger electrical grid – can help facilities to continue offering services in the event of a future electrical outage; and

WHEREAS, New Jersey has encouraged the use and deployment of distributed generation technologies for some time, including pursuant to the State's 2011 Energy Master Plan, which committed to developing 1,500 megawatts of new distributed generation resources where net economic and environmental benefits can be demonstrated; and

WHEREAS, because of the initial cost associated with pursuing distributed generation technologies and islanding capabilities, many critical facilities do not currently have in place energy resilience capacity; and

WHEREAS, the approved ERB is designed to continue to pursue innovation and build energy resilience by helping to encourage the development of distributed generation projects, microgrids, and other resilient technology designs at critical facilities throughout the State; and

WHEREAS, the ERB, to achieve its objectives, will provide technical and financial support, such as flexible financing that may include grants and low-interest loans, loan guarantees, loan loss reserve coverage, and other forms of financing to critical facilities, as set forth in the Action Plan, as it may be amended from time to time, and

WHEREAS, the BPU has a long tradition of promoting innovative and energy-efficient technologies, offering financial assistance to clean energy projects, and ensuring the reliability and resilience of the power grid; and

WHEREAS, the EDA has developed considerable expertise in providing New Jersey institutions with innovative financing products and in deploying federal and State funds, particularly in the wake of recent natural disasters; and

WHEREAS, on account of the foregoing, the State has determined that EDA and BPU are most qualified to jointly administer the ERB; and

WHEREAS, a bedrock principle of the State's comprehensive approach to recovery has been to leverage available federal, State, private and philanthropic recovery resources in a coordinated way to maximize their impact for recovery; and

WHEREAS, a long-term objective of the ERB is to attract more private capital to finance resilient distributed generation projects in New Jersey; and

WHEREAS, CDBG-DR funds administered by HUD and intended to address "unmet needs" not satisfied by other recovery resources are a major source of funding that could be leveraged in the creation of the ERB in combination with State funds; and

WHEREAS, the BPU has made a clear commitment to support the financial sustainability and flexibility of the ERB with BPU clean energy funds, in accordance with applicable statutory requirements; and

WHEREAS, the CDBG-DR funds are being administered by the DCA and any use of those funds by other agencies requires coordination with the DCA; and

WHEREAS, the ERB is not intended to be a new instrumentality of the State, but rather a program jointly operated by the Parties for the objective of promoting energy resilience throughout the State in a manner fully consistent with the approved Action Plan and ensuing amendments; and

WHEREAS, the Parties enter into this EDA-BPU Subrecipient Agreement as an inter-department governmental agreement pursuant to N.J.S.A. 52:14-1 et seq. to set forth their understanding as to the respective duties and responsibilities of each Party in connection with the joint implementation of the ERB and the use of all federal and other funding sources for that purpose.

**NOW, THEREFORE**, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

## **I. General Definitions**

All capitalized words not otherwise defined herein shall have the meaning ascribed to them in the Amended Agreement (Appendix A).

## II. Scope of Agreement

### A. Grant Award

Subject to the terms and conditions of the Amended Agreement, the DCA, as New Jersey's designated recipient of the CDBG-DR Program funds, has agreed that it shall make available to EDA CDBG-DR funds up to the gross amount of five hundred five million and 00/100 (\$505,000,000) Dollars (the "Grant Funds") for the purpose of funding EDA's activities under the Action Plan and subsequent amendments related to the Economic Revitalization Program (the "Program"), as defined in the Amended Agreement. The \$505,000,000 includes an aggregate of \$305,000,000 for EDA's four initial activities under the Program as described in the EDA-DCA Subrecipient Agreement, and \$200,000,000 for the BPU and EDA's administration of the ERB as described in the First Amendment. The Grant Funds must be expended by EDA within two years of the date that HUD executes each grant agreement with DCA for all or a portion of the Grant Funds, with the final grant agreement expected to be executed by HUD and DCA on or by September 30, 2017 ("Final Grant Agreement"), unless an extension is hereinafter granted in writing by the appropriate federal authority and/or as approved by DCA. EDA is required to ensure all contracts (with subrecipients, recipients, and Contractors) clearly stipulate the period of performance or the date of completion. BPU hereby acknowledges that the period of performance or the date of completion of this EDA-BPU Subrecipient Agreement is within two years of the date that the CDBG-DR funds are obligated under the Final Grant Agreement.

### B. Implementation of Agreement

BPU's rights and obligations under this Agreement are as a subrecipient as set forth in 24 CFR 570.502. BPU is responsible for complying with said regulations and for implementing the ERB in a manner satisfactory to the DCA and HUD and consistent with any applicable guidelines and standards that may be required as a condition of DCA's providing the funds, including but not limited to all applicable CDBG Program Administration and Compliance requirements set forth by this Agreement and the Statement of Assurances (attached hereto as Appendix B) executed by BPU and made a part hereof. The provision of a portion of the Grant Funds under this Agreement for administration of the ERB is specifically conditioned on BPU's compliance with this provision and all CDBG-DR Program and CDBG regulations, guidelines and standards.

## III. The Budget

The total amount of CDBG-DR monies allocated by DCA for funding the ERB is \$200,000,000, which includes Administrative Expenses of up to \$1,000,000 and Activity Delivery Costs of up to \$30,000,000. Such Administrative Expenses and Activity Delivery Costs may include costs and expenses incurred by the Parties prior to the execution of this Agreement, as allowed by HUD and consistent with the Action Plan and any amendments thereto. The EDA agrees to allow DCA to reimburse the BPU's Administrative Expenses

and Activity Delivery Costs allocable to the ERB according to the agreed upon annual budget to be jointly approved by BPU and EDA as set forth below, provided the following conditions are met:

1. The ERB Executive Director or the Deputy Director will review and approve timesheets for the ERB staff to ensure that they are in compliance with HUD requirements and APA Number 7 pertaining to the ERB. The BPU time sheets and other supporting data will be provided to EDA in a format that is compatible with inputting the information into the Sandy Integrated Recovery Operations and Management System ("SIROMS"); and
2. All requests for reimbursement sought by BPU shall be properly allocable to Administrative Expenses and Activity Delivery Costs incurred by BPU in connection with its implementation of the ERB program as set forth in the annual budget.

The BPU and the EDA will work together to develop and approve a mutually agreed upon annual budget for the ERB by June 30<sup>th</sup> of each Fiscal Year with the exception of the first Fiscal Year. The first Fiscal Year's ERB budget shall be developed and presented to both Boards, along with the initial approval of the program compliance filing, guides and applications. The mutually agreed upon annual budget will include the use of CDBG and Societal Benefits Charges Program Income to ensure the sustained capitalization of the ERB.

#### **IV. The Energy Resilience Bank**

##### **A. Purpose/Source of Funds**

The Parties agree to jointly operate the ERB, the purpose of which is to help promote energy resilience of New Jersey's critical facilities through financing of energy efficiency and renewable energy projects as outlined in the Action Plan, as it may be amended from time to time, which is posted on DCA's website at <http://www.state.nj.us/dca/divisions/sandyrecovery/>. Through the respective Boards of the BPU and EDA, the ERB will have the authority to fund any project that satisfies the minimum threshold requirements, as outlined in the ERB program guide, guidelines and/or protocols, subject to the terms of the Action Plan, as it may be amended from time to time, and any constraints on availability of funds.

ERB will be capitalized with monies both from the CDBG-DR allocation as set forth in the First Amendment, and BPU clean energy monies obtained through payment of the Societal Benefits Charges ("SBC"), established pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-60 ("EDECA"), which are deposited in the Clean Energy Trust Fund. In consultation with EDA, BPU agrees to determine the amount of funding and the purposes of the funding to be allocated to ERB on an annual basis, subject to the provisions set forth in Section 48:3-60(a)(3) of EDECA. The annual clean energy funds may be used for administrative costs as approved in the annual budget. BPU endeavors to allocate up to an aggregate amount of \$150,000,000 of SBC funding

between Fiscal Year 2015 and Fiscal Year 2018, subject to appropriation and the availability of funds.

B. Duties of the BPU

BPU will contribute its expertise in the areas of energy, technical considerations, and resilience benefits, among others. Its specific responsibilities include:

*Design*

1. Jointly develop with EDA standard application forms (including intake and full applications forms).
2. Jointly develop with EDA initial program eligibility criteria (including technical criteria), financial products, guidelines and/or protocols, and project scoring methodology. In addition, BPU will jointly work with EDA on proposed changes to the foregoing, as necessary, subject to BPU and/or EDA Board approval(s), if required.
3. Jointly draft with EDA standard funding agreements for the ERB's financial products.
4. In conjunction with EDA, establish the technical, operational and financial conditions to be met by facilities in order to receive (where applicable) any loan forgiveness.
5. Together with EDA, develop project-specific requirements and/or conditions which must be agreed to and/or satisfied (as applicable) as pre-conditions to closing an ERB financing with a successful applicant.

*Marketing and Outreach*

6. Jointly publicize and market the ERB's financing programs with the EDA and other State agencies. Such publicity may include, but not be limited to general information sessions with prospective applicants, public "town hall" meetings, press releases, distribution of marketing materials or public notices of grant and/or loan availability, including posting on the ERB website(s).
7. Jointly draft public relations/marketing material related to public announcements about the ERB.
8. Together with EDA, provide general information to prospective applicants that may include optional pre-application conferences regarding viable distributed generation technologies, general facility considerations, the benefits of resilient/distributed generation technology or other technical matters.
9. Jointly with EDA, monitor and track pre-application inquiries.

