



Agenda Date: 6/17/15  
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/bpu/](http://www.nj.gov/bpu/)

MISCELLANEOUS

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

**Party of Record:**

**Melissa Orsen, Chief Executive Officer, New Jersey Economic Development Authority**

**BY THE BOARD:**

This Order concerns amendments to the August 19, 2014 Subrecipient Agreement (“SRA”) between the New Jersey Board of Public Utilities (“Board” or “BPU”) and the New Jersey Economic Development Authority (“EDA”) in regard to the joint agency administration of the New Jersey Energy Resilience Bank (“ERB” or “Program”). The Amendment to the SRA (“Amendment”) was approved by the EDA Board on June 9, 2015. This Board hereby approves the Amendment and authorizes President Richard Mroz to execute the Amendment on the Board’s behalf. Under the Amendment, the Board’s role in the ERB will be modified to provide staff technical support services and it will no longer assist in shared administration with EDA or the Challenge Process.

Also, no Societal Benefits Charge (“SBC”) funds have been committed by the ERB and SBC funds will no longer be available for ERB use.

**BACKGROUND AND PROCEDURAL HISTORY**

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. 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.

In the course of applying for the federal funding, the New Jersey Department of Community Affairs ("DCA") submitted an Initial Action Plan for the Utilization of CDBG-DR Funds in Response to Superstorm Sandy ("Action Plan") to the U.S. Department of Housing and Urban Development ("HUD"). The Action Plan was submitted on March 12, 2013 and initially approved by HUD on April 29, 2013 for the first round of CDBG-DR funding. Following the release of the second round of CDBG-DR funding allocation issued by HUD on October 13, 2013, DCA on March 25, 2014 submitted to HUD *Action Plan Amendment Number 7, Substantial Amendment for the Second Allocation of CDBG-DR Funds* ("Amendment Number Seven") that proposed the creation and capitalization of the ERB with \$200 Million of CDBG-DR funds. On May 30, 2014, HUD approved Amendment Number Seven to the Action Plan, including funding for the New Jersey ERB.

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 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.

Preliminary discussions with Board and EDA Staff, with input from DCA and the Governor's Office of Recovery and Rebuilding, culminated in the development and execution of a Subrecipient Agreement between EDA and BPU, which sets forth the respective duties and responsibilities of each agency in connection with the joint development and implementation of the ERB, including the joint responsibility for the development of ERB program guidelines and financial products guide. The BPU and the EDA approved the Subrecipient Agreement on August 18, 2014 and August 19, 2014, respectively. The decision was made to initially focus on the WWWWTP sector due to the significant direct and indirect impacts the community at large experienced due to disruption of electric service or actual physical damage to these facilities during Superstorm Sandy. In the development of the ERB Guide and Product for WWWWTP, Board Staff and EDA Staff solicited public input on the design and operation of the ERB as well as the type and structure of financial incentives the program should offer to WWWWTP facilities.

To date, the EDA and BPU have worked together, with the assistance of consultants, other State agencies and stakeholders, to develop the ERB program guidelines, internal processes, application processes, sector products and also promoted the program to potential applicants throughout New Jersey.

## **DISCUSSION**

The Board notes the significant progress and development of the ERB by staff from both agencies and is pleased with the current program, as designed, in that it is consistent with the HUD Action Plan, the goals of the State recovery plans and the original SRA. The Board and the EDA have determined that the ERB program should be placed under the sole direction of the EDA in an effort to streamline the processes, applications, and funding allocations for the program. Given the nature of the HUD funding and the timelines associated with allocation of those funds, a multilayered approval process for applicants, and the program values itself,

would prove cumbersome and slow action. With approval of the Amendment attached as Exhibit A to this order, the EDA will have autonomy to develop ERB goals, approve applications and administer funds from the ERB.

As outlined in the Amendment, the BPU will continue to provide technical support in the evolution and development of the ERB guidelines and products, and assist with technical review of applications and technology implementation. The BPU will act as a consultant to the EDA and work on specific tasks and portions of the projects. Work will be disseminated to BPU staff via tasking orders from the EDA specific to the ERB. The EDA will reimburse the Board for all time and costs associated with performing the BPU's outlined duties; which costs will include the BPU's use of subcontractors to assist with its tasks as needed. The reimbursement process is being finalized and will be completed and implemented within 30 days of approval of this Order.

The full scope the Board's roll is outlined in the Amendment and the attached Term Sheet (Exhibit B). The BPU will assist the EDA with:

- Developing and revising standard application forms (including intake and full applications forms).
- Initial technical program eligibility criteria, guidelines and/or protocols, and project scoring methodologies related to technical issues. In addition, BPU will work with EDA on proposed changes to the foregoing, as necessary, subject to EDA Board approval(s), if required.
- Establishing the technical and operational conditions to be met by facilities in order to receive (where applicable) any loan forgiveness.
- Developing project-specific technical 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 services upon request of EDA.
- Review of applications on the basis of technical feasibility, criticality and resiliency.
- Provide such other technical assistance as may be requested from time to time by EDA and agreed to by the BPU.

