East Side Commercial District Program Guidelines

Revised Version as of September 1, 2020

New York State
Empire State Development
East Side Corridor Economic Development Fund
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I. Introduction

As part of the 2017-2018 State budget, the Governor and the State Legislature approved a second phase of the Buffalo Billion initiative, or BB2, allocating an additional $500 million for economic development in Western New York. A major component of BB2 focuses on ensuring that all Western New Yorkers have an improved quality of life, and includes programs targeted at revitalization in the City of Buffalo’s (the “City”) most underserved neighborhoods. As part of this strategy, $50 million in state funding is dedicated to the revitalization of Buffalo’s East Side through the East Side Corridor Economic Development Fund (“ESCEDF”), which is making transformational capital investments in nine investment areas along four East Side Commercial Corridors – Michigan, Jefferson, Fillmore, and Bailey Avenues.

Within the ESCEDF, Empire State Development (“ESD”) established a $2 million program (the “Program”) that will expand neighborhood-serving businesses including retail, restaurants, and other services; and increase mixed-use opportunities along strong commercial districts within the Jefferson Avenue, MLK Park, Broadway-Fillmore, and Kensington-Bailey Commercial Districts

The program, the East Side Commercial District Program (“ESCDP”), will provide funding for building renovations in these four neighborhoods, which are four of the nine target investment areas of the ESCEDF. These investment areas were chosen because (1) they represent traditional mixed-use commercial districts, (2) there is demand from building owners, and (3) the area has an established non-profit Local Program Administrator (“LPA”) to administer ESCDP.

The LPA chosen to administer the grant funding for each corridor will use funds provided by ESD to award capital grants to district building owners, ensuring decisions are made at a local level with oversight from the community non-profit. Each LPA will be responsible for administering a $500,000 grant program over five years.

In addition, through a competitive bid process, ESD has procured Consultants (planning, economic development, and/or architecture/engineering firms) to assist the LPAs with the Program. Each LPA will receive assistance from an assigned Consultant for the initial two years of the Program. The LPAs, with assistance from the Consultants, will be responsible for all aspects of grant administration including, but not limited to: ensuring successful completion of all assisted projects; evaluating and selecting activities to be supported; entering into contracts with participating property owners and contractors; and assuring compliance with all local, state and federal laws and regulations. The Consultant will be responsible for assisting the LPA with ESCDP administration, as well as provide the LPA with the knowledge and know-how to continue this work independently. At the end of two years, LPA staff should be fully self-sufficient and be able to administer the program without consultant assistance.

II. Program Purpose and Goals

The ESCDP is modeled after the Better Buffalo Fund’s Buffalo Main Streets Initiative (BMSI) and the New York State Main Street (NYMS) program offered by NYS Homes and Community Renewal’s (HCR) Housing Trust Fund Corporation (HTFC). ESCDP aims to assist in the community-driven revitalization of mixed-use neighborhood commercial districts through targeted improvements such as façade renovations and interior building upgrades to commercial structures. LPAs will be responsible for selecting projects within the boundaries of the commercial district it is representing. ESD seeks projects that will contribute to the revitalization of commercial districts by:
• Building on existing planning processes to ensure that capital investments of public funds will enhance the aesthetics and economics of the commercial district;
• Stimulating the economic revitalization of commercial districts by providing financial incentives for the rehabilitation of traditional commercial building stock;
• Fostering small business development, thereby providing economic opportunities and promoting economic activity in neighborhood business locations;
• Supporting owner-occupied and neighborhood-based businesses along with minority-, women- and disabled military veteran-owned businesses to improve the overall community’s benefit of revitalization;
• Preserving significant and historic buildings and providing an environment that attracts new investment to enable the adaptive reuse of these buildings for new enterprises;
• Addressing existing accessibility, code compliance, environmental, energy efficiency and health and safety issues to return vacant commercial spaces to active use; and
• Creating an incentive for comprehensive and enhanced rehabilitation projects rather than deferred maintenance and repair assistance.

III. Program Eligibility

Each commercial district eligible for ESCDP is pedestrian-oriented and comprised of traditional mixed-use buildings that are eligible to participate in the program. ESCDP will fund projects within the identified Commercial Districts areas. For a property to be eligible for funds, its address must be on the street identified on the map.

1. Jefferson Avenue Commercial District (Jefferson Avenue addresses between East Ferry Street and Dodge Street, as well as establishments on corner lots in this targeted area).
2. MLK Park Commercial District (Fillmore Avenue addresses between East Ferry Street and North Parade Avenue, as well as establishments on corner lots in this targeted area).
3. Broadway-Fillmore Commercial District (Fillmore Avenue addresses between Sycamore Street and Paderewski Drive, and buildings with a Broadway address between Memorial Drive and Reed Street, as well as establishments on corner lots in this targeted area).
4. Kensington-Bailey Commercial District (Bailey Avenue addresses between LaSalle Avenue and Route 33, as well as establishments on corner lots in this targeted area).

See Attachment A: ESCDP Eligible Districts Map.

IV. Program Activities

LPAs may request funds to assist property owners within their concentrated target area. An ESCDP grant may be provided to selected property owners for exterior facade and storefront renovations or interior renovations for commercial buildings.

LPAs may award property owners eighty-five percent (85%) of total project costs, up to $50,000 per building, for renovation of a commercial building. Investments of ESCDP funds in eligible buildings and activities must be matched by other funds by the property owner. ESD requires that the property owner contribute a minimum of fifteen percent (15%) match of the total project cost. In-kind matches and/or staff time are not eligible for the match requirement. Costs incurred prior to the date of execution of the agreement between the LPA and Property Owner are not eligible.

The required match must come from the building owner. Proof of match must be provided to LPA upon
application in the form of a certified bank letter and/or dated bank statement proving match balance. Property owners may obtain a line of credit or loan to meet the match contribution and must provide proof of financing approval. Professional service costs ("soft costs") that are attributed directly to the delivery of the renovation activities may be eligible expenses provided they are reasonable, sufficiently documented, and related to a specific building project; however, these soft costs must be necessary for the completion of a building renovation project. Soft costs include architectural and engineering fees and other pre- and post-construction expenses. Soft costs must be included in the project budget and may not exceed 18% of the ESCDP funds for each project.

Any funds expended before the execution of the grant agreement between the LPA and property owner will not be eligible as match. **Property acquisition is not an eligible use of program funds and not an eligible source of match.**

Examples of prospective grant awards:

<table>
<thead>
<tr>
<th>Example 1: $25,000 Building Renovation Project</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ESCDP Grant</strong></td>
</tr>
<tr>
<td>$ 21,250</td>
</tr>
<tr>
<td><strong>Property Owner Match Contribution</strong></td>
</tr>
<tr>
<td>3,750</td>
</tr>
<tr>
<td><strong>Total Project</strong></td>
</tr>
<tr>
<td>$25,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Example 2: $58,823 Building Renovation Project</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ESCDP Grant</strong></td>
</tr>
<tr>
<td>$ 50,000</td>
</tr>
<tr>
<td><strong>Property Owner Match Contribution</strong></td>
</tr>
<tr>
<td>8,823</td>
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<tr>
<td><strong>Total Project</strong></td>
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<tr>
<td>$58,823</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>Example 3: $100,000 Building Renovation Project</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ESCDP Grant</strong></td>
</tr>
<tr>
<td>$ 50,000</td>
</tr>
<tr>
<td><strong>Property Owner Match Contribution</strong></td>
</tr>
<tr>
<td>50,000</td>
</tr>
<tr>
<td><strong>Total Project</strong></td>
</tr>
<tr>
<td>$100,000</td>
</tr>
</tbody>
</table>

**V. Eligible & Ineligible Use of Funds**

Funds must be used for commercial building upgrades. Upgrades to residential properties or the residential portion of a mixed-use building will not be funded by the ESCDP.