*Application Processing and Evaluation*

10. Together with EDA, set up a link on the ERB website(s) to receive application-related inquiries, particularly those focused on technical aspects of the ERB, and respond to such inquiries by posting a publicly accessible answer on the website(s).
11. Evaluate applications on the basis of technical feasibility, criticality and resiliency.
12. Make project-specific assessments to maximize cost effectiveness, including recommending additional clean energy program options for which qualified applicants may apply, if BPU authorizes the use of both funding sources.
13. Reject or approve any completed applications in accordance with ERB program guidelines and pursuant to Section IV D of this Agreement.
14. Jointly with EDA, develop an appeals process prior to ERB implementation and manage the appeals process for unsuccessful applicants.
15. In coordination with the New Jersey Department of Environmental Protection (“DEP”), assist applicant, when possible, to stimulate expedient processing of State and federal approvals required for the project approval process.
16. Notify EDA of a recipient’s successful completion of loan forgiveness or grant milestone in accordance with program guidelines and requirements, as applicable.

*Administration and Staffing*

17. Provide constructive input to the EDA in its hiring of the ERB Executive Director, which will be an EDA employee. The ERB Executive Director will report as applicable to both Boards. With constructive input from the EDA, hire an ERB Deputy Director, which will be an employee of BPU. The ERB Deputy Director will as applicable report to both Boards.
18. Hire, train and manage performance of any other ERB-focused staff at the BPU.
19. Manage pre-construction, construction and post-construction inspections, including the intake and processing of all required and applicable HUD construction certifications requirements such as Davis Bacon and compliance with Section 504 of the Rehabilitation Act of 1973.

*Reporting and Compliance*

20. Jointly with EDA, assist in maintaining and providing all necessary technically-based or other information regarding ERB-specific metrics and metrics necessary for EDA to meet HUD reporting requirements, including but not limited to the national

objectives of the State CDBG-DR program, Davis Bacon, and Section 504 compliance.

21. Work in collaboration with the EDA to facilitate all aspects of program delivery and compliance.

C. Duties of EDA

The EDA will contribute its expertise in the financial aspects of the ERB and federal and State compliance requirements.

*Design*

1. Jointly develop with BPU standard application forms (including intake and full application forms).
2. Jointly develop with BPU initial program eligibility criteria (including technical criteria), financial products, guidelines and/or protocols, and project scoring methodology. In addition, EDA will jointly work with BPU on proposed changes to the foregoing, as necessary, subject to BPU and/or EDA Board approval(s), if required.
3. Jointly draft with BPU standard funding agreements for the ERB's financial products.
4. In conjunction with BPU, establish the technical, operational and financial conditions to be met by facilities in order to receive (where applicable) any loan forgiveness.
5. Together with BPU, develop project-specific requirements and/or conditions which must be agreed to and/or satisfied (as applicable) as pre-conditions to closing an ERB financing with a successful applicant.
6. Manage the ERB's financial portfolios.
7. Facilitate the sustained capitalization of the ERB through innovative financing.

*Marketing and Outreach*

8. Jointly publicize and market the ERB's financing programs with the BPU and other State agencies. Such publicity may include, but not be limited to general information sessions with prospective applicants, public "town hall" meetings, press releases, distribution of marketing materials or public notices of grant and/or loan availability, including posting on the ERB website(s).
9. Jointly draft public relations/marketing material related to public announcements about the ERB.

10. Together with BPU, provide general information to prospective applicants that may include optional pre-application conference regarding viable distributed generation technologies, general facility considerations, the benefits of resilient/distributed generation technology or other technical matters, and financial options that may be open to facilities, as well as opportunities for third-party financing. .
11. Jointly with BPU, monitor and track pre-application inquiries.

*Application Processing and Evaluation*

12. Together with BPU, set up a link on the ERB website(s) for those having any application-related inquiries, particularly those focused on financial products, CDBG-DR requirements or other financial considerations, and respond to such inquiries by posting a publicly accessible answer on the website(s).
13. Intake applications for ERB financing and determine the completeness of accompanying materials with assistance from BPU on technical details.
14. Conduct a financial review and perform due diligence of applicants and projects which have successfully completed BPU technical review to determine financial feasibility.
15. Reject or approve any completed applications in accordance with ERB program guidelines and pursuant to Section IV D of this Agreement.
16. Jointly with BPU, develop an appeals process prior to ERB implementation and manage the appeals process for unsuccessful applicants.
17. Following approval of applications from both BPU and EDA, (or from delegated authority, if applicable) finalize financing agreements with applicants and send a pre-closing package to applicants.
18. Disburse ERB funds based on agreed upon milestones to approved applicants in accordance with program guidelines and requirements, and any EDA and/or BPU conditions. .
19. Provide customer relationship management, including collecting financial information, accepting and monitoring of repayments (if applicable), creating and maintaining general accounting records of the terms of financing, notifying loan recipients of any late or delinquent payments, and initiating collection actions when required, in coordination with the State Attorney General's Office.
20. Upon notification by BPU of a recipient's successful completion of loan forgiveness and/or grant milestone in accordance with program guidelines and requirements, make appropriate notifications to recipient (if applicable).

*Internal Operations and Staffing*

21. With constructive input from the BPU, hire an ERB Executive Director, which will be an employee of EDA. The ERB Executive Director will, as applicable, report to both Boards. Provide constructive input to the BPU in its hiring of an ERB Deputy Director, which will be a BPU employee. The ERB Deputy Director will, as applicable, report to both Boards.
22. Hire, train and manage performance of any other ERB-focused staff at the EDA.

*Reporting and Compliance*

23. Publish on a regular basis reports which may include descriptions of ERB activities, success stories, performance statistics and challenges of the ERB sufficient to help the public understand its activities and post the foregoing on the ERB website(s).
24. As further detailed in the EDA Subrecipient Agreement, EDA will gather and report all necessary information required by HUD for disbursement of CDBG-DR funds, including information required for any report and auditable trail.

D. Decision Making

1. While the BPU and EDA Boards will ultimately vote to approve, reject or modify applications, subject to any delegations, the following shall be the process for the evaluation of all ERB applications, not solely those funded with CDBG-DR or other federal, State or private funds:
  - i. Technical Review. BPU staff is responsible for evaluating applicant projects on whether they meet the technical requirements for funding by the ERB, technical feasibility, cost effectiveness, resilience benefit and facility criticality as outlined by ERB program guides. BPU staff, under the direction of the Deputy Director, also is responsible for preparing the technical components of the evaluation of each project proposal in accordance with the ERB program guides, guidelines and protocols.
  - ii. Credit Review. EDA staff will be responsible for considering the financial analysis of the applicant and project, and recommending funding terms and amounts for each project. EDA staff will perform financial analyses, recommend funding sources, terms and amounts, and prepare the credit report for each project proposal, in accordance with the ERB program guides, guidelines and protocols.
  - iii. Executive Director. The ERB Executive Director is an employee of the EDA who is ultimately responsible for managing the pipeline of ERB investments, overseeing review, selection and closing of individual transactions, and recommending the direction of the ERB. The Executive Director shall report

to both the EDA and BPU Boards and be ultimately responsible for implementing the Boards' directives for the ERB.

2. For applications that will receive both SBC and CDBG-DR funding, the approval of the application by both the BPU Board and EDA Board shall be required in accordance with paragraphs IV D 3 and IV D 4 below.
3. BPU Board – For applications that will receive both CDBG-DR and SBC funds, the BPU Board will vote to approve, reject or modify the Technical Review and Credit Review provided by ERB staff for each completed application to the ERB and the use of SBC funds for that application.
4. EDA Board – For applications that will receive both CDBG-DR and SBC funds, the EDA Board will vote, or its delegates will determine to approve, reject or modify the Technical Review and Credit Review provided by ERB staff for each completed application to the ERB and the use of CDBG-DR funds for that application.
5. For applications that will receive both CDBG-DR and SBC funding, a rejection of the application by either the BPU Board or the EDA Board, or as determined by its delegates, shall result in a rejection of the application.
6. Applications that will receive solely SBC funds will only require the vote of the BPU Board in accordance with paragraph IV D 3. Notwithstanding the foregoing the EDA Board, or its delegates, shall provide a recommendation to the BPU on whether the SBC funded application should receive funding from the ERB. The BPU Board shall determine whether an application receives SBC funds based on the Technical Review and Credit Review and the recommendation from the EDA Board.
7. Applications that will receive solely CDBG-DR funds will only require the vote of the EDA Board, or the approval of its delegates, in accordance with paragraph IV D 4. Notwithstanding the foregoing, the BPU Board, or its staff if authorized, shall provide a recommendation to the EDA on whether the application should receive CDBG-DR funding from the ERB. The EDA Board shall determine whether an application receives CDBG-DR funds based on the Technical Review and Credit Review and the recommendation from the BPU Board.
8. Both the EDA and the BPU will jointly agree as to the use of any CDBG and SBC Program Income (defined in Section VIII(A) herein).
9. The ERB staff will seek delegations of authority from their respective Boards as necessary to strive to enable maximum efficiencies in the administration of the ERB.

E. Project Selection and Approval

In recognition of the ERB's objectives and the need for transparency throughout its processes, the Parties will evaluate and select all projects in accordance with established

ERB program compliance filings, applications and guides, approved by the EDA and BPU Boards and publically available on the ERB website(s). Any material amendments or alterations of the ERB program guides are to be separately approved by the respective Boards of the BPU and the EDA with any appropriate public notice and opportunity for comment as may be required.

At least initially, the Parties envision accepting the ERB applications on a rolling basis. Completed applications will be reviewed in the order in which they are received, provided they are complete. The Parties reserve the authority to jointly modify the process of review and selection of projects consistent with the Action Plan and this Agreement.

#### *Selection Criteria*

1. Minimum Threshold Criteria – In order for a project to be eligible for ERB financing, the project must meet the minimum requirements for program eligibility, technical feasibility, cost effectiveness, CDBG-DR requirements, and financial viability, as outlined in the ERB program guides, guidelines and/or protocols.
2. Evaluative Criteria – All projects which satisfy the minimum threshold criteria referenced above will be evaluated in accordance with the ERB program guides, guidelines and/or protocols.