The Amendment includes the scope of the changes, budgetary concerns, duties of the BPU, assurances, reporting and metrics, and requirements for compliance with the HUD and state's policies for the program.

For the above mentioned reasons, the Board **HEREBY FINDS** the Amendment will foster the ERB and benefit the general good by streamlining the processes and goals of the program. Additionally, the Board **FINDS** that the proposed new leadership role of the EDA in the ERB and the continued role of the BPU for technical support are appropriate.

**CONCLUSION**

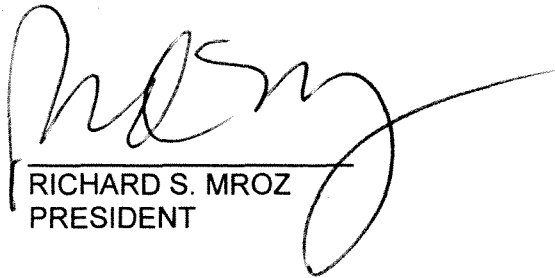
Based on the above, the Board **HEREBY ADOPTS** the Amendment and rescinds the Challenge Process. Furthermore, the Board **HEREBY DIRECTS** Staff to continue to work with the EDA in a technical role, as set out in the Amendment. Additionally, the Board **HEREBY DIRECTS** Staff to finalize and implement the EDA/BPU reimbursement process for Staff's expenses.

This Order will be effective as of June 26, 2015.

DATED:

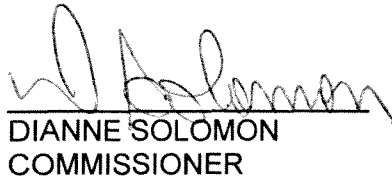
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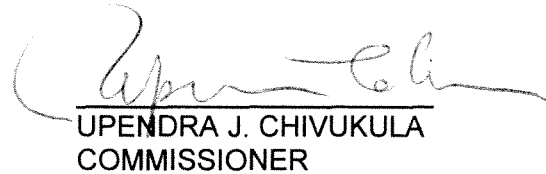
BOARD OF PUBLIC UTILITIES  
BY:

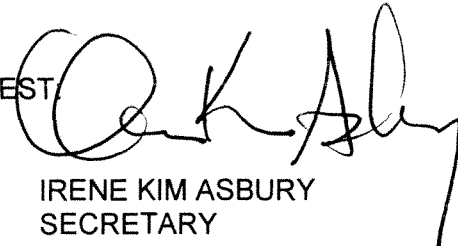
  
RICHARD S. MROZ  
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COMMISSIONER

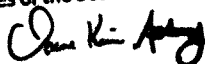
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST   
IRENE KIM ASBURY  
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 PROGRAM GUIDE AND BUDGET EXTENSION  
DOCKET NO. QO14060626

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**FIRST AMENDMENT TO SUBRECIPIENT AGREEMENT**  
**BETWEEN**  
**THE BOARD OF PUBLIC UTILITIES AND**  
**THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

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

This First Amendment (“Amendment”) to the Subrecipient Agreement originally entered into on the 19<sup>th</sup> day of August, 2014 (“Original Agreement”) is made and entered into by and between the NEW JERSEY BOARD OF PUBLIC UTILITIES (“BPU”) and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (“EDA”) for the purpose of revising the duties of the BPU in the Energy Resilience Bank (ERB) program.

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 (such agreement as amended, “the EDA-DCA Subrecipient Agreement”) which made funds available to the EDA for purposes, including, inter alia, development and maintenance of the New Jersey Energy Resilience Bank (the “ERB”) to address Statewide energy resilience needs, as defined in the State’s CDBG-DR Action Plan Amendment Number 7; and

WHEREAS, the EDA and BPU previously entered into the Original Agreement for the purpose of jointly administering the ERB;

WHEREAS, the EDA and the BPU intend to modify that relationship to allow for ERB administration by the EDA with only technical assistance from the BPU, limited to those duties set forth herein, and no use of Societal Benefits Charge (“SBC”) funding.

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 amend the Original Agreement as follows. The Original Agreement, as hereby amended is hereinafter referred to as the “Agreement”.

**I. SAVINGS CLAUSE**

All provisions of the Original Agreement are hereby removed and replaced by the sections contained in this Amendment; except for the following Sections which shall continue to be in effect: Sections II. (B), “Implementation of Agreement”; the first paragraph of Section IV. G, “Eligible Cost”; Section V, “Payment Process”, with the reference to Section III of the Original Agreement therein to be read to refer to Section III of this Amendment; Section VI.

B, "Termination/Suspension for Cause; Section VI. C, "Termination for Convenience"; Section VI. D, "Termination Due to Unavailable Funding"; Section VI. E, "Obligations Governing Use of CDBG Funds Survive Termination" except for subpart (4); Section VI. F, "Payment Upon Termination"; all sections of VII. A, "Administrative Requirements – Documentation and Recordkeeping", except for 3, "Close-outs"; all sections of IX, "General Conditions", except that the second paragraph of F. "Amendments" shall be revised to read "Any change to ERB program guides, guidelines and/or protocols will not require an amendment to this Agreement"; Section X, "No Third Party Beneficiary"; and all Sections of XI, "Miscellaneous", except for Sections XI A and Section XI B with the understanding that terms defined in the Preambles to the Original Agreement shall continue except as modified by this Amendment and with the understanding that the ERB is no longer jointly operated by EDA and BPU.