Funds must be used for capital purposes, including work pertaining to code compliance, plumbing, electrical and cosmetic renovations or necessary project delivery expenses such as architectural and engineering work, or required environmental review expenses purpose.

Improvements to structures owned by religious or private, membership-based organizations; or improvements to municipally owned buildings used for municipal purposes are ineligible uses of funds. The purchase of non-permanent fixtures, such as furnishings, appliances, electronics, and business equipment; general organizational operating expenses; site work or ancillary activities on a property, including septic systems and laterals, grading, parking lots, sidewalks, landscaping, fences, free standing signs, and general maintenance; and predevelopment planning and associated expenses, are not eligible project costs that will be reimbursed or used as towards the match.
New construction on vacant sites is not eligible, however additions to existing buildings, limited to fifty percent (50%) of existing space, not to exceed 4,000 square feet of space, on property already owned or controlled by the applicant, in full compliance with local development regulations, and not involving a property listed on the State/National Registers of Historic Places will be considered provided they advance the objectives of the Program.

Project costs incurred by the property owner prior to LPA & Property Owner Grant Agreement execution date and environmental review will not be eligible for reimbursement.

Properties listed for sale or with intent to sell will not be eligible.

Program funds will not be used to cover late fees or interest.

VI. Administrative Guidelines

1. Program Development
   a. Marketing the Program
      The LPA shall conduct outreach in the awarded target area to make all property owners aware of the availability of financial assistance through the Program.

      • The LPA will develop and distribute informational materials to market program availability and explain program requirements. These materials will be distributed to businesses and property owners in the target area and made available for distribution to local governments, libraries, chambers of commerce, business associations, and other local partners.

      • Instructions on how to apply for assistance and required forms will be available at the offices of the LPA and other local partners.

      • Public informational meetings will be held at one or more locations within the community to present information and answer questions.

      • The LPA must retain distribution lists, public notices and other documentation of marketing and outreach efforts in program files.

   b. Project Selection
      The LPA must develop and formalize project selection criteria and a clear project selection process. This process must be used consistently throughout the term of the Grant Disbursement Agreement between the LPA and ESD (five years) and should be used for as many rounds of projects as time and funding allow.

      • The LPA must identify a Project Selection Committee to implement the project selection process and generate funding decisions. The project selection committee can be comprised of LPA staff, neighborhood stakeholders, and design and construction experts.

      • Project selection criteria must afford priority to:
         - Projects that are visually prominent.
         - Projects with historic value or historic properties in danger of being lost to disrepair or damage.
         - Projects that adhere to the LPA’s Commercial District design standards.
- Projects that, with the assistance of Program funds, will reduce blight, contribute to the economic recovery of the target area, or realize a stabilization or expansion of an East Side Commercial Corridor business.

- The LPA should develop local project selection criteria to supplement the priority project selection criteria (above) identified by the Program.

- In addition to satisfying the project selection criteria, the LPA must verify proof of building ownership of each applicant.

- The LPA will advise applicants on the disposition of an application within 30 business days of the submission of a complete application, unless otherwise advised by ESD.

- The LPA must retain clear documentation of each project selection committee decision in the program files. This must include a determination for each application reviewed, and each project selected. This documentation should include project selection memos, Project Selection Committee meeting minutes or other related correspondence.

- It may be permitted for the assigned LPA to allocate funds for a property owned by a member of its board. The allocation must be consistent with the selection procedures described above, as well as in the written supplemental procedures. The allocation must also be consistent with the LPAs adopted bylaws or other policies. If the identified Project Selection Committee selects a property owned by a board member, the material facts of the potential conflict of interest must be disclosed to the not-for-profit board. The board must authorize this project selection and contract by a vote that is sufficient for such purpose, without counting the vote of the interested board member. The board member whose property may receive assistance may not vote on or participate in discussions concerning that matter. This vote must be clearly documented in the board’s meeting minutes.

2. Project Development

a. Work Write-up / Scope of Work

If the LPA determines an initial application to be eligible for assistance, and the identified Project Selection Committee chooses to commit grant funds for the project, the LPA will meet with the property owner to develop a Scope of Work and an initial estimate of costs. This meeting may occur at the building site or after a visit to the site. The LPA will discuss requirements related to program requirements, including but not limited to, lead-based paint hazards, energy efficiency, historic design standards, or any other work scope issues with the property owner.

A written Scope of Work is an ESDP program requirement and must be submitted by the LPA to ESD for each project being funded through the ESDP. The Scope of Work must address:

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

The written Scope of Work must include:
• Name and contact information of Property Owner
• Name and contact information of Contractor
• Total project budget with breakdown of owner match, ESDP grant, 10% retainage
• Description of work
• Number of working days to complete work
• List of applicable permits
• Environmental and State Historic Preservation Officer requirements

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

The property owner and LPA will be responsible for paying for all agreed upon repairs as outlined in the Scope of Work, and the LPA will not fund more than the costs identified in the LPA & Property Owner Agreement as available per building for the funding year.

See Attachment B: Scope of Work Suggested Template.

b. Contractor Selection

At least three (3) bids must be obtained for each separate construction project or professional service to establish the reasonableness of project costs. In the event three bids are unattainable, there must be reasonable proof and professional review of the unattainable circumstance. Contractors must supply references and proof of proper insurance when submitting a bid.

Certain principles must be upheld in seeking bids or quotes:
• There must be a clear, written, Scope of Work for the project for which bids or quotes are sought, as outlined in Work Write-up/Scope of Work above.
• All bidders must have equal access to relevant information, including information on the property itself.
• The process should be free of collusion or intimidation, and the LPA should exercise appropriate oversight over the entire process to ensure that it is fair and efficient and avoid actual and perceived conflicts of interest.