#### *Approval Process*

Subject to satisfaction of all other HUD criteria, the Parties expect to recommend financing to any project which meets the minimum threshold criteria as described in the ERB program guides, guidelines and/or protocols, subject to but not limited to the following restriction: The ERB staff may determine that the quantity of financing requested for eligible projects is likely to exceed the remaining capital of the ERB. In such case, the EDA and BPU, with appropriate notice, will restructure ERB fund allocation in a feasible manner that may, for example, include awarding funds to the highest-scoring projects based on clear scoring guidelines established and posted by the ERB. In the event that CDBG funding is exhausted and SBC funding is to be used exclusively in funding ERB projects, EDA and BPU agree to decide whether the nature of the ERB and the Parties' responsibilities thereunder should change. As part of the assessment, the Parties will reassess all ERB guidelines, including the continued role and function of EDA in the ERB process and the applicability of HUD/CDBG requirements and APA Number 7.

#### **F. Subsequent Revisions to ERB Program Guides**

In light of the dynamic environment in which the ERB operates, the Parties anticipate the need for ongoing development of guides, processes, new credit products or refined selection criteria by ERB staff. The Parties recognize that this flexibility must be balanced against the need for transparency and predictability in ERB policies for the

benefit of current and future applicants. To achieve both these objectives, ERB staff shall consider the following steps:

1. Internal evaluation of potential revisions to the main aspects of the ERB program guides, guidelines and/or protocols consistent with this Agreement, the Action Plan and applicable statutory criteria.
2. The Parties will provide public notice of the changes and an opportunity for comment when needed.
3. Once changes have been agreed upon by the ERB staff, the BPU and EDA Boards (if required) and IIUD or DCA, when necessary, the Parties will update information on the ERB's website(s) to inform potential and existing applicants, along with the future effective date of those changes.

#### G. Eligible Costs

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

FDA will, as part of the project feasibility analysis, establish and implement processes and procedures to prevent any duplication of benefits as defined by Section 312 of the Stafford Act. Guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011). EDA processes must verify all sources of disaster assistance for each activity, determine an applicant's unmet need(s) before awarding assistance, and ensure Participating Parties agree to repay the assistance if they later receive other disaster assistance for the same purpose.

In accordance with 24 CFR 58.6(b), EDA and BPU agree that they will not provide any Grant Funds to an applicant that had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance and the applicant failed to obtain and maintain such insurance.

#### II. Job Relocation Clause

HUD has waived provisions of 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482(h); EDA and BPU may provide assistance to any applicant that was operating in the disaster-declared labor market area before the date of the disaster and has since moved, in whole or in part, from the affected area to another state or to a labor market area within New Jersey to continue business.

I. Building Code Standards

For all projects that include construction or rehabilitation, BPU shall require recipients of Grant Funds to meet all State and local building code requirements, in addition to those cited in Appendix D (Construction, Alterations, and Rehabilitation) attached hereto and incorporated herein. Further, BPU and EDA must undertake and promote, and require recipients of Grant Funds to consider, hazard mitigation techniques and the utilization of green technologies and practices where doing so is feasible and cost-effective.

J. Mitigation

BPU and EDA agree to encourage those receiving any Grant Funds to incorporate preparedness and mitigation measures into all rebuilding activities to minimize damage in the event of future floods and/or hurricanes.

K. Assurances

BPU and EDA shall be responsible for administering the ERB in compliance with all applicable State and federal laws and regulations. It shall be BPU's and EDA's responsibility to require that all of its Sub-subrecipients, grantees, borrowers, Contractors, and all tiers of their subcontractors, adhere to all applicable State and federal laws and regulations, and to conduct all necessary monitoring for such compliance. As to laws and regulations which apply to the use of CDBG funds, BPU is concurrently executing the Statement of Assurances, attached hereto as Appendix B, which shall be deemed to be requirements of this Agreement to the extent that they are applicable. As to any other laws and regulations which may apply to construction projects, BPU is responsible for determining the applicable laws and regulations and ensuring compliance therewith.

Notwithstanding the foregoing, DCA is responsible for environmental review, decision making and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law, since under CDBG regulations, BPU and EDA are expressly prohibited from assuming such responsibility. EDA and BPU agree, however, that they will not commit any Grant Funds to a project until they have approval from the New Jersey Department of Environmental Protection to do so, and HUD approves a certification of compliance with environmental laws and request for release of funds.

BPU and EDA agree to comply with all applicable federal CDBG -DR statutes and regulations as more fully detailed in Appendix B, subject to waivers cited in the Federal Register / Vol. 78, No. 43 / Tuesday, March 5, 2013, Department of Housing and Urban Development, [Docket No. FR-5696-N-01] Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy.

L. Cooperation with HUD and the DCA

BPU and EDA each hereby binds itself, certifies, and assures that it will comply with all federal, State, and local regulations, policies, guidelines and requirements, as they relate to the application, in acceptance and use of State and federal funds. The Parties expressly acknowledge that the matters which are the subject of this Agreement are under the CDBG Disaster Recovery Program administered by HUD, which by its emergency nature is subject to ongoing modification and clarifications. The Parties' obligations under this Agreement are subject to compliance with applicable statutes and regulations of the CDBG program, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD. BPU and EDA agree that in connection with their respective rights and obligations under the Agreement, they shall cooperate with HUD and DCA regarding the administration and audit of the ERB, including compliance with various operating and reporting procedures which may hereinafter be promulgated by the DCA and/or HUD.

M. LMI Benefit

Pursuant to the regulations promulgated by HUD for the CDBG-DR Program, the aggregate use of CDBG-DR funds shall principally benefit Low and Moderate Income Families in a manner that ensures that at least 50% of the Grant Funds are expended for activities that benefit such persons. In furtherance of this Statewide goal, EDA and BPU agree to use best efforts to ensure that at least 60% of the Grant Funds allocated for ERB are expended for activities that benefit Low and Moderate Income Families. This LMI benefit shall be tracked by EDA to DCA on a reporting schedule to be determined.

N. Contract Monitor/Performance Measures

The contract monitor for the EDA on this Agreement is the Chief Executive Officer of the EDA, or her designee. The performance measures for this Agreement shall include the successful performance and completion of BPU's obligations as provided in this Agreement and any attachments, as well as all guidelines for the ERB. BPU shall submit to the EDA on a schedule and dates to be provided by the EDA, a report of project progress and beneficiary data in a format to be provided by the EDA. Reporting requirements may require BPU to obtain data from third parties (i.e. persons that receive Grant Funds or other beneficiaries of the program(s), including Sub-subrecipients, grantees, and/or borrowers funded under this Agreement, tenants/operators/users of facilities or equipment acquired or improved with Grant Funds provided under this Agreement). It shall be the BPU's obligation to implement any contractual arrangements it may need for use of, and access to, such data.

BPU must, in advance of signing subcontracts related to this Agreement, ensure that Sub-subrecipients, developers, Contractors and/or other third party entities have in place adequate financial controls and procurement processes and have established procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act.

Pursuant to HUD's waiver of 24 CFR 570.492, EDA and/or DCA shall make reviews and audits, including onsite reviews of any Sub-subrecipients, designated public agencies, and units of local government as may be needed to meet the requirements of 42 U.S.C. 5304(e)(2), as amended. In the event of noncompliance, the EDA and/or DCA shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence.

#### O. Conflict of Interest

Except for approved eligible administrative and personnel costs, none of the BPU's designees, agents, members, officers, employees, consultants or members of its governing body, or anyone who is in a position to participate in a decision-making process or gain inside information with regard to the Project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Project or benefit there from, which is part of this Agreement at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the EDA and the EDA has approved such exception.

The procedures for requesting, documenting, and submitting a request for an exception from the Conflict of Interest provisions shall include the applicable procedures delineated in 24 CFR 570.489(h)(4) and in the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order No. 189. This Conflict of Interest provision shall be in addition to the requirements in the "Common Rule," 24 CFR Part 84, 24 CFR Part 85, 24 CFR 570.611, 24 CFR 570.489(h).

The BPU agrees to abide by the provisions of 24 CFR 84.42 and 24 CFR 570.611, which include (but are not limited to) the following:

1. The BPU shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.
2. No employee, officer or agent of the BPU shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
3. No covered persons who exercise or have exercised any functions or responsibilities with respect to assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the assisted activity, or with respect to the proceeds from the assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any

person who is an employee, agent, consultant, officer, or elected or appointed official of the DCA, BPU, EDA, or any designated public agency.

4. BPU will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

## **V. PAYMENT PROCESS; COMPENSATION**

Subject to the requirements in Section III of this Agreement (“The Budget”), EDA shall submit to DCA Draw Down requests for payment of Administrative Expenses and Activity Delivery Costs incurred by BPU in connection with performing its duties and responsibilities hereunder. Such Draw Down requests and the consideration of their payment by DCA shall conform to the standards and procedures set forth in the Amended Agreement. Pursuant to the First Amendment, DCA has agreed that, once approved, such payments shall be made directly to BPU via electronic funds transfer.

Indirect costs are not reimbursable under this Agreement. Eligible travel expenses incurred under this Agreement shall be paid in accordance with the Grant Agreement.

In the event of non-compliance with this Agreement, the EDA or DCA may withhold payment to the BPU until the EDA or DCA, as applicable, deems the BPU has brought the ERB within compliance. Noncompliance on any aspect funded under this Agreement may serve as a basis to withhold payment on other funds payable under this Agreement.

## **VI. TERM OF AGREEMENT; TERMINATION OR SUSPENSION OF AGREEMENT**

### **A. Term of Agreement**

This Agreement shall be deemed effective upon execution by both Parties and the service on the EDA of a BPU Board Order approving execution of the Agreement. The Agreement shall continue in full force until such time as BPU and EDA no longer are exercising any supervision or control over any of the Grant Funds, including CDBG and SBC Program Income, unless terminated prior to such time in accordance with the terms and conditions of this Agreement.