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

## **II. SCOPE OF AMENDMENT**

The purpose of this Amendment is to provide for terms under which BPU shall provide technical assistance to the EDA in the implementation of the ERB program. The BPU will no longer approve or reject applications or process appeals under the Challenge Process, which will be the sole responsibilities of the EDA. The Challenge Process approved by the Board on October 27, 2014, will no longer be applicable.

## **III. THE BUDGET**

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 not-to-exceed annual budget attached hereto as Exhibit E, provided the following conditions are met:

1. The ERB Executive Director, or the Executive Director's designee, 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 reimbursement process will be agreed upon and finalized by both parties within 30 days of implementation of this Amendment.
3. All BPU costs incurred prior to the execution of this Amendment shall be paid according to the procedures set forth in the Original Agreement and the newly established reimbursement process.



#### **IV. DUTIES OF THE BPU**

As requested by EDA, BPU will advise EDA in the following areas:

1. Assist the EDA with developing and revising standard application forms (including intake and full applications forms).
2. Assist the EDA with initial technical program eligibility criteria, guidelines and/or protocols, and project scoring methodologies related to technical issues. In addition, BPU will work with EDA on proposed changes to the foregoing, as necessary, subject to EDA Board approval(s), if required.
3. Assist the EDA in establishing the technical and operational conditions to be met by facilities in order to receive (where applicable) any loan forgiveness.
4. Assist the EDA with developing project-specific technical 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.
5. Assist the EDA with Marketing and Outreach services upon request of EDA
6. Assist the EDA in review of applications on the basis of technical feasibility, criticality and resiliency. This process shall include but shall not be limited to:

##### **Step 1: Screening Evaluation**

A 1-day site visit/basic screening study for sites that include the possibility of applying Combined Heat and Power (“CHP”) (this could be done with the help of the Department of Energy CHP Technical Assistance Partnerships initiative, which is focused on CHP, district energy and waste heat to power applications only). This step is a proactive engagement at the site with the applicant and their engineering team to properly review the proposed project and, if necessary, orient the applicant towards a viable solution while learning more about the site and its needs.

##### **Step 2: Level I Assessment**

A Level I assessment would involve development/review of the existing and future electric and thermal loads, proposed on-site energy production system design review, resiliency design review, budget costing, economic evaluation and a review of the regulatory and environmental impacts. This is a detailed preliminary technical review of the proposed resiliency solution at a high level that also provides the data needed for Step 3. The process would incorporate discussions with the proposing team to develop a consensus around their proposed resiliency solution that would meet the Bank’s underwriting standards.

Step 3: ERB Internal Assessment using Rutgers Center for Energy, Economic and Environmental Policy (“CEEPP”) Cost Benefit Ratio (“CBR) Calculator

Once there is agreement with the site on the technical approach and outcomes from Step 2, the data would be run through the Rutgers CEEPP CBR calculator or similar program analysis and the results together with Level I analysis would be reviewed with the EDA.

7. Provide such other technical assistance as may be requested from time to time by EDA and agreed to by the BPU.
8. BPU’s scope of work for each task assigned by the EDA will be agreed upon by both parties and the BPU will provide the EDA with a “Tasking document” listing the work to be performed, the estimated timeline for completion, and the estimated work hours and costs associated with the task, which will require approval by the EDA prior to any work commencing.
9. The Parties acknowledge that the BPU may from time to time use subcontractors, including but not limited to Rutgers CEEPP and New Jersey Institute of Technology to assist in the performance of the BPU’s technical duties.

#### **V. ASSURANCES**

BPU shall be responsible for undertaking its duties hereunder in compliance with all applicable State and federal laws and regulations. It shall be BPU’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. BPU shall provide to the EDA guidance as requested on the applicable laws and regulations governing a particular construction project under consideration for ERB funding.

BPU agrees 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 and which hereinafter may be granted by HUD.

#### **VI. COOPERATION WITH HUD AND DCA**

The BPU 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.

## **VII. CONTRACT MONITOR/PERFORMANCE MEASURES**

The contract monitor for the EDA on this Agreement is the Chief Executive Officer of the EDA, or the CEO's 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.

To the extent applicable under this Amendment, reporting requirements may require the BPU to obtain data from third parties (i.e. persons that receive Grant Funds or other beneficiaries of the program(s), such as Sub-subrecipients or vendors described under Section VIII, paragraph 9 of this Amendment, 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 and with whom the BPU may be involved in the performance of its duties hereunder). It shall be the BPU's obligation to implement any contractual arrangements it may need for use of, and access to, such data from these third parties.

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.

## **VIII. 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 the previously executed 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.