Although the property owner may select the contractors to supply quotes, the LPA will request bids on behalf of the property owner and contractor quotes must be submitted directly to the LPA by the contractor. The LPA will review the bids and will advise the property owner of acceptability of bids/proposed cost. ESD strongly recommends property owners select the lowest priced responsible bidder which has complied with the Scope of Work specifications. If the LPA chooses other than the lowest responsible bidder, they must submit rationale to ESD in writing, which must be approved by ESD before contracting with that bidder.

c. Contracting Procedures

i. LPA & Property Owner Grant Agreement:

The LPA and Property Owner will enter into a Grant Agreement to provide the agreed financial assistance, subject to the property owner entering into the agreement based on the agreed Scope of Work and the work beginning within 45 days of LPA approval. Should an extension to this timeline need to be made, the Contractor shall request approval in writing to the LPA and ESD
The LPA & Property Owner Grant Agreement will specify that payments will be made by the LPA directly to the contractor upon proof of an approved invoice, ESD approval, and any documentation required by ESD. The LPA & Property Owner Grant Agreement will outline the roles and responsibilities for both the LPA and the property owner. In addition, it will provide that the LPA has the right to inspect work at any time and cancel the agreement should the work being done be inconsistent with the standards mentioned in the preceding sections, or if problems with the workmanship arise, or if insurance is not maintained by the contractor. The LPA & Property Owner Grant Agreement must specify:

- The agreed upon Scope of Work;
- The amount of financial assistance awarded;
- The project timeline;
- That payments will be made upon receipt of:
  - Applicable Permits
  - Record of Inspection, including but not limited to LPA, utility company, and City of Buffalo
  - Certificate of occupancy (if applicable)
  - Code compliance (if applicable)
  - Sign off on completion of Scope of Work by, including but not limited to, LPA, property owner, contractor(s), architect/engineer
  - Project cost documentation, including but not limited to invoices and purchase orders. Owner labor or purchased materials will not be reimbursed.
- The LPA has the right to inspect work at any time and to cancel the agreement should the work be inconsistent with the standards outlined or if insurance is not maintained by the contractor;

The LPA & Property Owner Grant Agreement should also specify that it is subject to the property owner, with the assistance of the LPA, engaging a contractor and beginning construction within 45 days of LPA approval.

See Attachment C: LPA & Property Owner Agreement for full document.

**ii. Property Owner & Contractor Agreement:**

The property owner will enter into a separate Property Owner & Contractor Agreement with the contractor that outlines the Scope of Work, applicable costs and payment process.

See Attachment D: Property Owner & Contractor Agreement for full document.

All sample contracting Agreements provided as attachments to the ESCDP Guidelines have been approved by ESD. Any material changes made by the LPA to the sample agreements must be approved by ESD. ESD shall have the right to review and approve of the project agreements and documentation requirements prior to execution by the LPA.

3. **Construction Management/Quality Control**

   **a. Design Standards**

   All work must be completed in accordance with design standards that will be developed for each
commercial district by the LPA to meet the priorities listed in Guidelines Section 2(a) Work Write-up / Scope of Work. These standards will be consistent with the requirements of the State Historic Preservation Office (SHPO), and City Green Code, and any other applicable municipal code. The LPA will enforce the standards throughout the development process.

b. Inspections
The LPA and/or ESD retain the right to inspect work in progress at any point and will inspect on as needed basis for disbursement of funds. Before a final payment can be made, a final inspection will be required. The LPA, the local code enforcement officer (if applicable), and the property owner will all verify that the work was completed properly and is consistent with the contracted Scope of Work. The LPA must clearly document each site visit and inspection in the project files. Inspection reports will be reviewed during a possible ESDP Program monitoring visit.

c. Project Signage
Properties participating in the ESDP program may place an ESDP program participant sign in a visible location at the project site during construction. Project signage is optional and will not be reimbursed through the Program.

See Attachment E: Participant Sign Template for sample.

4. Financial Management

a. LPA Program Administration Staff Requirements
The LPA’s chief financial officer will be responsible for all financial transactions under the executed Grant Disbursement Agreement (“GDA”) between the LPA and ESD. The LPA should have a written policy on internal controls and use the policy to determine the process for review and approval of requests for disbursement of ESDP funds.

b. ESD to LPA Payment Procedures
ESCDP is not a reimbursement program. The LPA will not award nor disburse more than the costs identified as available per building as listed in the LPA & Owner Grant Agreement. Payment will only be made upon the LPA and ESD determinations as to the satisfactory completion of all work and all back-up documentation has been provided.

c. LPA to Contractor Payment Procedures
The Property owner shall be responsible for the initial payment to the Contractor for its total match requirements, which shall be no less than 15% of the total project costs. LPA payments to contractors will begin only after the owner has provided Proof of payment to the contractor either as a cancelled check or bank statement reflecting the payment. Upon receipt, the LPA will submit to a payment request to ESD for approval and following ESD’s approval will pay the contractor for the balance of project costs owed, based on the value of the back-up documentation provided.

In the event additional project costs arise during construction, and the project costs exceed the maximum allowable of grant funds and owner match, the property owner shall be responsible for additional approved project costs and provide proof of payment of the additional costs in advance of the LPA releasing the final 10% retainage of Program funds to the contractor.

All projects must be completed within 24 months of ESD’s approval of each individual project and the LPA’s initial request to release funds.
All funds are subject to recapture at the discretion of ESD, based upon the executed Grant Disbursement Agreement between ESD and the LPA.

5. Ongoing Maintenance

   a. Obligations
   Property owners will be required to maintain property assisted with ESCDP funds for a period of five years from the date of project completion and final inspection. This requires that any assisted commercial or civic units be maintained in a manner that is consistent with the goals of the ESCDP program for the enforcement period.

   The LPA will require each property owner receiving ESCDP funds to file a Property Maintenance Declaration, in a form approved by ESD, with the Erie County Clerk. In the Declaration the property owner will declare that he/she has received assistance from ESCDP and will maintain the property in a manner consistent with the program objectives for a minimum of five years from project completion. In the event of non-compliance or resale, the amount of grant funds will be subject to repayment in accordance with a simple annual declining balance, based on the five-year enforcement period.

   b. Responsible Parties
   The LPA will monitor projects assisted under ESCDP during the five-year enforcement period. The LPA will ensure maintenance of ESCDP investments. The LPA must develop a formal plan for monitoring the assisted properties and ensuring compliance for the full maintenance term. The plan must address staff assignment of this responsibility and address continuity of operations. As part of this plan, the LPA will periodically inspect assisted properties and conduct any inspections directed by ESD.

   See Attachment F: Property Maintenance Declaration.

6. Environmental Review Procedures

ESD, as lead agency, completed an environmental review for construction the overall program for each Commercial District, pursuant the requirements of the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. This review found that the proposed ESCDP for each of the four corridors would be an Unlisted Action that would not result in significant adverse impacts on the environment. This analysis was based on the premise that most applications under the program would largely involve in-kind rehabilitation of mixed-use business district structures, with no anticipated expansions larger than 4,000 square-feet in gross floor area and permitted under current zoning and other land development regulations (i.e., the threshold for Type II actions).

Nevertheless, prior to the expenditure of ESCDP funds for work done on specific grants/projects in each of the Commercial Districts, the applicants/LPAs\(^1\) must determine if the proposed project would

\(^1\) For the initial two years of the program, LPAs will be provided consultants and/or direct ESD assistance to undertake these efforts. For subsequent years of the program, this work would be the responsibility of the applicant; however, the costs of such services may be reimbursed through the program grant.
result in any significant environmental issues/effects pursuant to SEQRA that were not considered in the ESD review of the program. Environmental issues to be evaluated for each project would include, but not be limited to:

1) Determining whether the project involves a historic property;
2) Determining whether it is in compliance with City zoning and land development regulations;
3) Determining whether the property exhibits soil contamination, lead-based based paint, asbestos-containing materials, and/or Radon within areas or in any way directly affecting the areas of proposed improvements; and
4) Confirming that the property does not contain wetlands or floodplains.2

In the case of historic properties (i.e., buildings/sites listed on or are eligible for inclusion on the State and National Registers of Historic Places), the LPAs/applicants must consult with the NYS Office of Parks, Recreation and Historic Preservation (NYSOPRHP) pursuant to the requirements of Section 14.09 of the State Historic Preservation Act prior to any construction work, and obtain either a “No Impact” or “No Adverse Impact” letter, or in the case of an adverse impact, a mitigation plan agreed to with NYSOPRHP and summarized in a “Letter of Resolution”. Any work conducted prior to receipt of a SHPO determination will not be an eligible expense.