### **B. Termination/Suspension for Cause**

Either Party may, after giving reasonable written notice specifying the effective date, suspend or terminate this Agreement in whole or in part if either Party materially fails to comply with any term of this Agreement, which shall include, but not be limited, to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD or DCA guidelines, policies or directives as may be applicable at any time;
2. Failure, for any reason, of either Party to fulfill in a timely and proper manner the material obligations under this Agreement;
3. Submission by BPU of reports to the EDA, DCA, HUD, or any of their auditors, that are incorrect or incomplete in any material respect, or
4. Ineffective or improper use of Grant Funds as provided for under this Agreement.

Notwithstanding anything hereinabove to the contrary, each Party agrees that it shall not exercise its right to suspend or terminate this Agreement until it shall have given written notice to the other Party of the alleged non-compliance and has given such Party a reasonable amount of time to correct and/or cure the alleged non-compliance.

C. Termination for Convenience

The EDA may terminate the Agreement in whole or in part at any time by giving at least thirty (30) days prior written notice to BPU with written notification setting forth the reason(s), if any, for termination. Upon receipt of notice, BPU shall, unless the notice directs otherwise, immediately discontinue all activities set forth in the Section IV B ("Duties of the BPU"), except as may otherwise be legally required pursuant to a binding commitment to perform.

BPU may terminate the Agreement in whole or in part at any time by giving at least thirty (30) days prior written notice to EDA, with such written notification setting forth the reasons for termination, if any, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the EDA determines that the remaining portion of the BPU's duties hereunder will not accomplish the purposes of the ERB, the EDA may terminate the Agreement in its entirety under this paragraph or the Termination/Suspension for Cause provision of this Agreement.

D. Termination Due to Unavailable Funding

The continuation of this Agreement is contingent upon the appropriation and release of sufficient funds to the EDA to fulfill the requirements of this Agreement. Failure of the appropriate authorities to approve and provide an adequate budget to the EDA for fulfillment of this Agreement shall constitute reason for termination of the Agreement by either Party. BPU shall be paid for all authorized services properly performed prior to termination.

#### E. Obligations Governing Use of CDBG Funds Survive Termination

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

#### F. Payment Upon Termination

Except as in the event of termination or suspension for cause, BPU shall be entitled to payment of Administrative Expenses and Activity Delivery Costs no later than ninety (90) days from the date of termination contained within the notice, to the extent that requests represent expenses incurred for eligible activities satisfactorily completed during the term of the Agreement and are otherwise payable under the terms of this Agreement.

### **VII. ADMINISTRATIVE REQUIREMENTS**

#### A. Documentation and Record-Keeping

##### *1. Records to be Maintained*

The Parties shall maintain all Project records required by 24 CFR 570.506 and as more fully detailed in Appendix C (Records and Retention) attached hereto and incorporated herein.

##### *2. Access to Records*

With respect to those records referenced in subsection 1 above, the Parties shall comply with the retention and access requirements set forth in 24 CFR 570.506. The DCA, the State Comptroller, HUD, the Comptroller General of the United States, and any of their duly authorized representatives or agents, shall have access to any books, documents, papers and records of the Parties which are directly pertinent to this Agreement for the purpose of audits, examinations, and making excerpts and transcriptions.

Each Party understands that applicant information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the DCA's or either Party's responsibilities with respect to services provided under this Agreement, is prohibited by either Party unless written consent is obtained from such applicant requesting financing and, in the case of a minor, that of a responsible parent/guardian. Notwithstanding the foregoing, either Party, as an

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

The Parties shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding public records, privacy and obligations of confidentiality.

All records, reports, documents, or other material or data, including electronic data, related to this Agreement and/or obtained or prepared by the Parties, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the services contracted for herein shall become the property of the Party which obtained or prepared such information, unless otherwise mutually agreed by the Parties, and provided that such Party has ownership rights in the foregoing and same is not subject to third party rights pursuant to a legally binding agreement.

### *3. Close-outs*

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

### *4. Audits and Inspections*

In addition to any other audit requirements set forth in this Agreement, EDA and BPU agree to comply with the OMB Circular 128, "Audits of State and Local Governments", which mandates that a comprehensive single audit (A-33) be performed by the independent auditor of all federally funded awards administered by EDA or BPU, including the Grant Funds covered by this Agreement. It is hereby agreed that the DCA, the State Comptroller, HUD, Office of Inspector General, HUD monitors, and auditors contracted by any of them, shall have the option of auditing all records and accounts of EDA, BPU and/or their borrowers, grantees, Contractors, subcontractors and subrecipients (collectively, the "Audit Parties") that relate to this Agreement at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data upon providing the Audit Parties, as appropriate, with reasonable advance notice. EDA and BPU shall comply, and shall require the other Audit Parties to comply, with all relevant provisions of State law pertaining to audit requirements, including NJ OMB Circular Letter 98-07 and NJ State Grant Compliance Supplement (available on the internet at <http://www.statc.nj.us/treasury/omb/grant.htm>). Any deficiencies noted in audit reports

must be fully cleared within thirty (30) days after receipt by EDA, BPU, or the other Audit Parties, as appropriate.

Failure of either Party and/or the other Audit Parties to comply with the above audit requirements will constitute a violation of this Agreement and may, at the DCA's option, result in the withholding of future payments and/or return of Grant Funds paid under this Agreement. Each Party agrees, and shall require the other Audit Parties to agree, to have an annual audit conducted in accordance with current State policy concerning such audits, OMB Circulars A-133 and A-128, and 24 CFR 85.26.

Applicant Data: BPU and EDA shall maintain applicant data demonstrating eligibility for services provided. Such data shall include, but not be limited to, applicant name, address or other basis for determining eligibility, and description of service provided. Such information shall be made available to DCA monitors or their designees for review upon request.

#### B. Procurement

Each Party shall comply with the requirements of 24 CFR 85.36 (except paragraph a) or the equivalent State procurement laws and regulations as certified by HUD, and the current State policy and State regulations and requirements regarding procurement, including but not limited to Executive Order 125 (Christie 2013). This requirement is in addition to whatever State laws may apply to procurement by the respective Party.

### VIII. COMPLIANCE PROVISIONS

#### A. Program Income

##### 1. *Recording Program Income*

CDBG Funds: EDA shall collect and record CDBG Program Income generated by activities funded in whole or in part by CDBG funds under this Agreement.

CDBG Program Income, which is defined in 24 CFR 570.500(a) and further clarified in the Federal Register notice, (HUD Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant Disaster Recovery Funds in Response to Hurricane Sandy, March 5, 2013) means any gross income received by EDA or BPU that was directly generated from the use of the Grant Funds. This includes, but is not limited to payments of principal and interest on any CDBG-funded portion of ERB loans made by EDA, as well as interest earned on CDBG Program Income pending disposition of the income, but excluding interest earned on Grant Funds held in a revolving loan account, which must be returned to DCA for remittance to HUD. By way of example and for clarification purposes only, if an ERB loan is funded 50% with CDBG monies and 50% with SBC monies, 50% of such loan repayment shall be considered CDBG Program Income and 50% shall be considered SBC Program Income, as defined herein below.

CDBG Program Income received before or after closeout of the Activity that generated the CDBG Program Income shall be used for additional disaster recovery activities and shall be treated as additional disaster recovery CDBG funds subject to the requirements of this Agreement and shall be used in accordance with the DCA's Action Plan.

It is expected that DCA will establish a CDBG Program Income account specifically for EDA in the DRGR, which is HUD's reporting systems of record for CDBG-DR funds, and will record as part of the financial transaction the receipt and expenditure of CDBG Program Income from ERB. EDA agrees to submit a quarterly report to the DCA detailing receipt and uses of CDBG Program Income.

**SBC Funds:** EDA shall collect and record SBC Program Income generated by activities funded in whole or in part by SBC funds under this Agreement.

The term SBC Program Income shall mean any gross income received by EDA and/or BPU in connection with ERB that was directly generated from the use of SBC funds. This includes, but is not limited to payments of principal and interest on any SBC-funded portion of ERB loans made by EDA and/or BPU, interest earned on SBC Program Income pending disposition of the income, and interest earned on SBC funds held in a revolving loan account.

SBC Program Income received before or after closeout of the Activity that generated the SBC Program Income should be used for ERB purposes and should be used in accordance with the APA Number 7 and Section IV of this Agreement, unless the EDA and BPU Board, if required, agree otherwise in writing.

EDA shall establish a SBC Program Income account specifically for SBC funds and shall record as part of the financial transaction the receipt and expenditure of SBC Program Income by EDA. EDA agrees to submit a quarterly report to the BPU detailing receipt and uses of SBC Program Income. BPU agrees to provide information EDA may request in order to satisfy its ERB reporting requirements to DCA and/or HUD.

## *2. Use of CDBG Program Income*

EDA agrees to create, operate and maintain one or more revolving loan funds compliant with all CDBG requirements and the DCA Program Income Policy and to deposit all CDBG Program Income receipts into these funds. BPU and EDA shall create processes for the administration of the revolving loan funds, eligibility requirements, application processes, underwriting criteria, and related policies and procedures. Pursuant to Section III of this Agreement, all CDBG Program Income receipts generated by activities funded under this Agreement must be deposited into the revolving loan funds and may only be used for additional disaster recovery and revitalization activities related to ERB. A maximum of 5% (five percent) of CDBG Program Income receipts may collectively be used by EDA and/or BPU for eligible administrative expenses related to operation of the revolving loan fund.

### 3. *Change of Use*

The requirements of 24 CFR Section 570.489(j) regarding change of use of real property applies to real property within EDA's or BPU's control which was acquired or improved in whole or in part using CDBG-DR funds in excess of the threshold for small purchase procurement (24 CFR 85.36). These standards apply from the date CDBG-DR funds are first spent for the property until five years after closeout of the Grant Funds.