## **IX. PROCUREMENT**

Subrecipient shall substantially comply with the current GRANTEE practice, which is to comply with the State procurement laws and regulations that were certified by HUD as equivalent to 24 CFR Part 85.36, and the State regulations and requirements regarding procurement, including but not limited to Executive Order 125 (Christie 2013) in executing its duties under this Amendment. This is in addition to whatever State laws may apply to procurement by the Subrecipient. Notwithstanding the above, the Parties acknowledge that, unless otherwise agreed to, the State Department of the Treasury, Division of Purchase and Property, shall be responsible for all procurement activities associated with the Program, including but not limited to procurement of a marketing firm to create and implement a marketing campaign and procurement of one or more consulting entities to assist with business process services for administering the Program.

## **X. 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 EDA no longer exercises any supervision or control over any of the Grant Funds, including CDBG Program Income, unless terminated or amended prior to such time in accordance with the terms and conditions of this Agreement.

## **XI. COMPLIANCE PROVISIONS**

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

The Parties have executed and delivered this Agreement on the date set forth next to their respective signatures below. By the signatures, the Parties execute this Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization to all provisions contained herein.

**NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY**

\_\_\_\_\_  
Name: Melissa Orsen  
Title: Chief Executive Officer

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

**BOARD OF PUBLIC UTILITIES**

\_\_\_\_\_  
Name: Richard S. Mroz  
Title: President

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

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

**DEPARTMENT OF COMMUNITY AFFAIRS**

\_\_\_\_\_  
Name: Charles Richman  
Title: Acting Commissioner

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

**APPENDIX A**  
**EDA-DCA SUBRECIPIENT AGREEMENT**

Amendment #1

**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."

**PREAMBLES**

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..."

IX. Section III Payment Process: Compensation

This Section shall be amended by adding an additional sentence to subsection B as follows:

"Payment of Activity Delivery Costs and Administrative Expenses incurred by the New Jersey Board of Public Utilities ("BPU") in connection with its implementation of the New Jersey Energy Resilience Bank are paid to BPU from the GRANTEE via electronic funds transfer."

X. It is further agreed and understood that the language in this First Amendment shall supersede any language to the contrary contained in the Agreement and that all other terms and conditions of the Agreement shall remain the same, unchanged and in full force and effect.

XI. Any capitalized word not defined herein shall have the meaning ascribed to it in the Agreement.

The Parties have executed on the date set forth next to their respective signatures below, but effective as of the date first above written.

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

Name: FE

Title: Commissioner

Date: 8-12-14

**NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY**

Name: [Signature]

Title: Chief Executive Officer

Date: August 8, 2014

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

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

**ASSURANCES**

The purpose of this Statement of Assurances is to list requirements applicable to programs funded in whole or in part by the Community Development Block Grant – Disaster Recovery (“CDBG-DR”) funds received from the U.S. Department of Housing and Urban Development (“HUD”). Not all of the requirements listed herein shall apply to all the activities or work of the Board of Public Utilities (“BPU”) under the Subrecipient Agreement dated August 19, 2014 by and between BPU and the New Jersey Economic Development Authority (“NJEDA”), as amended by the First Amendment to Subrecipient Agreement (together, the “Amended Agreement”) which sets forth the duties of the BPU concerning the Energy Resilience Bank.

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) activities under the Action Plan and ensuing Amendments.
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 Amended Agreement as approved 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. It and its agents, employees, assigns, subrecipients, contractors, subcontractors or other third parties receiving funds for CDBG-DR programs under the Amended Agreement shall be responsible for complying with all applicable CDBG-DR Program and CDBG regulations, guidelines and standards in a manner satisfactory to the State and the U.S. Department of Housing and Urban Development (“HUD”), including all administration and compliance requirements set forth by this Statement of Assurances.
4. It shall require that each subrecipient, contractor, subcontractor or other third parties as a condition for receiving CDBG-DR Program funding reimbursement, comply with all statutes, regulations, and requirements specified in this and the other appendices to the Amended Agreement, as applicable. Every CDBG-DR funded agreement entered into by BPU shall set forth these requirements.

5. It agrees to comply with all applicable Federal regulations pertaining to CDBG-DR, cross-cutting statutes and regulations, subject to waivers cited in the Federal Register / Vol. 78, No. 43 / Tuesday, March 5, 2013, Department of Housing and Urban Development, [Docket No. FR-5696-N-01] Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG - DR funds in Response to SuperStorm Sandy, and which may hereinafter be granted by HUD.
6. In the occasion that two or more applicable rules, regulations, or procedures related to, incorporated into, or otherwise referenced in the Amended Agreement, or in this and other appendices to the Amended Agreement, are in conflict with one another, the most proscriptive rule, regulation, or procedure shall apply.

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

**I. GENERAL PROVISIONS**

- A. Subject to Section IV of Amended Agreement, the Board of Public Utilities (“BPU”) will assist the EDA with technical review under 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.
- B. 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.
- C. It will abide by and enforce the conflict of interest requirement set forth in 24 CFR 570.489, 24 CFR §570.611, and 2 CFR 200.112. Except for approved eligible administrative and personnel costs, none of BPU’s designees, agents, subconsultants, members, officers, employees, subcontractors, and no other public official who exercises or who has exercised any functions or responsibilities with respect to the CDBG-DR funded Program during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Program, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program or in any Activity, or benefit therefrom, which is part of this Amended Agreement at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the DCA for approval.
- D. 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.