In cases where a proposed use is not in compliance with City zoning or land development regulations, applicants must obtain applicable variances or zoning changes from the City that would permit the proposed use, prior to being eligible for a grant.

7. Covenants of the Recipient
The LPA will comply with all applicable statues, guidelines, regulations, policies and procedures of the ESCDP. Any defect or departure from the ESCDP Guidelines must be requested and approved in writing. ESCDP Guidelines are subject to change and all program participants will be notified of any changes.

VII. ESCDP Guidelines Attachments

1) Attachment A: East Side Commercial District Program Eligible Districts Map
2) Attachment B: Scope of Work Suggested Template
3) Attachment C: LPA & Property Owner Grant Agreement
4) Attachment D: Property Owner & Contractor Agreement
5) Attachment E: ESCDP Project Participant Sign Template
6) Attachment F: ESCDP Property Maintenance Declaration
7) Attachment G: Anti-Bribery Certification
8) Attachment H: Contractor Bid Submittal Form

2 Please note that current Federal Emergency Management Administration (FEMA), National Wetland Inventory (NWI), and NYS Department of Environmental Conservation (NYSDEC) maps show no floodplains or wetlands on any of the four corridors.
Eligible Districts

East Side Commercial District Program

Legend

Reflects properties with a Fillmore Ave. address between East Ferry St. and N Parade Ave.

Reflects properties a Jefferson Ave. address between East Ferry St. and Dodge St.

Reflects properties with a Fillmore Ave. address between East Ferry St. and Paderewski Dr., and properties with a Broadway address between Memorial Dr. and Reed St.

Reflects properties with a Bailey Ave. address between LaSalle Ave. and Rt. 33.
EAST SIDE COMMERCIAL DISTRICT PROGRAM: [LPA NAME], Project #133,XXX

SCOPE OF WORK

1. Project Address: ____________________________________________________________

2. Property Owner Name, Phone Number & Address:
   __________________________________________________
   __________________________________________________
   __________________________________________________

3. Contractor Name, Phone Number & Address:
   __________________________________________________
   __________________________________________________
   __________________________________________________

4. Project Budget:
   a. Owner Match Contribution (no less than 15%): $xx,xxx.xx
   b. [LPA] Contribution (no more than 85%): $xx,xxx.xx

   Total Project Budget: $xx,xxx.xx

5. Description of Work: Click or tap here to enter text.
   ____________________________________________________________________________
   ____________________________________________________________________________
   ____________________________________________________________________________
   ____________________________________________________________________________

6. Number of Working Days to complete work as described above: ______________

7. Date of Notice to Proceed (MM/DD/YYYY): _____/_____/

8. List of Applicable Permits, date of permit:
   __________________________________________________
   __________________________________________________
   __________________________________________________

9. New York State Environmental Quality Review (“SEQR”) required: Yes □ or No □
   a. If Yes, is the review completed? Yes □ or No □
   b. If Yes, please submit a copy of the SEQR to Johanna Walczyk (Johanna.Walczyk@esd.ny.gov)

10. State Historical Preservation Office (“SHPO”) consultation required: Yes □ or No □
    a. If Yes, is the consultation completed? Yes □ or No □
    b. If Yes, please submit a copy of the SHPO consultation to Johanna Walczyk (Johanna.Walczyk@esd.ny.gov)
This Agreement is made effective as of the _____ day of _______________, 20____, by and between [INSERT LPA FULL NAME & ACRONYM] (which, for the purpose of this document will be referred to as the “LPA”), with an office at _________________________, and ____________________________ (“Owner”), residing at or having a principal place of business at ________________________________________.

WITNESSETH:

WHEREAS, the LPA has entered into a Grant Disbursement Agreement (“GDA”) with Empire State Development (“ESD”) to distribute and administer funds for projects under the East Side Commercial District Program (“Program”) to eligible properties selected in accordance with Program Guidelines (“Guidelines”); and

WHEREAS, the LPA administers the distribution of grant funds to the Owner, for the project in accordance with all the terms and conditions of its GDA with ESD, and ESD’s applicable rules, regulations, policies and procedures, as amended from time to time; and

WHEREAS, the Owner has submitted an application which has been accepted by the LPA for funding subject to compliance with the Program Guidelines; and

WHEREAS, the Owner intends to complete improvements of the property located at [STREET ADDRESS] (the “Premises”) using funds to be provided through the Program (“Program Funds”) being administered by the LPA; and

NOW, THEREFORE, the LPA and the Owner agree as follows:

1. TERM
The period of performance for all activities assisted pursuant to this LPA & Property Owner Grant Agreement (this “Agreement”) shall be _____ months, commencing on the effective date of this Agreement and ending on _______________(the “Term”), unless otherwise approved by the LPA.

2. OWNER’S REPRESENTATIONS
The Owner hereby expressly represents that he/she/it is the owner of the Premises designated herein for improvement and rehabilitation and that, as the Owner, he/she/it has all lawful authority required to execute this Grant Agreement, which shall be binding upon the Owner and/or its successors and assigns.

3. FUNDING
Subject to compliance with all Program Guidelines, the LPA agrees to pay up to 85% of project related costs, in an amount not to exceed $________________. The Owner is responsible for paying project
related expenses no less than 15% ($_________________) of the total project related costs prior to Program Funds being utilized as described in the Scope of Work attached hereto and incorporated herein as Exhibit A. Total project related costs are expected to be $_________________________. Any modification, amendment or rescission of project related costs must be requested in writing and approved in writing by the LPA. In no event, shall the payment of Program Funds exceed $50,000; the Owner’s contribution must be paid before Program Funds are expended.

4. PROJECT REQUIREMENTS
   a) The LPA, on behalf of the Owner, shall obtain at least three bids to complete the Scope of Work. In the event three bids are unattainable, the LPA, on behalf of the Owner, shall provide an explanation in writing to ESD for approval as why three bids could not be obtained. The LPA, on behalf of the Owner, shall provide equal access to relevant information to all bidders and the process shall be free of collusion or intimidation. All bids shall be submitted directly to the LPA. The LPA will advise the Owner of acceptability of bids and proposed cost. If the Owner chooses other than the lowest acceptable bidder, project cost will be developed based on the amount of the lowest bid.
   b) The LPA shall solicit bids from eligible contractors pursuant to a list maintained by the LPA, or otherwise approved by the LPA.
   c) Owners and/or family members shall not be permitted to submit bids or complete any work to be paid with Program funds.
   d) Upon receipt of a bid acceptable to the Owner and LPA, the Owner shall contract with the selected bidder to complete the Scope of Work.