#### B. Use and Reversion of Assets

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

1. BPU shall transfer to the EDA any Grant Funds on hand and any accounts receivable attributable to the use of Grant Funds under this Agreement at the time of expiration, cancellation, or termination, but BPU shall be entitled to retain any SBC monies allocated for use in the ERB.
2. Immovable property under EDA's or BPU's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives set forth in 24 CFR 570.208 until five (5) years after expiration of this Agreement (or such longer period as the DCA deems appropriate). If EDA or BPU, as applicable, fails to use such immovable property in a manner that meets a CDBG National Objective for the prescribed period of time, EDA or BPU, as applicable, shall pay to the DCA an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. Such payment shall constitute CDBG Program Income to the DCA. EDA or BPU, as applicable, may retain real property acquired or improved under this Agreement after the expiration of the five-year period, or such longer period as the DCA deems appropriate.
3. In all cases in which equipment acquired, in whole or in part, with Grant Funds is sold, the proceeds shall be CDBG Program Income (prorated to reflect the extent to which Grant Funds received under this Agreement were used to acquire the equipment). Equipment not needed by EDA or BPU, as applicable, for activities under this Agreement shall be (a) transferred to the DCA for the CDBG program or (b) retained by EDA or BPU, as applicable, after compensating the DCA an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

## IX. GENERAL CONDITIONS

### A. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. In the event that BPU contracts with third parties to perform any of the services to be performed hereunder, such third parties shall at all times remain an "independent contractor" to BPU with respect to the provision of such services. The EDA shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, with respect to such third party contracts.

### B. Hold Harmless/Indemnity Contractors/Subcontractors

To the extent that BPU is permitted to and utilizes the services of any third parties in performance of BPU's duties and obligations under this Agreement, any contract entered into shall contain a provision that the Contractor and/or subcontractor shall hold BPU, EDA and DCA harmless and defend and indemnify EDA, BPU and DCA from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor and/or subcontractor's performance or nonperformance of the services.

### C. Workers' Compensation

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

### D. Insurance and Bonding

Unless expressly waived in writing by EDA, BPU shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond, or equivalent insurance acceptable to the EDA.

### E. DCA/HUD Recognition

BPU and EDA shall ensure recognition of the role of the DCA and HUD in providing services through this Agreement. All activities, facilities and items used pursuant to this Agreement shall be prominently labeled as to funding source. In addition, BPU and EDA will include a reference to the support provided herein in all publications made possible with Grant Funds made available under this Agreement.

### F. Amendments

The BPU or EDA may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing and signed by a duly authorized representative of each Party. Such amendments shall not

invalidate this Agreement, nor relieve or release the BPU or EDA from its obligations under this Agreement, except as may otherwise be provided. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the ERB, including purpose or beneficiaries; ii) need to extend the availability of ERB funds; iii) revision that would result in the need for additional funding; and iv) expenditures on items for which applicable cost principles (OMB Circulars A-87 and A-122) require prior approval (see 24 CFR 570.200h for pre-award/pre-agreement costs).

Any change to ERB program guides, guidelines and/or protocols will not require an amendment to this Agreement, but will require the Parties' approvals as outlined in the ERB program guides, guidelines and/or protocols.

The EDA may, in its discretion, require that this Agreement be amended to conform to federal, State or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed EDA and BPU.

#### G. No Assignment

No Party may transfer or assign this Agreement or transfer or assign any of its rights or assign any of its duties hereunder without the express prior written consent of the other Party. However, if the Parties do mutually agree to an assignment, all rights and obligations set forth herein shall inure to the benefit of the Parties and to their respective successors and assigns.

#### H. Severability

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

#### I. Entire Agreement

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

J. No Authorship Presumptions

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

K. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of New Jersey.

L. No Personal Liability of Individual Representatives

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

M. Delay or Omission

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

N. Prohibited Activity

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

O. Safety

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

P. Fund Use

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

Each Party shall certify, and shall require that its borrowers, grantees, subrecipients, Contractors and any sub-contractors certify, that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that they will not and have not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each Party shall disclose, and shall require that each of its borrowers, grantees, subrecipients, Contractors and sub-contractors also disclose, any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

Q. Subcontractors

Each Party may enter into subcontracts with third parties for the performance of any part of such Party's respective duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of either Party to the other Party for any breach in the performance of that Party's or any of its subcontractor's duties.

R. Copyright

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to either Party for copyright purposes. Any such material produced as a result of this Agreement that might be subject to copyright is the property of, and all rights shall belong to, the DCA, except as may otherwise be provided in a third party contract related to the implementation of the ERB.

Software and other materials owned by either Party prior to the date of this Agreement and not related to this Agreement shall be and remain the property of the respective Party.

The Parties shall cooperate to provide to each other any and all documents in their possession requested by the other Party in connection with the specific awards made under this Agreement, subject to claims of attorney-client and/or deliberative process privilege. All records, reports, documents and other material delivered or transmitted to one Party by the other Party shall remain the property of that original Party and shall be returned to that original Party, upon request, at termination, expiration or suspension of this Agreement.

S. Drug Free Workplace Compliance

BPU and FDA hereby certify that they shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended and with 24 CFR part 21. Further, there shall be a provision mandating compliance with the Drug-Free Workplace Act of 1988, as amended, in any contracts executed by and between either Party and any third parties funded using Grant Funds under this Agreement in accordance with 48 CFR part 23.500, et seq., and 48 CFR part 52.223-6.

T. Notices

Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be either hand-delivered or mailed, postage prepaid by first-class mail, registered or certified, return receipt requested, or delivered by private, commercial carrier, express mail, such as Federal Express, or sent by, telecopy (facsimile) or other similar form of rapid transmission, and confirmed by written confirmation (postage prepaid by first-class mail, registered or certified, return receipt requested or private, commercial carrier, express mail, such as Federal Express) at substantially the same time as such rapid transmission. All such communications shall be transmitted to the address or numbers set forth below, or such other address or numbers as may be hereafter designated by a Party in written notice to the other Party compliant with this Section.

**To the DCA:**  
Department of Community Affairs  
Office of Legal & Regulatory Affairs  
101 South Broad Street  
Trenton, New Jersey 08625  
Facsimile: 609-984-6696

**To EDA:**

New Jersey Economic Development Authority  
36 West State Street  
PO Box 990  
Trenton, New Jersey 08625  
Facsimile: 609-292-5722  
Attention: ERB Executive Director and EDA CEO

**To the BPU:**

New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
PO Box 350  
Trenton, New Jersey 08625  
Facsimile: 609-777-3348  
Attention: Board Secretary and Office of Clean Energy

**U. Applicability of Provisions Included/Excluded from Agreement**

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

Likewise, execution of this Agreement will not obligate either Party to comply with any regulation, statute, public law, Executive Order, agency directive or OMB Circular, if not otherwise applicable to the use of the CDBG funds provided herein or to the particular projects performed under this Agreement, even though it may be referenced in this Agreement or in the Appendices.

**X. No Third Party Beneficiary**

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

**XI. Miscellaneous**

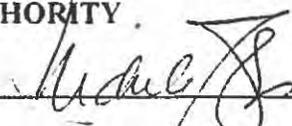
- A. This Agreement is being entered into for the sole purpose of evidencing the mutual understanding and intention of the Parties with respect to the joint administration of the ERB.
- B. The recitals appearing in the Preambles are made part of this Agreement and are specifically incorporated herein by reference.

- C. The Parties shall administer their responsibilities under this Agreement consistent with New Jersey Department of Treasury requirements, the Action Plan as it may be amended from time to time, ERB program guides, guidelines and/or protocols, any relevant State and federal requirements, to the extent applicable, and the Amended Agreement.
- D. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall together constitute one (1) and the same instrument.

[The remainder of this page is intentionally left blank.]

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

**NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY**

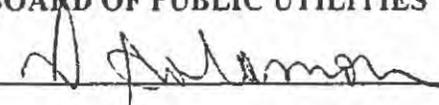
  
\_\_\_\_\_

Name: Michele Brown

Title: Chief Executive Office

Date: August 13, 2014

**BOARD OF PUBLIC UTILITIES**

  
\_\_\_\_\_

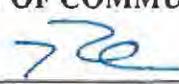
Name: Dianne Solomon

Title: President

Date: 8/19/14

The execution of this Agreement by the Parties above has been received and acknowledged by the signature below:

**DEPARTMENT OF COMMUNITY AFFAIRS**

  
\_\_\_\_\_

Name: Richard Constable

Title: Commissioner

Date: 8/19/14



**APPENDIX A  
AMENDED AGREEMENT**

STATE OF NEW JERSEY  
DEPARTMENT OF COMMUNITY AFFAIRS  
INTERAGENCY AGREEMENT  
WITH THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
IMPLEMENTING GRANT UNDER THE COMMUNITY DEVELOPMENT BLOCK  
GRANT DISASTER RECOVERY ("CDBG-DR") PROGRAM

This First Amendment to the Subrecipient Agreement (the "First Amendment") is made and entered into on this 8th day of August, 2014 by and between the NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), and the STATE OF NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("EDA")

The DCA shall be referred to as ("GRANTEE"). GRANTEE and the EDA may sometimes hereinafter be collectively referred to as the "Parties" and individually as a "Party."

**PRFAMBLES**

WHEREAS, GRANTEE and the EDA entered into a subrecipient agreement, effective May 21, 2013, (the "Agreement") which made available to EDA up to four hundred sixty million and 00/100 dollars (\$460,000,000.00) of CDBG-DR funds for the purpose of funding GRANTEE's activities under the Economic Revitalization Program; and

WHEREAS, Action Plan Amendment Number 4 to New Jersey's Initial Action Plan for the Utilization of CDBG-DR Funds in Response to Superstorm Sandy, which was approved by HUD on January 8, 2014, adjusted the funds made available to the EDA Grants/Forgivable Loans to Small Businesses Program to \$100,000,000; a transfer of \$160,000,000 from EDA to housing programs.