- E. 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.
- F. 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 its receipt or use of CDBG Funds.
- G. It will comply with the provisions in 24 CFR §570.200(c) regarding special assessments to recover capital costs if imposed.
- H. It certifies that no federally appointed funds will be used for lobbying purposes regardless of level of government, in accordance with the regulations found at 2 CFR 200.450
- I. It certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429. Further, it will require sub-subrecipients, developers, community-based development organizations (“CBDO”), lower tier Contractors and any third parties providing CDBG-DR funded services to comply with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429.
- J. It shall adhere to Section 312 of the Stafford Act and 76 FR 71060 (published November 16, 2011), regarding duplication of benefit requirements applicable to the CDBG-DR program. BPU shall ensure that no Program component supported by CDBG-DR funds is also receiving financial assistance from any other program or from insurance or any other source for the same purpose. BPU agrees as a condition for funding to repay the funding if it later receives other disaster assistance funding for the same purposes herein.
- K. It 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.

- L. It agrees to comply with all other applicable federal, State and local laws, regulations and policies governing the CDBG Funds available under this Amended Agreement to supplement rather than supplant funds otherwise available.

## II. FINANCIAL MANAGEMENT AND PROCUREMENT

To the extent applicable, BPU shall comply with, and shall require any sub-subrecipient, developer, CBDO or lower-tier Contractor funded in whole or in part with CDBG Funds to comply with, the following financial and program management and procurement standards:

- A. It shall adhere to the principles and standards governing federal grant distribution set forth in the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200).
- B. It shall comply with the uniform administrative requirements set forth at 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).
- C. It shall ensure that any contract made utilizing CDBG funds contains provisions which prohibit the making of any contract award to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR Part 2424. Additional policies concerning debarment and suspension are contained at 2 CFR Part 180 and 2 CFR Part 2424. It shall certify that it and all subconsultants and subcontractors are not listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 2 CFR 2424 (CDBG-DR funds may not be provided to excluded or disqualified persons), <https://www.sam.gov/portal/public/SAM/>.
- D. It shall comply with all requirements imposed by the State concerning special requirements of law, program requirements, and other administrative requirements.
- E. It shall comply with 24 CFR Part 570 and 2 CFR Part 200 regarding the management and disposition of cash, real and personal property acquired with CDBG-DR funds.
- F. It shall comply with 24 CFR 570.489: Program Administrative Requirements;
- G. It shall comply with 24 CFR 570.490: Recordkeeping requirements;
- H. It shall comply with 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, subcontractors and third parties) which was acquired in whole or in part using CDBG-DR funds. 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.

### **III. PERSONALLY IDENTIFIABLE INFORMATION**

BPU agrees to comply with the Privacy Act of 1974 and HUD rules and regulations related to the protection of personally identifiable information (PII). BPU shall ensure that all staff, subrecipients, contractors, consultants, and their employees that have access to PII shall be provided with, and sign, a Non-Disclosure Agreement to protect any personally identifiable information necessary to complete their scope of work, or BPU shall verify that said persons/entities do not have access to this type of personally identifiable information where the forms are not required. BPU shall also ensure that any subrecipient or contractor procured for the design, development, or operation of a system of records on individuals do so in compliance with 48 CFR 24.102, et seq. The term “personally identifiable information” refers to information which can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. See 2 CFR 200.79 and OMB M-07-16.

### **IV. ENVIRONMENTAL REGULATORY COMPLIANCE**

- A. BPU may not begin any Project Activities without prior written consent of the New Jersey Department of Environmental Protection (“DEP”) and DCA, as follows:
  1. For all activities undertaken, BPU agrees that it will provide information as needed to DEP for site-specific activities.

This will include, but is not limited to:



- i. Providing the names of all facilities receiving federal assistance so that DEP can ensure that the facilities are not listed on the United States Environmental Protection Agency's (EPA) list of violating facilities. 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;
2. It will work with DEP 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 HUD 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 DEP 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.
3. BPU will cooperate with DEP 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).
  4. 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.
- B. To the extent applicable, BPU must comply with HUD regulations found at 24 CFR Part 58, implementing the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, and other Federal environmental requirements, including but not limited to:
1. Floodplain management and wetland protection:
    - a. Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted by HUD regulations at 24 CFR 55, particularly sections 2 and 5 of the order;
    - b. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order;
  2. The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. §§1456(c) and(d));
  3. In relation to water quality:
    - a. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution;