5. MATCHING GRANT PAYMENT PROCESS
   a) The payment of Program Funds shall be made only upon satisfactory progress or completion of the Scope or Work as agreed to by the Parties.
   b) No payment shall be paid to the Contractor pursuant to this Agreement until the work is inspected by the LPA, its representative(s) or agent(s), for each requested payment. All completed work shall comply with all applicable building codes and standards.
   c) To substantiate work costs, Owners must provide written contracts, bank documents, copies of invoices for materials and labor, cancelled checks, lien releases, and any other documents deemed necessary by the LPA to maintain effective internal controls. Cash payments, owner labor or owner-purchased materials will not be reimbursed.

6. INSPECTION OF WORK: UNSATISFACTORY WORK
The Owner agrees that the LPA, its representative(s) or agent(s), shall at all times have access to the Premises for the purpose of inspecting and reviewing the renovation work. In the event that the Owner or the LPA, its representative(s) or agent(s), shall determine that there exists unsatisfactory work, the Owner shall notify the contractor in writing of the existence of such (sending copies to the LPA and any other interested parties), and the contractor shall correct such work within twenty (20) calendar days after receipt of said notice. In the event that the contractor fails or refuses to complete such corrections within said period of time; the LPA shall have the right to cancel this Agreement and, have no obligation to provide any reimbursement for the work completed.
7. **REGULATORY PERIOD**
For a period of five (5) years from project completion ("Regulatory Period"), the Owner shall take all necessary steps to ensure that the Premises improved under the Program is maintained in good condition.

The Owner of a Premises improved under the Program ("Assisted Property") will be required to execute a Declaration, in the form attached as Exhibit D, which shall be filed at the Erie County Clerk’s Office. The Owner agrees to maintain the Assisted Property in compliance with the terms of this Agreement, throughout the Regulatory Period. The Owner shall further declare that in the event of any non-compliance or sale of the Assisted Property, the amount of Program Funds distributed shall be subject to repayment. The amount shall be calculated and determined in accordance with an annual declining balance method based upon the five (5) year enforcement period, as shown on the Declaration. The Owner further acknowledges and agrees that the LPA and ESD shall have the right to inspect the Assisted Property to monitor the Owner’s compliance with this requirement.

8. **REPORTS AND ACCESS TO RECORDS**
During the Term and the Regulatory Period, the LPA will require an annual inspection. The Owner further agrees to provide the LPA with reports or records to prove results of satisfactory inspection in such form, content and frequency as requested by the LPA and the ESD.

9. **TERMINATION**
In the event the Program or the LPA shall for any reason cease to exist or terminate prior to the completion of the work to be performed as specified in this Agreement, or in the event the Owner shall die, or the ownership of the building changes prior to the completion of such work, the LPA may terminate its obligation(s) hereunder to the Owner.

10. **COMPLIANCE WITH LOCAL LAWS AND CODES**
The Owner shall be required to give all notices required by, and comply with, all applicable laws, ordinances, regulations and codes of the City of Buffalo, the State of New York, and the United States, and shall at its own expense, pay the fees or charges for all permits required for the performance of the work related to the work contemplated in this agreement.

11. **NOTICE OF INVESTIGATION OR DEFAULT**
The Owner shall notify the LPA within five (5) calendar days after obtaining knowledge of: (i) the commencement of any investigation or audit of his/her activities by any governmental agency in connection with the Assisted Property; or (ii) the alleged default by the Owner under any mortgage, deed of trust, security agreement, loan agreement or credit instrument executed in connection with the Assisted Property; or (iii) allegation of ineligible or prohibited activities. Upon receipt of such notification, the LPA and the ESD may, in its discretion, withhold or suspend payment of Program Funds for a reasonable period of time while a review of activities and expenditures is conducted.

12. **DEFAULT**
   (a) If an Event of Default as defined below shall occur, all obligations on the part of the LPA to make any further payment of Program Funds shall, if the LPA so elects, terminate and the LPA may, in its discretion, exercise any of the remedies set forth herein; provided, however, that the LPA may make any payments after the happening of an Event of Default
without thereby waiving the right to exercise such remedies, and without becoming liable to make any further payment.

(b) The following shall constitute an Event of Default hereunder:
(i) if the Owner fails, in the opinion of the LPA, to comply with or perform any provision, condition or covenant contained in this Agreement, any applicable State or federal law or regulation, or the Program policies and procedures established by ESD or the LPA;
(ii) if at any time any representation or warranty made by the Owner shall be incorrect or materially misleading; or
(iii) if the Owner has failed to commence the improvements as specified in Exhibit A- Scope of Work in a timely fashion or has failed to complete such improvements within the Term.

(c) Upon the happening of an Event of Default, the LPA may, in its discretion, exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of such remedies shall not preclude the LPA from pursuing any other remedies contained herein or otherwise provided at law or in match:
(i) Terminate this Agreement, provided that the Owner is given at least ten (10) business days prior written notice.
(ii) Withhold or suspend payment of Program Funds.
(iii) Recapture any Program Funds disbursed to the Owner on a pro rata basis over the Regulatory Period. The amount to be recaptured shall be determined by reducing the original amount of Program Funds disbursed to the Owner by one fifth (1/5th) for each year of the Regulatory Period the Owner was in compliance with this Agreement.
(iv) Exercise any corrective or remedial action, to include, but not be limited to, advising the Owner to suspend, discontinue or refrain from incurring costs for any activities in question or requiring the Owner to reimburse the LPA and the ESD for the amount of Program Funds expended or used in an unauthorized manner or for an unauthorized purpose.

(d) In the event this Agreement is terminated by the LPA for any reason, or upon the closeout of the Program, the LPA shall have no further liability or obligation under this Agreement; provided, however, that nothing herein is intended to relieve the LPA of its obligation to pay for services properly performed by the Owner prior to such termination.

13. INDEMNIFICATION
Owner shall require any contractor providing services that are excepted to be paid with Program Funds to defend, indemnify and hold harmless the Owner, the LPA, ESD, and the City of Buffalo from liability for any claim for injury or damages to persons including the contractor and his/her employees, subcontractors and agents, or property, resulting from any work performed under this Agreement.

14. ASSIGNMENT
The Owner shall not assign this Agreement without the prior written consent of the LPA and any such request for assignment of said Agreement must be addressed to the LPA at, ____________________________________________.

15. WAIVER OF LIABILITY
Nothing in this Agreement nor any act of the LPA or ESD, including but not limited to, an inspection of work, approvals given, permits issued or payments made, shall be construed as a warranty for the work performed under this Agreement, and the Owner hereby expressly waives any such claim.

16. PROPERTY RELEASE
By executing this Agreement, the Owner agrees to permit the LPA and the ESD to publish photographs of assisted properties for promotional or public relations purposes.

17. MODIFICATION AND AMENDMENT
This Agreement shall be construed under the laws of the State of New York and may be modified or amended only by a written instrument executed by both the Owner and the LPA.

18. EXHIBITS:
The following attachments are hereby incorporated into this agreement and the Owner shall adhere to the provisions contained therein.

- Exhibit A: Copy of Owner’s Application for ESCDP Assistance
- Exhibit B: Scope of Work (ESCDP Guidelines: Attachment B)
- Exhibit C: Program Rules and Design Guidelines
- Exhibit D: Property Maintenance Declaration (ESCDP Guidelines: Attachment F)
- Exhibit E: Anti-Bribery Certification (ESCDP Guidelines: Attachment G)
IN WITNESS WHEREOF, the LPA and the Owner have executed this Agreement on the date first written above.