WHEREAS, a second allocation of CDBG-DR funds was appropriated to the State of New Jersey (the "State") for disaster recovery efforts from Superstorm Sandy in November 2013; and

WHEREAS, Action Plan Amendment Number 7 to New Jersey's Initial Action Plan for the Utilization of CDBG-DR Funds in Response to Superstorm Sandy, which was approved by HUD on May 30, 2014 provides for the use of funds from the second allocation by GRANTEE in the amount of: i) \$5,000,000 for the Tourism Marketing Campaign (Section 3.4.1), and ii) \$200,000,000 to create and maintain the New Jersey Energy Resilience Bank ("ERB") to address Statewide energy resilience needs (Section 3.5.2 of); and

WHEREAS, pursuant to Section VII (F) of the Agreement, the Parties are required to amend the Agreement to reflect the change in CDBG-DR funding allocated to the EDA and the incorporation of new activity under the EDA-administered Economic Revitalization Program. The amended total of CDBG-DR funds made available to EDA

reflected in this Amendment is up to five hundred five million and 00/100 dollars (\$505,000,000).

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

I. Section I General Definitions. Economic Revitalization Program definition is revised to the following:

"Economic Revitalization Program", for purposes of this Agreement, means Section 4.3 of the Action Plan and shall also include the New Jersey Energy Resilience Bank set forth in Section 3.5.2 under Section 3.5 Infrastructure and the Tourism Marketing Campaign detailed within the guidelines of the Action Plan and updated in the ensuing Action Plan Amendment Number 7.

II. Section II (A). Grant Award, is deleted in its entirety and the following is substituted in lieu thereof:

A. **Grant Award**

Subject to the terms and conditions of this Agreement, the GRANTEE, as administrator of the CDBG-DR Program, shall make available to Subrecipient disaster recovery funds up to the gross amount of five hundred five million, and 00/100 (\$505,000,000) Dollars (the "Grant Funds") for the purpose of funding GRANTEE's activities under the Action Plan and subsequent amendments related to the Economic Revitalization Program (the "Program"). The Parties acknowledge that \$5 million of the above-referenced Grant Funds represent additional monies allocated to the EDA for its tourism marketing campaign; Subrecipient's receipt of this sum is contingent upon HUD's approval of the State's waiver request to increase by \$5 million the State's cap on using CDBG-DR monies for tourism. The Grant Funds must be expended by Subrecipient within two years of the date that HUD executes each grant agreement with GRANTEE for all or a portion of the Grant Funds, with final grant agreement to be executed on or by September 30, 2017, unless an extension is hereinafter granted in writing by HUD or as approved by GRANTEE. Subrecipient is required to ensure all contracts (with subrecipients, recipients, and Contractors) clearly stipulate the period of performance or the date of completion.

III. A new subsection II (D) 1 (e) shall be added and provide as follows:

e) **Infrastructure** - Subrecipient will facilitate the Programs defined in Section 3.5 of Amendment 7 to the Action Plan in order to best position the State to be prepared for future disasters by setting policies and standards aimed at realizing smart infrastructure investment, identifying resilience opportunities, and using technological innovation and mitigation designs to meet future challenges and hazards.

IV. A new subsection II(D) 1 (f) shall be added and provide as follows:

(f) **New Jersey Energy Resilience Bank**—Subrecipient will provide technical and financial support, including but not limited to grants and low-interest loans, to critical facilities in the State to realize energy resilience projects or enhancements to existing energy infrastructure. GRANTEE acknowledges that the ERB program will be administered by the EDA in conjunction with the Board of Public Utilities (BPU) pursuant to the terms of a memorandum of understanding, dated as of the date hereof, which may be amended from time to time; however EDA remains solely responsible for all obligations contained within the Agreement as Subrecipient of CDBG-DR funds

V. Section II (D) 2 The Budget

A. The first paragraph is deleted in its entirety and the following is substituted in lieu thereof:

Activity/Item	Maximum Amount
Tourism/Marketing	\$30,000,000
Grants/Forgivable Loans	\$100,000,000
Direct Loans	\$100,000,000
Neighborhood and Community Revitalization	\$75,000,000
<b>New Jersey Energy Resilience Bank</b>	<b>\$200,000,000</b>
<b>TOTAL</b>	<b>\$505,000,000</b>

The total budget of \$505,000,000 includes Administrative Expenses of up to \$2,525,000 and Activity Delivery Costs of up to \$75,750,000.

This reflects the changes contained in Action Plan Amendments 5 and 7.

B. The following additional paragraph is added:

“The Parties may agree, in writing, to a revision of the Budget or a reallocation of funds between categories within the Budget without the need to amend this Agreement; provided however, that in no case shall any such revisions or reallocations exceed the total allocation under the Agreement.”

C. “Administrative Expenses” - “\$2,300,000 (Two Million Three Hundred Thousand Dollars)” shall be deleted and “\$2,525,000 (Two Million Five Hundred Twenty Five Thousand Dollars)” shall be substituted in lieu thereof.

D. “Activity Delivery Costs” - “\$69,000,000 (Sixty Nine Million Dollars)” shall be deleted and “\$75,750,000 (Seventy Five Million Seven Hundred Fifty Thousand Dollars)” shall be substituted in lieu thereof.

VI. Section II (D) 3 Performance Requirements

The following additional paragraph is added following the fourth bullet:

"Subrecipient will make best efforts to launch ERB in August 2014. Subrecipient intends to complete all ERB-related Activities of the Program, including 100% expenditure of ERB-allocated funds that have been drawn down no later than two years from the execution date of each Grant Agreement between GRANTEE and HUD, and it shall endeavor to assist as many individual qualifying facilities as is practicable given the Grant Fund allocation for ERB. Activity completion and expenditure requirements do not apply to Activities separately funded through the Subrecipient's or GRANTEE's receipt and expenditure of Program Income.

Subrecipient agrees to use best efforts to comply with intermediate benchmarks as follows:

- \$30 million obligated under a Grant Agreement between GRANTEE and HUD within 1 year of execution of this Agreement
- An additional \$40 million obligated under a Grant Agreement between GRANTEE and HUD within each 1 year anniversary of execution of this Agreement for the next 3 years
- An additional \$50 million obligated under a Grant Agreement between GRANTEE and HUD within the 5<sup>th</sup> anniversary of execution of this Agreement, unless such date is otherwise stipulated in writing by GRANTEE and HUD.

GRANTEE authorizes an extension of the dates contained in this section to reflect that all Action Plan 1 funds obligated under the Grant Agreement dated May 13, 2013, as amended, must be expended by May 13, 2015. The funds disbursed in subsequent tranches must be expended within 2 years of the date the funds are obligated by HUD to GRANTEE."

VII. Section II(D) 10 LMI Benefit

This Section shall be amended by adding the following sentence: "Notwithstanding the foregoing, Subrecipient shall use best efforts to ensure that 60% of the Grant Funds allocated to ERB are expended for activities that benefit low and moderate income families "

VIII. Section III Payment Process: Compensation

This Section shall be amended by adding the following phrase "on a sampling basis" to the third sentence in subsection A resulting in the revised sentence as follows:

"Following review on a sampling basis and approval of the Draw Down requests by the Commissioner of the GRANTEE, or his designee, approved Draw Down requests shall be submitted to the GRANTEE Finance Director. . ."



**APPENDIX B**  
**SUBRECIPIENT STATEMENT OF ASSURANCES**

BPU hereby assures and certifies that:

1. It possesses legal authority to serve as a subrecipient of a Community Development Block Grant for Disaster Recovery ("CDBG - DR") and to execute the proposed Energy Resilience Bank (ERB) under the Action Plan.
2. Its governing body has duly adopted, or passed as an official act, a resolution, motion or similar action authorizing the signing of the ERB Subrecipient Agreement with EDA and directing and authorizing the person identified as the official representative of the BPU to act in connection with the CDBG-DR funds, sign all understandings and assurances contained therein, and to provide such additional information as may be required.
3. Subject to Section IV M of the Agreement, it will develop the CDBG-DR program and use the CDBG-DR Grant Funds so as to give maximum feasible priority to activities that will benefit low and moderate income families, aid in the prevention or elimination of slums or blight, or meet other community development needs having urgency.
4. It will adhere to 76 FR 71060 (published November 16, 2011) regarding duplication of benefit requirements applicable to the CDBG-DR program.
5. It will establish safeguards to prohibit employees from using official positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties, in accordance with CDBG regulations.
6. It will abide by and enforce the conflict of interest requirement set forth in 24 CFR §570.611, 24 CFR §85.36 and 24 CFR §84.42.
7. It will comply with the provisions of the Hatch Act that limit the political activity of employees and the HUD regulations governing political activity at 24 CFR §570.207.
8. It will comply with HUD rules prohibiting the use of CDBG funds for inherently religious activities, as set forth in 24 CFR §570.200(j), except for circumstances specified in the Department of Housing and Urban Development Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response (March 5, 2013). Funding for rehabilitating or reconstructing a storm-damaged or destroyed building may be appropriate where a facility is not used exclusively for the benefit of the religious congregation (i.e., a homeless shelter, food pantry, adult literacy or child care center). When used for both religious and secular purposes, CDBG-DR funds may pay the portion of eligible rehabilitation or construction costs attributable to the non-religious use.