- b. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) et seq. and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency (“EPA”) determines may contaminate an aquifer which is the sole or principal drinking water source for an area (40 CFR 149); and
- c. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation’s water.
4. Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.), as amended, particularly section 7 (16 U.S.C. §1536);
  5. The Fish and Wildlife Coordination Act of 1958, as amended;
  6. Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.), particularly sections 7(b) and (c) (16 U.S.C. §1278(b) and (c));
  7. Executive Order 11738, providing for administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, and EPA regulations (40 CFR 15);
  8. The Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)), and 40 CFR 6, 51, 93, which prohibits engaging in, supporting in any way, providing financial assistance for, licensing or permitting, or approving any activity which does not conform to State or Federal implementation plans for national primary and secondary ambient air quality standards.
  9. The Farmland Protection Policy Act of 1981, 7 U.S.C.A. §4201 et seq., particularly sections 1540(b) and 1541 (7 U.S.C. §4201(b) and §4202), and Farmland Protection Policy, 7 CFR 658, which require recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses;
  10. Noise abatement and control requirements at 24 CFR 51B;
  11. Explosive and flammable operations requirements at 24 CFR 51C;
  12. Requirements at 24 CFR 58.5(i) relating to toxic chemicals and radioactive materials;

13. Environmental Justice, Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.
14. 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).

C. Compliance with Lead-Based Paint Requirements

In delivering programmatic activity supported by CDBG-DR funds pertaining to housing units built before 1978, or in contracting with third parties for such services supported by CDBG-DR funds, BPU shall comply with the lead-based paint requirements set forth at 24 CFR Part 35, subparts A, B, J, K and R. The regulation implements section 1012 and 1013 of the Residential Lead Paint Hazard Reduction Act of 1972, which is Title X of the Housing and Community Development Act of 1992.

## V. FEDERAL LABOR STANDARDS

To the extent applicable, BPU shall comply with Federal Labor Standards, including:

1. Section 110 of the Housing and Community Development Act of 1974, 42 U.S.C. §5310, 24 CFR §570.603 and HUD Handbook 1344.1 Federal Labor Standards Requirements in Housing and Community Development Programs, as revised, which require that all laborers and mechanics (as defined at 29 CFR §5.2) employed by BPU (including its subcontractors/subconsultants) in connection with construction contracts over \$2,000, are paid wages at rates not less than those prevailing on similar construction in the locality as per the Davis-Bacon Act (40 U.S.C. §3141 et seq.), as amended; except that these requirements do not apply to the rehabilitation of residential property if such property contains less than 8 units;
2. The Contract Work Hours and Safety Standards Act (40 U.S.C. §3701 et seq.), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts of \$100,000 or greater be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work-week;
3. The Federal Fair Labor Standards Act (29 U.S.C. 201 et seq.), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;

4. The Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented in Department of Labor regulations (29 CFR 3), which requires payment of wages once a week and allows only permissible payroll deductions;
5. Department of Labor regulations in parallel with HUD requirements above:
  - a. 29 CFR 1: Procedures for Predetermination of Wage Rates
  - b. 29 CFR 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)
  - c. 29 CFR 6: Rules of Practice for Administrative Proceedings Enforcing Labor Standards In Federal and Federally Assisted Construction Contracts and Federal Service Contracts
  - d. 29 CFR 7: Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts.

## **VI. ACQUISITION AND RELOCATION**

- A. 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)

- B. 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:
1. 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;
  2. 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;
  3. 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;
  4. 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;
  5. 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;
  6. 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;
  7. 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.

## VII. 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 Amended Agreement or other enforcement action.

BPU shall 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, which prohibits discrimination because of race, color, religion, or natural origin in certain places of public accommodation, such as hotels, restaurants, and places of entertainment.
- iv. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 et seq. The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term “building” does not include privately owned residential structures not leased by the government for subsidized housing programs.
- v. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in any federally funded education program or activity.
- vi. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which provides that no otherwise qualified individual shall, solely by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination under any program or activity receiving federal funding assistance.

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

### **VIII. SECTION 3 REQUIREMENTS**

Section 3 of the Housing and Urban Development Act of 1968, as amended, is to ensure that employment and other economic opportunities generated by certain HUD funds, including CDBG funds, shall to the greatest extent feasible be directed to low- and very low-income persons, and to business concerns that provide economic opportunities to low and very low



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

- A. BPU shall ensure that requirements under Section 3 of the Housing and Urban Development Act of 1968 (HUD Act of 1968) shall apply to all individual properties assisted with these funds, regardless of the actual amount spent on each individual unit/property. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued prior to the execution of this contract, shall be a condition of the CDBG-DR assistance provided under this Amended Agreement and binding upon the BPU and third-party entities.
- B. If BPU has the need to hire new persons to complete the Section 3 covered contract, or needs to subcontract portions of the work to another business, BPU must direct its newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. The same numerical goals (see below) apply to contractors and subcontractors.
- C. BPU shall ensure compliance with the statutory and regulatory requirements of Section 3 in its own operations, and those of covered subconsultants, subcontractors or third parties. These responsibilities include:
  - i. Making efforts to meet the minimum numerical goals found at 24 CFR 135.30;
  - ii. Complying with the specific responsibilities at 24 CFR 135.32; and
  - iii. Submitting quarterly reports on Section 3 projects using HUD Form 60002. Reports will be due within one week of the end of each calendar quarters. Reports shall be submitted to:

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

- D. For purposes of CDBG-DR funds received in response to Superstorm Sandy, an individual is eligible to be considered a Section 3 resident if the annual wages or

salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction. See 78 FR 14329, 14346 (March 5, 2013).