LPA:  

__________________________  
Signature  
Date  

__________________________  
Printed Name  
Title  

Owner:  

__________________________  
Signature  
Date  

__________________________  
Printed Name  
Title  

STATE OF NEW YORK  }  
COUNTY OF ERIE  } SS:  
CITY OF BUFFALO  }  
On this _____ day of _____________________, 20____ , before me subscriber personally appeared  
_______________________________me known and known to me or proved to me on the basis of  
satisfactory evidence to be the individual whose name is subscribed to the within instrument and  
acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on  
the instrument, the individual, or the person upon behalf of which the individual acted, executed the  
instrument.

________________________________  
Notary Public/Commissioner of Deeds
EAST SIDE COMMERCIAL DISTRICT PROGRAM

PROPERTY OWNER & CONTRACTOR AGREEMENT

This AGREEMENT, by and between _________________________ with offices located at ________________________________, hereinafter referred to as the “Contractor” and _________________________, with an address of ______________________________, hereinafter referred to as the “Owner”.

WITNESSETH:

WHEREAS, the Owner owns property located at________________________, Buffalo, New York, hereinafter referred to as the “Property”

WHEREAS, the Owner intends to make repairs on his/her aforementioned property,

WHEREAS, the Owner has made application to its Local Program Administrator [Insert LPA Organization name] herein after referred to as the (“LPA”) for funds to accomplish this work under the East Side Commercial District Program (“ESCDP”) or “the Program”,

WHEREAS, the Program funds are provided by Empire State Development (“ESD”) by virtue of the Grant Disbursement Agreement (“GDA”) executed on (DATE) between the LPA and ESD. ESD has the right to request additional documentation from the LPA and the Owner per the terms and conditions outlined in the GDA,

WHEREAS, the Owner intends to enter into this Property Owner & Contractor Agreement (“Agreement”) with the Contractor to complete the Scope of Work on the Owner’s property (“the Project”), subject to the approval and execution of an Agreement with the LPA, and

WHEREAS, the Contractor has the necessary equipment, personnel and expertise to perform the work specified in the attached Scope of Work,

NOW, THEREFORE, the Contractor and the Owner, for the consideration mentioned above, and under the conditions set forth herein, do mutually agree as follows:

1. CONDITION FOR VALIDITY OF AGREEMENT
   It is agreed by the Owner and the Contractor that this Agreement is contingent upon, and subject to, the Owner receiving approval from the LPA under the guidelines of the ESCDP, and the terms and conditions outlined in the executed agreement between the Owner and the LPA.

2. WORK DESCRIPTION
   The Contractor agrees to perform the repairs as set forth in the written specifications attached hereto and incorporated herein Exhibit B, the Scope of Work.
3. TIME OF PERFORMANCE
The Contractor agrees to begin the work provided for by this Agreement within forty-five (45) working days of receiving a written Notice to Proceed from the Owner. Should an extension to this timeline need to be made, the Contractor shall request approval in writing to the LPA and ESD. The Contractor agrees to complete the work based upon the schedule outline in the attached Exhibit B Scope of Work in accordance with all laws, rules and regulations governing the work.

No work shall commence prior to the Contractor receiving the written Notice to Proceed from the Owner. Following issuance of the Notice to Proceed, each Party to this Agreement shall have three (3) business days to withdraw from this Agreement without penalty. Upon cancellation by either Party, this Agreement shall have no force or effect and neither of the Parties shall have any claim of any nature against each other.

The Contractor agrees that the LPA, its representative(s) or agent(s), shall at all times have access to the Premises for the purpose of inspecting and reviewing the work. In the event that the Owner or the LPA, its representative(s) or agent(s), shall determine at any time that there exists unsatisfactory work, the Owner shall notify the Contractor in writing of the existence of such (sending copies to the LPA and any other interested parties), and the contractor shall correct such work within twenty (20) calendar days after receipt of written notice. In the event that the contractor fails or refuses to complete such corrections in the work within the allotted period of time, the LPA and the Owner shall have the right to cancel this Agreement and, upon such cancellation, shall have no obligation to provide any reimbursement for the work completed.

5. METHOD OF PAYMENT
The Owner acknowledges that he/she/it is required to pay the Contractor directly for its contribution (a minimum of 15%) of the Project Budget for the Scope of Work specified under this Agreement and attached hereto. The LPA will pay the Contractor directly for the remaining costs up to $_____________________ (a maximum of 85% of the Project Budget). Prior to remitting payment to the Contractor, the LPA will require the Owner to provide proof of payment of its contribution to the Contractor in the form of, including but not limited to, cancelled checks, and/or bank statements. Upon receipt of the contribution proof of payment, the LPA will pay the Contractor for the work completed minus 10% retainage which shall be released upon final completion of the Project as outlined in the Scope of Work, and all project required approvals have been received.

6. CONDITIONS RELATING TO USE OF STATE of NEW YORK MONIES
The Contractor understands that this Agreement is the result of a New York State financial assistance program, implemented through the Program, and that Program obligates the Contractor to comply with the requirements enumerated below.

7. ANTI-DISCRIMINATION AND EMPLOYMENT PRACTICES
A. General Policy
The City of Buffalo (the “City”), ESD and [Your Organization] affirm their policy of Equal Opportunity and their commitment to require all Contractors, Subcontractors, lessors, vendors and suppliers doing business with [Your Organization], ESD and the City to follow a policy of Equal Employment Opportunity, in accordance with the requirements set forth herein. The Contractor agrees that it shall comply with all State and Federal Equal Opportunity laws and regulations.

B. Definitions
GOOD FAITH EFFORT - shall mean every reasonable attempt to comply with the provisions of this policy by making every reasonable effort to achieve a level of employment of minority groups and female workers that is consistent with their presence in the local work force.
MINORITY GROUP PERSONS - shall mean a person of Black, Spanish surname American, Asian American or American Indian ethnic or racial origin and identity.

C. Compliance
The Owner and Contractor shall comply with all of the following provisions of this Equal Opportunity Requirement:

i. The Owner and Contractor shall not discriminate on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability, marital status, or handicap status in the performance of services or programs pursuant to this Agreement.

ii. The Owner and Contractor agree to make a good faith effort to employ minority group persons and females, and that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Owner, Contractor and/or its Subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, disability, marital status, or handicap status, discriminate against any person who is qualified and available to perform the work to which the employment relates. The Owner and Contractor agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, color, religion, creed, national origin, sex, sexual orientation, age, disability, marital status or handicap status.

iii. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship. The Owner and/or Contractor agree to post notices in conspicuous places available to employees and applicants for employment, and to include language in all solicitations or advertisements for employment placed by or on behalf of the Owner, reflecting this non-discrimination policy.

iv. If the Owner or Contractor is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, disability, marital status, or handicap status, by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity Laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the LPA, or ESD on account of such cancellation or termination.

v. The Owner or Contractor shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the LPA, or ESD for goods, work, or services until such time as the Owner or Contractor can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.

vi. The Owner and Contractor shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

vii. The Owner and Contractor shall comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) popularly known as the Fair Housing Act, which provides that is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the limited States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision...
of brokerage services, including otherwise making unavailable or denying a dwelling unit to any person because of race, color, religion, sex, marital status or national origin.

viii. The Owner and Contractor shall not subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

ix. The Owner and Contractor shall not restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

x. The Owner and Contractor shall not treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement keep or conditions which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

8. GENERAL LIABILITY INSURANCE

The Contractor shall obtain at his/her own expense, general liability insurance in the amount of at least One Million Dollars, for protection against claims of personal injury, including death, or damage to property, arising out of the Project. The insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York, the LPA and the New York State Urban Development Corporation d/b/a Empire State Development must be listed as additional insureds. The Contractor shall provide the Owner and the LPA with certificates of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force.