9. It will give the State and HUD, and any of their representatives or agents, access to and the right to examine all records, books, papers, or documents related to the Grant Funds.
10. It will comply with the provisions in 24 CFR §570.200(c) regarding special assessments to recover capital costs if imposed.
11. It certifies that no federally appointed funds will be used for lobbying purposes regardless of level of government.
12. It will comply, and require sub-subrecipients, developers, community-based development organizations (“CBDO”) and/or lower tier Contractors to comply with the drug-free workplace requirements contained at 24 CFR, Part 24, Subpart F and established by the Drug-Free Workplace Act.
13. BPU agrees to comply with the following requirements, subject to waivers cited in the Federal Register / Vol. 78, No. 43 / Tuesday, March 5, 2013, Department of Housing and Urban Development, [Docket No. FR-5696-N-01] Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy:
  - a. BPU agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subparts J and K of these regulations, except that (1) BPU does not assume DCA’s environmental responsibilities described in 24 CFR 570.604 and (2) BPU does not assume DCA’s responsibility for initiating the review process under the provisions of 24 CFR Part 52.
  - b. BPU also agrees to comply with all other applicable federal, State and local laws, regulations and policies governing the Grant Funds available under this Agreement to supplement rather than supplant funds otherwise available.
  - c. BPU shall require any sub-subrecipient, developer, CBDO or lower-tier Contractor funded in whole or in part with Grant Funds to comply with the following mandatory contract provisions:

#### **FINANCIAL MANAGEMENT AND PROCUREMENT**

- i. OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments) as amended and made part of State regulations;
- ii. A-102 (Grants and Cooperative Agreements with State and Local Governments), as amended and made part of State regulations;
- iii. OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), revised;
- iv. 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) and

- v. Certification by BPU's Contractors, and each tier of subcontractors, that such Contractors and subcontractors are not on the List of Parties Excluded from Federal Procurement or Nonprocurement Programs promulgated in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24 (CDBG funds may not be provided to excluded or disqualified persons);
- vi. 24 CFR 570.489: Program Administrative Requirements;
- vii. 24 CFR 570.490: Recordkeeping requirements; and
- viii. It will comply with all requirements imposed by the State concerning special requirements of law, program requirements, and other administrative requirements; and
- ix. 24 CFR Section 570.489(j) regarding change of use of real property. These standards apply to real property within BPU's control (including activities undertaken by sub-subrecipients) which was acquired in whole or in part using CDBG-DR funds in excess of the small purchase procurement threshold in 24 CFR 85.36. These standards apply from the date CDBG-DR funds are first spent until five years after the closeout of the Program.
  - 1. BPU may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, without first providing citizen review and comment and either:
    - a. The new use meets one of the national objectives and is not a building for the general conduct of government;
    - b. The requirements of 24 CFR Section 570.489(j) are met.
  - 2. If the change of use does not qualify, BPU may retain or dispose of the property if the CDBG-DR program is reimbursed for the fair market value of the property, less any portion of the value that is attributable to non-CDBG-DR funds.
  - 3. Following the reimbursement the property will no longer be subject to any CDBG-DR requirements.

## **ENVIRONMENTAL IMPACT**

BPU may not begin any Project Activities without prior written consent of the New Jersey Department of Environmental Protection ("Department") and DCA, as follows.

For all activities undertaken, BPU agrees that it will provide information as needed to the New Jersey Department of Environmental Protection for site-specific activities.

This will include, but is not limited to:

- i. Providing the names of all facilities receiving federal assistance so that the Department can ensure that the facilities are listed on the United States Environmental Protection Agency's (EPA) list of violating;
- ii. Providing site-specific information regarding the age, location and prior ground disturbance of all facilities assisted, to determine compliance requirements with Section 106 of the National Historic Preservation Act of 1966, and the Preservation of Archaeological and Historical Data Act of 1966, and the provisions of 24 CFR Part 55 and Executive Order 11988, as amended by Executive Order 12148, relating to evaluation of flood hazards;
- iii. It will work with the Department to ensure beneficiaries comply with the flood insurance purchase requirement of Section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. §4001 et seq., which requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of HUD as an area having special flood hazards. For purposes herein, the phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal funding. Additionally:
  - a. BPU will follow Department procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, prior to providing assistance, as well as post-assistance requirements related thereto,
  - b. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG-DR funds for existing residential buildings in the Special Flood Hazard Area (SFHA) (or "100-year" floodplain). With respect to flood insurance, a HUD-assisted homeowner for a property located in the SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD assisted property within the SFHA.
  - c. *Future Federal assistance to owners remaining in a floodplain.* (1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. No Federal disaster relief assistance may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance and the person has subsequently failed to obtain and maintain flood insurance. BPU may

- not provide CDBG disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.
- d. BPU will assist the Department to ensure that in the event of transfer of any property having received CDBG-DR assistance, the transferor notifies the transferee in writing of the requirements to 1) Obtain flood insurance, if the property is not insured as of the date of transfer; 2) Maintain flood insurance; 3) Require the transferor, if there is failure to notify the transferee, to reimburse the federal government in the amount of any subsequent disaster relief assistance if such funds are expended on the property after the date of transfer.
  - iv. BPU will cooperate with the Department to require all assisted properties to be elevated, repaired, reconstructed or newly-constructed (including both commercial and residential properties) in accordance with the newly-released FEMA Base Flood Elevation Maps (reference table 2-6 in the state's Action Plan).
  - v. In accordance with 24 CFR 58.6(b), BPU agrees that it will not provide any Grant Funds to a small business that had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance and the small business failed to obtain and maintain such insurance.

Through the Department, BPU and beneficiaries of Program assistance will be required to comply with:

- vi. Executive Order 11990, Protection of Wetlands;
- vii. the Coastal Zone Management Act Sections 307( c)(d);
- viii. In relation to water quality:
  - a. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution
  - b. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) et seq. and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area; and
  - c. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution; The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.
- ix. The Endangered Species Act of 1973 (50 CFR 402), as amended;

- x. The Fish and Wildlife Coordination Act of 1958, as amended;
- xi. Wild and Scenic Rivers Act of 1968 {Sections 7(b) and (c)}, as amended
- xii. Executive Order 11738, providing for administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, and Environmental Protection Agency regulations (40 CFR part 15);
- xiii. The Clean Air Act of 1970 (Sections 176(c), (d), and 40 CFR 6, 51, 93), which prohibits engaging in, supporting in any way, or providing financial assistance for, licensing or permitting, or approving any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards.
- xiv. The Farmland Protection Policy Act, 7 U.S.C.A. §4201 et seq., which requires recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses;
- xv. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994;
- xvi. Noise abatement and control requirement found at 24 CFR 51B;
- xvii. Provisions of 24 CFR 51C, explosive and flammable operations;
- xviii. Provisions of 24 CFR 58.5(i) relating to toxic chemicals and radioactive materials;
- xix. Sections 1012 and 1013 of Title X of the Housing and Community Development Act of 1992 (Public Law 102-550, as amended). The regulation appears within Title 24 of the Code of Federal Regulation as part 35 (codified in 24 CFR 35). The purpose of this regulation is to protect young children from lead-based paint hazards in housing that is financially assisted by the Federal government or sold by the government. This regulation applies only to structures built prior to 1978. It will also comply with the Lead Safety Housing Regulation covering prohibited methods of paint removal (24 CFR Part 35.140) and occupant protection (24 CFR Part 35.1345).
- xx. It will comply with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et seq.).
- xxi. It will comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871);

## FEDERAL LABOR STANDARDS

- i. BPU will administer and enforce the labor standards requirement set forth in 24 CFR §570.603 and any other regulations issued to implement such requirements;
- ii. BPU will comply with Section 110 of the Housing and Community Development Act of 1974, as amended and as set forth in 24 CFR §570.603;
- iii. It will comply with the Davis-Bacon Act, as amended (40 U.S.C. §3141 et seq.);
- iv. It will comply with the Contract work Hours and Safety Standards Act (40 U.S.C. §327 et seq.), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work-week;
- v. It will comply with the Federal Fair Labor Standards Act (29 U.S.C. §201 et seq.), requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;
- vi. It will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3);
- vii. It will comply with the following HUD regulations and/or guidance:
  - 24 CFR 570.489(l): Debarment and suspension
  - 24 CFR 570.603: Labor standards
  - 24 CFR 570.609: Use of debarred, suspended, or ineligible Contractors or sub-subrecipients.
  - HUD Handbook 1344.1 Federal Labor Standards Compliance in Housing and Community Development Programs
- viii. It will comply with the following United States Department of Labor regulations in parallel with HUD requirements above:
  - 29 CFR Part 1: Procedures for Predetermination of Wage Rates
  - 29 CFR Part 3: Contractors and Subcontractors on Public Building or Public Work Financed In Whole or In Part by Loans or Grants from the United States
  - 29 CFR Part 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)

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

### **ACQUISITION AND RELOCATION**

BPU agrees to comply with the following statutes and regulations:

- i. Title II (Uniform Relocation Assistance) and Sections 301-304 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Chapter 61), and HUD implementing instructions at 24 CFR Part 42 and 24 CFR §570.606; and
- ii. Section 104(d) of the Housing and Community Development Act of 1974, as amended ; and
- iii. It will comply with 42 U.S.C. 3537c (Prohibition of Lump Sum Payments);
- iv. It will comply with 49 CFR Part 24 (Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs)
- v. URA Fixed Residential Moving Cost Schedule
- vi. 24 CFR Part 42 (Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD-Assisted Programs)
- vii. 24 CFR 570.606 (Displacement, Relocation, Acquisition and Replacement of Housing)

BPU agrees to provide relocation assistance to those that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-DR assisted project, with the exception of:

- viii. The one-for-one replacement requirements at Section 104(d)(2)(A)(i)-(ii) and (d)(3) and 24 CFR 42.375 which have been waived by HUD;
- ix. The relocation assistance requirements at section 104(d)(2)(A) and 24 CFR 42.350 to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by the Act for activities related to disaster recovery;

- x. Arms-length voluntary purchase requirements at 49 CFR 24.101(b)(2)(i)-(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this Notice and does not have the power of eminent domain;
- xi. Rental assistance to a displaced person: The requirements at sections 204(a) and 206 of the URA, and 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the BPU to use 30 percent of a low-income displaced person's household income in computing a rental assistance payment if the person had been paying more than 30 percent of household income in rent/utilities without "demonstrable hardship" before the project;
- xii. Tenant-based rental assistance requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(ix) and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy, provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months;
- xiii. Moving expense requirements at section 202(b) of the URA and 49 CFR 24.302; BPU may instead choose to establish a "moving expense and dislocation allowance" under a schedule of allowances that is reasonable takes into account the number of rooms in the displacement dwelling;
- xiv. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established; units of local government receiving CDBG-DR funds may establish separate optional policies.