**E. The following language 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).*

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

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

- A. 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.
- B. 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.
- C. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978.
- D. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994.

- E. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
- F. Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, August 11, 2000.
- G. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001.
- H. Executive Order 13330: Human Service Transportation Coordination, February 24, 2004.
- I. BPU further affirms it will comply with implementing regulations for the above:
  - 1. 24 Code of Federal Regulations Part 1: Nondiscrimination in Federally Assisted Programs of HUD
  - 2. 24 Code of Federal Regulations Part 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance
  - 3. 24 Code of Federal Regulations Part 5.105: Other Federal Requirements
  - 4. 24 Code of Federal Regulations Part 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974
  - 5. 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
  - 6. 24 CFR Code of Federal Regulations Parts 50.4 (l) and 58.5 (j): Environmental Justice
  - 7. 24 Code of Federal Regulations Part 91.225 (a)(1): Affirmatively Furthering Fair Housing
  - 8. 24 Code of Federal Regulations Part 91.325 (a)(1): Affirmatively Furthering Fair Housing
  - 9. 24 Code of Federal Regulations Part 91.325(b)(5): Compliance with Anti-discrimination laws
  - 10. 24 Code of Federal Regulations Part 91.520: Performance Reports
  - 11. 24 Code of Federal Regulations Parts 100-125: Fair Housing

12. 24 Code of Federal Regulations Part 107: Non-discrimination and Equal Opportunity in Housing Under Executive Order 11063 (State Community Development Block Grant grantees)
13. 24 CFR Part 121: Collection of Data
14. 24 CFR Part 135: Economic Opportunities for Low- and Very Low-Income Persons
15. 24 CFR Part 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance
16. 24 Code of Federal Regulations Part 570.206(c): Fair Housing Activities
17. 24 Code of Federal Regulations Part 570.487(b): Affirmatively Furthering Fair Housing
18. 24 Code of Federal Regulations Part 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant grantees)
19. 24 Code of Federal Regulations Part 570.490(a)(b): Recordkeeping requirements
20. 24 Code of Federal Regulations 570.491: Performance Reviews and Audits
21. 24 Code of Federal Regulations Part 570.495(b): HCDA Section 109 nondiscrimination
22. 24 Code of Federal Regulations Part 570.506(g): Fair Housing and equal opportunity records
23. 24 Code of Federal Regulations Part 570.601: Affirmatively Further Fair Housing
24. 24 Code of Federal Regulations Part 570.608 and Part 35: Lead-Based Paint
25. 24 Code of Federal Regulations Part 570.614: Architectural Barriers Act and Americans with Disabilities Act
26. 24 Code of Federal Regulations Part 570.904: Equal Opportunity and Fair Housing Review
27. 24 Code of Federal Regulations Part 570.912: Nondiscrimination compliance

## **X. LIMITED ENGLISH PROFICIENCY**

Where potential interaction with persons with Limited English Proficiency (“LEP”) is anticipated, all services must be made available to LEP persons in accordance with the State’s Language Access Plan (LAP) (available online at [http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP\\_Version-1.0\\_2015.01.14-for-RenewJerseyStronger.pdf](http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP_Version-1.0_2015.01.14-for-RenewJerseyStronger.pdf)) and HUD requirements (see Federal Register Notice FR–4878–N–02, available online at <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>). Services should be provided in any languages for which qualified translators are available. For all other languages, DCA’s *I Speak* Cards (to be provided by DCA) may be used and LEP households may be referred to DCA’s language line and other translation services. DCA translation services will only be available to CDBG-DR funded programs. All LEP services provided pursuant to this Contract will be reported to DCA monthly by the number and type of those services, so that DCA may report to HUD.

## APPENDIX C RECORDS AND RECORDS RETENTION

BPU shall be responsible for maintaining records, in accordance with N.J.A.C. 17:44-2.2(b), 2 CFR 200.333, 24 CFR 570.502 and 570.506. Records shall be maintained for the longer of:

- (a) a period of three (3) years from submission of the final expenditure report for the Rebuild by Design Program; and
- (b) a period of five (5) years from the date of final payment.

- 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.

**APPENDIX E  
ERB BUDGET FOR BPU TECHNICAL AND REGULATORY SERVICES**

<b>*Estimated FY 2016 -- ramp-up budget</b>									
		Avg/Unit Cost	Duration	Frequency	Subtotal	Salary Fringe + Payroll Taxes	Cont.	Estimated FY2016 Not To Exceed Budget	
<b>Staffing</b>									
Chief Technical Officer	\$	110,000	Full Time	1/2 year	55,000	90.75%	10%	88,413	
Sr. Staff (2)**	\$	89,400	Full Time	3/4 year **	178,800	90.75%	10%	281,613	
Staff (1)*	\$	60,300	Full Time	1/2 year **	75,375	90.75%	10%	121,165	
					<b>Subtotal</b>			<b>491,191</b>	
<b>Contractors</b>									
Rutgers CEEEP (Resiliency Cost Benefit Analysis + technical support)			Annual	1 Year Contract	75,000		15%	86,250	
NU Institute of Technology (MicroGrid Work + technical support)			Annual	1 Year Contract	60,000		15%	69,000	
Other anticipated (Energy Consultants)			Annual	As needed	50,000		15%	57,500	
					<b>Subtotal</b>			<b>212,750</b>	
<b>Other Services</b>									
Travel	\$	1,000	1 day	5 major + minor	10,000		15%	11,500	
Meetings/Conferences/Publications/Related Expenses	\$	75,000	Annual	1 year	75,000		20%	90,000	
					<b>Subtotal</b>			<b>101,500</b>	
<b>Total</b>								<b>805,341</b>	

\* Different Staff member may rotate into and out of the ERB assignment  
 \*\* This figure is not a straight calculation. It allows for variable personnel at differing rates billing time

<b>Ongoing/FY 2017 Forward -- Not to Exceed Annual Projection</b>									
		Avg/Unit Cost	Duration	Frequency	Subtotal	Salary Fringe + Payroll Taxes	Cont.	Estimated Annual FY 2017 Forward Not To Exceed Budget	
<b>Staffing</b>									
Chief Technical Officer	\$	110,000	Full Time	3/4 year	82,500	90.75%	10%	132,619	
Sr. Staff (2)*	\$	89,400	Full Time	1 year **	238,500	90.75%	10%	375,351	
Staff (2)*	\$	60,300	Full Time	1 year **	240,750	90.75%	10%	342,331	
					<b>Subtotal</b>			<b>750,301</b>	
<b>Contractors</b>									
Rutgers CEEEP (Resiliency Cost Benefit Analysis + technical support)			Annual	1 Year Contract	100,000		15%	115,000	
NU Institute of Technology (MicroGrid Work + technical support)			Annual	1 Year Contract	125,000		15%	143,750	
Other anticipated (Energy Consultants)			Annual	As needed	125,000		15%	143,750	
					<b>Subtotal</b>			<b>402,500</b>	
<b>Other Services</b>									
Travel	\$	1,000	1 day	5 major + minor	10,000		15%	11,500	
Meetings/Conferences/Publications/Related Expenses	\$	75,000	Annual	1 year	75,000		20%	90,000	
					<b>Subtotal</b>			<b>101,500</b>	
<b>Total</b>								<b>\$ 1,254,301</b>	

**ERB Transition and Forward Plan**  
**Revised 6-4-15**  
**For Order**

ERB General Forward Plan

- EDA will assume primary operations, planning and project underwriting and financing approval of the NJ ERB
- The BPU will assume a support role and act as a consultant to the ERB providing technical and policy expertise
- Funding will be determined by the EDA from CDBG Recovery Funding
- BPU will maintain a level of funding for staff support and contingency funding should potential projects not meet CDBG funding criteria
- An amendment to the existing Subrecipient Agreement (“SRA”) will be drafted and approved by both agency Boards.

BPU Role

The BPU will provide technical support to the ERB and EDA as necessary to include up to the following services:

- participation in the creation and/or changes to the Program Guide, Product development and internal policies & procedures
- support for technical meetings with applicants and outreach functions
- technical review of applications and projects along with recommendations (this would include a high level review of applications and a detailed design/functionality/operational review as necessary)
- assistance with technical consultants – if necessary
- Optional - support during the construction oversight process – if necessary.
- Optional - research and industry outreach as necessary (similar to functions of McKinsey)
- Optional - Coordination of DEP permitting can remain with the BPU in required.
- Optional – technical training to ERB/EDA personnel as required.

BPU Staffing

- BPU will provide staffing of all technical functions as required, including but not limited to, Chief Technical Officer, Project Development personnel, technical analysts, and project coordinator as required. It is anticipated that the EDA will hire in-house personnel to assume these positions and roles in the future.

- Some of these BPU functions may require the retention of outside consultant. The BPU plans to enter into contracts with Rutgers and NJIT (including but not limited to CEEEP and Sustainable Jersey) for technical analysis and technical expertise where required.

### BPU Funding

EDA will reimburse BPU for services of the BPU from ERB funds. All time expended by BPU staff or consultants will be tracked, coded and submitted via invoice to the EDA. This invoicing process will be finalized within 30 days of execution of the amended SRA.

### Modifications to SRA (General)

- BPU will become a consultant to the EDA for the ERB program.
- No BPU commissioner approval of projects, guidelines or Products
- BPU will not be required to submit a yearly Budget for the ERB.
- The proposed SBC funding originally allocated to the ERB from the BPU SBC funds will not be provided.
- Section IV – part B of the Subrecipient Agreement should be modified per the new scope of work.
- Language regarding the payment of services to the BPU must be modified and a formal process established.

### Considerations:

- Need continued coordinate with OCE programs to ensure that ERB and OCE are not in competition for projects.
- The ERB should not create or define any policy decisions or changes that would impact larger State programs – this function should remain with the BPU as necessary.