Furthermore, the Contractor shall provide a listing of any and all exclusions under its policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide ESD with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

9. WORKERS’ COMPENSATION AND DISABILITY BENEFITS INSURANCE

This Agreement shall be void and of no effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured under the provisions of the Workers’ Compensation Law of the State of New York. The Contractor shall provide proof to the LPA, duly subscribed by an insurance carrier, that such Workers’ Compensation and Disability coverage has been secured. In the alternative, Contractor shall provide proof of self-insurance or shall establish that Workers’ Compensation and/or Disability Benefits coverage is not required by submitting the current and required New York State Workers’ Compensation Board’s form.

10. EMPLOYMENT OF LOCAL LABOR

A. Work to be performed under this Agreement shall provide that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

B. The Owner and Contractor shall include the substance of this Section in every subcontract for work in connection with the project and will take appropriate action upon a finding that the Subcontractor is in violation
of this requirement. The Owner and Contractor will not subcontract with any Subcontractor where the Owner or Contractor has notice or knowledge that the latter has been found in violation of this requirement and will not let any subcontracts unless the Subcontractor has first provided a preliminary statement of ability to comply with this requirement.

11. LEAD-BASED PAINT
The Contractor agrees that any construction or rehabilitation of residential units with assistance provided under this Agreement shall be subject to EPA Lead-Based Paint Regulations at 40 CFR Part 745. Such regulations require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of government funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

12. ANTI-KICKBACK RULES
Salaries of Contractor's employees performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions that are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. I08; title 18 U.S.C., section 874; and title 40U.S.C., section 276).

The Owner shall comply with applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to insure compliance by Subcontractors with such regulations and shall be responsible for the submission of affidavits required of Subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

13. ARBITRATION
A. The Owner and Contractor agree that any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled in accordance with the Rules of the American Arbitration Association as administered by a certified arbitration firm. Judgment upon the Award rendered by such Arbitrator(s) may be entered in any Court having jurisdiction thereof.

B. The Contractor agrees that the Owner may deduct and cancel the amount of any monetary Arbitration Award made in favor of the Owner from the monies, if any, otherwise due and owing the Contractor under this Contract, upon the Owner’s written notice to the Contractor. Such deduction and cancellation may be made only after the time period for applying to the courts for vacating or modifying the Award has elapsed without such application being made by either the Owner or Contractor.

C. The Owner agrees that the Contractor may add the amount of any monetary Arbitration Award made in favor of the Contractor to the monies, if any, otherwise due and owing the Contractor under this Contract, upon the Contractor’s written notice to the Owner. Such deduction and cancellation may be made only after the time period for applying to the courts for vacating or modifying the Award has elapsed without such application being made by either the Owner or Contractor.

D. In the event that Judgment upon the Award has been entered, cancellation of the Judgment shall be effective only if the entering party records a Satisfaction of Judgment in the amount canceled and deducted.
STATEMENT ACKNOWLEDGING LIABILITY FOR WORKMEN’S COMPENSATION CLAIMS IN THE PERFORMANCE OF PROGRAM CONTRACTS

In consideration for the receipt of program funds, I hereby acknowledge my status as an independent Contractor for the performance of all work to be carried out pursuant to this Agreement. I affirm that such work is being undertaken as neither an employee of the LPA or, of the Owner. I agree to indemnify and hold harmless the LPA, ESD and the Owner from all claims resulting from personal injuries incurred in the performance of work under the terms of such contract, whether claimed on behalf of myself, my employees, a Subcontractor, or employees of such Contractor; and regardless of whether such claims are in the nature of payments pursuant to the Workman’s Compensation Law of the State of New York or personal injury actions alleging damages.

14. EXHIBITS
The following attachments are hereby incorporated into this agreement and the Contractor shall adhere to the provisions contained therein.

   Exhibit A: Contractor Bid Submittal Form (ESCDP Guidelines: Attachment H)
   Exhibit B: Scope of Work (ESCDP Guidelines: Attachment B)
   Exhibit C: Anti-Bribery Certification (ESCDP Guidelines: Attachment G)

Company Owner: _______________________________________________________________

Company Name: ________________________________________________________________

Company Address: ______________________________________________________________
IN WITNESS WHEREOF, the Owner and the Contractor have executed this Agreement on the date first written above.

Owner: _________________________________________________________________________

_________________________ __________________________
Signature Date

_________________________ __________________________
Printed Name Title

Contractor: _________________________________________________________________________

_________________________ __________________________
Signature Date

_________________________ __________________________
Printed Name Title

STATE OF NEW YORK  }
COUNTY OF ERIE   } SS:
CITY OF BUFFALO  }
On this _____ day of _____________________, 20____, before me subscriber personally appeared _______________________, me known and known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____________________
Notary Public/Commissioner of Deeds
East Side Commercial District Program
Better Buffalo Fund 2
East Side Corridor Economic Development Fund

Building Renovations at:
[Property address]

Andrew M. Cuomo, Governor
Kathleen C. Hochul, Lieutenant Governor

Eric Gertler, ESD President, CEO & Commissioner

Byron Brown, Mayor; Mark Poloncarz

In Partnership with [Local Program Administrator & logo]

Construction Manager/Firm

Architect

All funders and investors
East Side Commercial District Program Property Maintenance Declaration Form

Program funds granted by [ENTER LPA NAME], of [ADDRESS] to:

OWNER(S): ______
PROPERTY STREET ADDRESS: ______
[MUNICIPALITY], ______ County
SECTION/BLOCK/LOT: ______
AMOUNT OF GRANT ASSISTANCE: ______
UNIT ASSISTED: ______
DESCRIPTION OF ASSISTED IMPROVEMENTS: ______

This Declaration is made and executed this ______ day of ______, [SELECT YEAR].

WHEREAS, the undersigned is/are the owner(s) (“Owner”) of the premises described above (“Premises”); and

WHEREAS, the Owner acknowledges that the Premises have been improved with Grant Assistance provided by the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) to [ENTER LPA NAME] under the East Side Commercial District Program (“Program”);

NOW, THEREFORE, the Owner hereby declares that for a period of five (5) years (“Regulatory Period”), which commenced on ______ [SELECT YEAR] and terminating ______, [SELECT YEAR], (“Termination Date”), the Premises shall at all times be maintained in good operating order and condition, and all necessary repairs, renewals, replacements, additions and improvements shall, from time to time, be promptly made. Furthermore, during the Regulatory Period, the Owner hereby declares the Premises shall not be sold, moved, demolished or materially altered without the prior written consent of [ENTER LPA NAME].

This Declaration is expressly subject and subordinate to any mortgage given by the Owner for the purpose of construction or permanent financing of the Premises, whether or not such mortgage is recorded prior to the date of this Declaration.

All the grants, covenants, terms, provisions and conditions contained herein shall run with the land, binding all subsequent owners, encumbrances and tenants of the Premises. In the event the Owner shall breach any such grant, covenant, term, provision or condition, the Owner must return the Grant Assistance to [ENTER LPA NAME], for recapture by ESD. The amount to be recaptured shall be determined by reducing the original amount of Grant Assistance disbursed to the Owner by one fifth (1/5) for each year of the Regulatory Period the Owner was in compliance hereunder. Repayment will be calculated in accordance with the following schedule:

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

This Declaration shall be recorded in the Office of the Clerk of the County in which the Premises are located and shall automatically lapse on the Termination Date.
IN WITNESS WHEREOF, this instrument has been signed the day and year set forth above.

OWNER(S):

__________________________________________
Owner 1 Print Name

__________________________________________
Owner 1 Sign Name

__________________________________________
Owner 2 Print Name

__________________________________________
Owner 2 Sign Name

[ENTER LPA NAME]:

By: ________________________________

Name: _____

Title: _____

STATE OF NEW YORK )

COUNTY OF ________________) ss.:

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

______________________________
NOTARY PUBLIC
STATE OF NEW YORK )

COUNTY OF ____________________________) ss.:

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

___________________________
NOTARY PUBLIC
ESCDP Guidelines - Attachment G: Anti-Bribery Certification

[On LPA letterhead]

EAST SIDE COMMERCIAL DISTRICT PROGRAM

EXHIBIT: ANTI-BRIBERY CERTIFICATION

The undersigned on behalf of _______________________ (the “Company”), in connection with the proposed payment of Grant Utilization Request Form #____, dated __________, pursuant to a Grant Disbursement Agreement between the ESD and ______________________ (the “Grantee”) dated __________ (the “Agreement”), identified herein, hereby confirms, based on my knowledge, under the penalties of perjury, the following:

Confirmation of Lack of Bribery

In connection with the Agreement and Invoices under which it has requested payment in the cumulative amount of $_________ as detailed in GURF #_____ (the “Requisition”) neither the Company, nor any employee, owner, consultant and/or agent of the Company and/or any other person or entity on behalf and/or for the benefit of the Company has: (i) conferred, accepted, or offered or agreed to confer or accept any benefit upon or as a public servant upon an agreement or understanding that such public servant’s vote, opinion, judgment, action, decision or exercise of discretion as a public servant would be thereby be influenced; and/or (ii) conferred, accepted or offered or agreed to confer or accept, any benefit as or upon any employee, agent, or fiduciary without the consent of his or her employer or principal, with intent to influence the employee’s conduct or be influenced in relation to his or her employer’s affairs; and/or (iii) offered, given, solicited, or received any item of value as a means of influencing the actions of an official or individual holding a public or legal duty; and/or (iv) offered, given, solicited or received a bribe of any kind.

Confirmation of Lack of Collusion

In connection with the Agreement and Invoices under which it has requested payment for operational costs in the cumulative amount of $________ as detailed in the Requisition: (i) the prices for the construction, equipment, goods and/or services for which the Company seeks payment under the Requisition, were arrived at independently and without consultation, communication, or agreement with any other contractor, bidder, or potential bidder for such equipment, goods and services; and/or (ii) no attempt was made to induce any firm or person to refrain from seeking to perform or provide such equipment, goods and services; and/or (iii) no attempt was made to induce any firm or person to submit a price higher than the prices invoiced to the Company, or to submit any intentionally high or noncompetitive price or other form of complementary price.
Confirmation of Fair Pricing

In connection with the Agreement and Invoices under which it has requested payment in the cumulative amount of $___________ as detailed the Requisition: (i) the prices being charged to the Company under the Invoices for such prices for the construction, equipment, goods and/or services are commercially fair and reasonable and were determined in good faith by the Company; (ii) the Company is not sharing and/or paying any portion of the amount received in payment of the Invoices: (a) with any public servant, public official and/or any person or entity on behalf of any public servant and/or public official; and/or (b) to any person or entity who has not provided actual services and/or goods to the Company in connection with such Invoices, unless such person or entity has provided actual services and/or goods to the Company in connection with such Invoices and the amount being paid to such person or entity is an amount equal to the fair value of the actual acquisition, goods or services, goods provided by such person or entity to the Company in connection with such Invoices.

This Certification is given under oath, recognizing that the penalties of perjury attach for any false or materially misleading statement contained herein and understanding that this Certification will be offered for filing with agencies of the State of New York. The person making this Certification is the Chief Executive Officer, President and/or Managing Member of the Company and is authorized to execute the Certification and bind the Company.

By: ____________________________
[Name]

Title: ___________________________

Company Name: ___________________________

Dated: ___________________________

At: ___________________________
East Side Commercial District Program

Contractor Bid Submittal Form

Date Received: ________________________                         Bid Due Date: _______________________

Property Owner (the “Owner”): __________________________________________________________________________

Property Address (the “Property”): _______________________________________________________________________

Owner’s Phone #: __________________________ Email: _______________________________________________________

Contractor’s Name: ____________________________

Name of Contractor’s Business (the “Contractor”): _______________________________________________________________________

Contractor’s Phone #: ___________________ Contractor Email: _______________________________________________________

Contractor Mailing Address: _______________________________________________________________________

The undersigned Contractor acknowledges that he/she has received the Scope of Work and specifications for this project, and that he/she has carefully reviewed and understands these documents.

The Contractor confirms that he/she has personally inspected the Property referenced above, is aware of all existing conditions and limitations, and that, to the best of his/her knowledge, the Scope of Work and specifications are complementary to the requirements of the work to be performed.

The Contractor proposes to furnish all the materials and do all of the work described in the work scope and specifications for the above property, according to the terms of this Contract, for the lump sum of ________________________________________($______________). This cost shall cover all expenditures necessary to perform the work called for in the work scope and specifications.

If this bid is selected and executed between the parties, the Contractor agrees to complete the work described herein within 120 days from the date of the Notice to Proceed issued by [LPA organization], unless otherwise approved by [LPA organization].

Provisions:
1. The Contractor shall start and complete this Agreement within the time period set forth above.

2. This bid, if executed, becomes the Contract between the Owner and the Contractor.
3. The Contractor agrees to provide a detailed cost breakdown by the categories of work. This shall be incorporated in the work specifications provided to him/her. The work specifications shall be submitted with this bid.

4. The Contractor is prohibited from assigning, in part or in whole, any work or proceeds from said work, acquired through this contract.

CONTRACTOR:

__________________________________________________________________________
NAME

SOC. SEC. # OR FEDERAL TAX ID#

__________________________________________________________________________
SIGNATURE

PHONE #

__________________________________________________________________________
EPA FIRM CERTIFICATION #

DATE

OWNER:
I, _____________________________, certify that I accept the above-mentioned Contractor to perform the work outlined in the work write-up for the property located at _____________________________.

__________________________________________________________________________
OWNER’S NAME

__________________________________________________________________________
SIGNATURE

DATE