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

Any act of unlawful discrimination committed by BPU or failure to comply with the following obligations when applicable shall be grounds for termination of this Agreement or other enforcement action; BPU agrees to comply with:

- i. Title VI of the Civil Rights Act of 1964 and as amended in 1988, 42 U.S.C. §200d et seq., as amended, and the regulations issued pursuant thereto (24 CFR Part1), which provide that no person in the United States shall on the grounds or race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the BPU receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance

extended to the BPU, this assurance shall obligate the BPU, or in the case of any transfer of such property, and transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.

- ii. Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619), which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.
- iii. Title II of the Civil Rights Act of 1968 (25 U.S.C. 1301-1303, Indian Civil Rights Act)
- iv. Architectural Barriers Act of 1968
- v. Title IX of the Education Amendments Act of 1972
- vi. Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall, solely by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program receiving federal funding assistance.
- vii. Section 508 of the Rehabilitation Act of 1973
- viii. Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR Part §570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR Part 6.
- ix. Section 104(b)(2) of the Housing Community Development Act of 1974
- x. Age Discrimination Act of 1975
- xi. Title II of the Americans with Disabilities Act of 1990
- xii. Housing for Older Persons Act of 1995 (HOPA)
- xiii. It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided to BPU to comply with any accessibility requirements, as required by Title

III of the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.). The BPU will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.

- xiv. It must use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. BPU may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- xv. Section 3, Housing and Urban Development Act of 1968. Section 3 requirements will apply to all individual properties assisted with these funds, regardless of the actual amount spent on each individual unit/property. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon BPU and third-party entities. The BPU certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

BPU shall ensure compliance with the statutory and regulatory requirements of Section 3 in its own operations, and those of covered contractors. These responsibilities include:

- 1) Making efforts to meet the minimum numerical goals found at 24 CFR Part 135.30;
- 2) Complying with the specific responsibilities at 24 CFR Part 135.32; and
- 3) Submitting Annual Summary reports in accordance with 24 CFR Part 135.90.

If covered contractors receive awards that exceed \$100,000 for the construction and rehabilitation activities listed above, responsibility for Section 3 compliance is shared between the BPU and that firm (with the exception of the submission of the Section 3 Annual report (Form HUD 60002), which must be submitted by the BPU to DCA).

Specifically, BPU shall be responsible for awarding 10 percent of the total dollar amount of all covered contracts to Section 3 business concerns.

**The following language must be included in all contracts and subcontracts:**

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

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

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

It will further comply with:

- xvi. Executive Order 11063: Equal Opportunity in Housing, November 20, 1962, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertains to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
- xvii. Executive Order 11246: EEO and Affirmative Action Guidelines for Federal Contractors Regarding Race, Color, Gender, Religion, and National Origin, September 25, 1965 and Executive Order 11375: Amending Executive Order No. 11246, October 13, 1967, which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. Further contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training and apprenticeship.
- xviii. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978
- xix. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994

- xx. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994
- xxi. Executive Order 13166: Improving Access To Services For Persons With Limited English Proficiency, August 11, 2000
- xxii. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001
- xxiii. Executive Order 13330: Human Service Transportation Coordination. February 24, 2004

And affirms it will comply with implementing regulations for the above:

- xxiv. 24 Code of Federal Regulations Part 1: Nondiscrimination in Federally Assisted Programs of HUD
- xxv. 24 Code of Federal Regulations Part 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance
- xxvi. 24 Code of Federal Regulations Part 5.105: Other Federal Requirements
- xxvii. 24 Code of Federal Regulations Part 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974
- xxviii. 24 Code of Federal Regulations Part 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development
- xxix. 24 CFR Code of Federal Regulations Parts 50.4 (l) and 58.5 (j): Environmental Justice
- xxx. 24 Code of Federal Regulations Part 91.225 (a)(1): Affirmatively Furthering Fair Housing
- xxxi. 24 Code of Federal Regulations Part 91.325 (a)(1): Affirmatively Furthering Fair Housing
- xxxii. 24 Code of Federal Regulations Part 91.325(b)(5): Compliance with Anti-discrimination laws
- xxxiii. 24 Code of Federal Regulations Part 91.520: Performance Reports
- xxxiv. 24 Code of Federal Regulations Parts 100-125: Fair Housing
- xxxv. 24 Code of Federal Regulations Part 107: Non-discrimination and Equal Opportunity in Housing Under Executive Order 11063 (State Community Development Block Grant grantees)
- xxxvi. 24 CFR Part 121: Collection of Data
- xxxvii. 24 CFR Part 135: Economic Opportunities for Low- and Very Low-Income Persons
- xxxviii. 24 CFR Part 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance
- xxxix. 24 Code of Federal Regulations Part 570.206(c): Fair Housing Activities

- xl. 24 Code of Federal Regulations Part 570.487(b): Affirmatively Furthering Fair Housing
- xli. 24 Code of Federal Regulations Part 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant grantees)
- xl.ii. 24 Code of Federal Regulations Part 570.490(a)(b): Recordkeeping requirements
- xl.iii. 24 Code of Federal Regulations 570.491: Performance Reviews and Audits
- xl.iiii. 24 Code of Federal Regulations Part 570.495(b): HCDA Section 109 nondiscrimination
- xl.v. 24 Code of Federal Regulations Part 570.506(g): Fair Housing and equal opportunity records
- xl.vi. 24 Code of Federal Regulations Part 570.601: Affirmatively Further Fair Housing
- xl.vii. 24 Code of Federal Regulations Part 570.608 and Part 35: Lead-Based Paint
- xl.viii. 24 Code of Federal Regulations Part 570.614: Architectural Barriers Act and Americans with Disabilities Act
- xl.ix. 24 Code of Federal Regulations Part 570.904: Equal Opportunity and Fair Housing Review
  - l. 24 Code of Federal Regulations Part 570.912: Nondiscrimination compliance

## APPENDIX C RECORDS AND RECORDS RETENTION

BPU shall maintain all **project records** required by 24 CFR 570.506 for five years following close out of this Agreement. These records will include the following:

- a. Description, geographic location and budget of each funded activity;
- b. Eligibility and national objective determinations for each activity;
- c. Personnel files;
- d. Property management files;
- e. HUD monitoring correspondence;
- f. Citizen participation compliance documentation;
- g. Fair Housing and Equal Opportunity records;
- h. Lump sum agreements;
- i. Environmental review records; and
- j. Documentation of compliance with other Federal requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint).

**FINANCIAL RECORDS** to be maintained include:

- a. Chart of accounts;
- b. Manual on accounting procedures;
- c. Accounting journals and ledgers;
- d. Source documentation (purchase orders, invoices, canceled checks, etc.);
- e. Procurement files (including bids, contracts, etc.);
- f. Real property inventory;
- g. Bank account records (including revolving loan fund records, if applicable);
- h. Draw Down requests;
- i. Payroll records and reports;
- j. Financial reports;
- k. Audit files; and
- l. Relevant financial correspondence.

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

- a. Eligibility of the activity;
- b. Evidence of having met a national objective (see below);
- c. Subrecipient Agreement;
- d. Any bids or contracts;
- e. Characteristics and location of the beneficiaries;
- f. Compliance with special program requirements, including environmental review records;
- g. Budget and expenditure information (including draw requests); and
- h. The status of the project/activity.

### Economic Development LMI Job Creation/Retention

- a. Written agreements with beneficiaries (i.e., loan agreements, promissory notes, mortgages, etc.) must be maintained for five years after the longer of: 1) the maturity date or earlier termination of the written agreement or 2) the expiration of the affordability period.
- b. HUD has waived 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) to allow identification of low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. (HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.) This method replaces the standard CDBG requirement in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e., number of persons). This allows the collection of wage data from the assisted business for each position created or retained, rather than from each individual household. Records relating to job creation/retention must be maintained for five years.
- c. Public benefit: HUD has waived the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, BPU must report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD has also waived 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

### OTHER

- d. **Section 3:** Pursuant to the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) and 24 CFR 135.5, HUD may establish income limits to consider an individual to be a Section 3 resident. For this CDBG-DR program, an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.
- e. **Relocation:** Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 92.353.
- f. **Litigation/Claims:** If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

**APPENDIX D  
CONSTRUCTION, ALTERATIONS, REHABILITATION**

- a. BPU affirms that activities involving new building construction, alterations, or rehabilitation will comply with the applicable New Jersey building code(s) as well as local building codes.
- b. BPU shall, to the extent feasible, ensure all rehabilitation, reconstruction, and new construction is designed to incorporate principles of sustainability, including water and energy efficiency, resilience and mitigating the impact of future disasters. Whenever feasible, BPU should follow best practices such as those provided by the U.S. Department of Energy Home Energy Professionals: *Professional Certifications and Standard Work Specifications*.
- c. BPU affirms that it will comply with the requirements of the Uniform Federal Accessibility Standards (UFAS) for the design, construction and alteration of buildings so that physically handicapped persons will have ready access to and use of them in accordance with the Architectural Barriers Act, 42 U.S.C. 4151-4157.

All reconstruction, new construction and rehabilitation must be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters.