

East Side Commercial Building Stabilization Fund Guidelines

(as of 11/20/2020)

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I. Introduction

As part of the 2017-2018 State budget, Governor Andrew M. Cuomo 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's 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) is establishing a \$5 million Commercial Building Stabilization Fund (the "Fund") that will help to protect the fabric, density, character, and community on the East Side – making sure that building assets on the East Side that may have current challenges are able to be maintained for prospective future development as mixed-use, retail, commercial, and housing uses, and can help to build up the strong commercial activity already present in areas on the East Side.

II. Fund Purpose and Goals

A unique asset in the story of Buffalo's rebirth and resurgence has been the reuse of its stock of historic buildings which has breathed new life into former manufacturing and commercial buildings in new, mixed-use ways. It has been an important element in the region's smart growth strategy, ensuring that the region's unique history, beauty, and sense of place are retained through its architecture, landscapes and urban design, and reversing the decades-long practice of demolishing historic building stock. New York State, in recognition of the value of preservation and reuse, is also committed to the restoration of historic structures through state historic tax credits.

Like the City as a whole, the restoration of buildings on the East Side, especially along its commercial corridors, is imperative to the resurgence in the community. More than any other area of the city, the East Side has seen much if its fabric disrupted through "demolition by neglect" – allowing a property to suffer severe deterioration, potentially beyond the point of repair, leaving the City no choice but to have to tear down the blighted and dangerous building. In other instances, perhaps an owner may have been willing to work on redevelopment of the building, but they lack the funds to stabilize the property or the ability to self-develop.

The Commercial Building Stabilization Fund will provide a dedicated funding source that will support near-term stabilization¹ of at-risk historic² buildings in the target investment areas of the East Side Corridor Economic Development Fund. The Fund will support smaller, seal-up efforts such as roof patching, mothballing precautions, etc. – or rather, correcting obstacles that are preventing active use and business activity – to help prevent having to deal with crisis-level failures in the future or, even

¹ For purposes of this Fund, "stabilization" refers to undertaking preventative repairs that correct structural deficiencies or code violations, which if not corrected, could lead to loss of the building through collapse or demolition.

² For purposes of this Fund, "historic" shall mean any building that has existed on the site since prior to urban renewal, or for at least 50 years; or that contributes to the unique neighborhood character of the place in which it is located and contributes to the vision for revitalized business districts through providing an opportunity for business development at the site and wealth creation in the neighborhood. Such buildings may or may not be listed on or determined to be eligible for listing on the State and National Registers of Historic Places (S/NRHP).

worse additional emergency demolitions of the existing urban fabric along these corridors. It will ensure that buildings with code violations or structural deficiencies but where there is not a currently viable project are not torn down as a short sighted “solution”; rather, such buildings will be kept viable through this fund, so that when there are market opportunities, the resources themselves will be intact and available for re-use.

III. Partner Roles and Responsibilities

Empire State Development (ESD), New York State’s chief economic development agency, is working with Preservation Buffalo Niagara (PBN) to administer a pilot round of the Fund. For subsequent rounds, ESD may contract with another local not-for-profit organization (referred to hereafter as the Local Program Administrator or “LPA”) to administer grants with PBN remaining as the lead for technical matters. PBN (and any other prospective LPA) will be responsible for conducting outreach and community engagement for identifying potential properties and building owners; managing the collection of grant applications and aiding in the selection process; administering grant funding provided by ESD to award capital grants to building owners for conducting “stabilization” repairs to the property; and serving as the construction manager for each property and project. *For the purpose of these guidelines, PBN can be substituted for the process outlined in the document in place of “LPA” for the initial pilot program.*

In addition, the City of Buffalo Department of Permits and Inspection Services (DPIS), the party responsible for the enforcement of all non-criminal ordinances in the City of Buffalo aside from those falling under the purview of the Department of Public Works, will be partnering on the program with ESD and PBN. A designated representative from DPIS will provide details regarding any current housing code violations and any outstanding court warrants; will participate in the review of applications; and will offer guidance with respect to fixing code issues. DPIS may also offer suggestions for potential candidate buildings based on inspection of building conditions and knowledge of the program.

IV. Fund Eligibility

Applicants and buildings must meet the following criteria for program eligibility:

Applicants must demonstrate ownership of all buildings/real estate considered part of the proposed project *or demonstrate expressed authorization* of the property owner. Buildings must be privately owned.

The building must be a commercial or mixed-use property located on Buffalo’s East Side.

For the purposes of the ESCEDF, the East Side is defined as 17 square miles, bounded by the University at Buffalo (UB) to the north; Main Street and Michigan Avenue (excluding the Buffalo Niagara Medical Campus and Central Business District) to the west; I-190 and the Buffalo River to the south; and the City line to the east. While any historic commercial or mixed-use building located on the East Side is eligible to apply, preference will be given to those buildings along commercial corridors especially in the target investment areas of the ESCEDF (See Attachment A: East Side Eligible Geography Map).

The building must be historic. For purposes of this Fund, “historic” shall mean any building that has existed on the site since prior to urban renewal, or for at least 50 years; or that contributes to the unique neighborhood character of the place in which it is located and contributes to the vision for revitalized business districts through providing an opportunity for business development at the site and wealth creation in the neighborhood. Such buildings may or may not be listed on or determined to be eligible for listing on the State and National Registers of Historic Places (S/NRHP).

Owners must maintain properties after stabilization. Property owners receiving assistance to stabilize their buildings under the Fund must file/record a “Property Maintenance Declaration” with the Erie County Clerk, stating that the subject property received assistance under the Fund, and that they will maintain the property in a manner consistent with the Fund objectives for a minimum of five years from date of completion of the stabilization project. In the event of non-compliance, 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.

Acceptable uses of funds are detailed in Section V.

V. Fund Activity and Use of Funding

Through the program, property owners will be eligible **for up to \$50,000 per building, unless otherwise approved by ESD**, for stabilization-related activities. ESD will not require that property owners contribute matching funds in order to receive grant funding; however, funds will only be distributed upon completion of stabilization work conducted under this grant.

Funds must be used for stabilization of commercial or mixed-use buildings. For purposes of this program, “stabilization” refers to undertaking preventative repairs that correct structural deficiencies or code violations, which if not corrected, could lead to loss of the building through collapse or demolition.

Fund must be used for capital purposes, including work pertaining to code violations. Costs for stabilization projects completed on a property prior to the property being accepted into this program will not be eligible for reimbursement.

Funds **may not** be used for: stabilization of residential properties; buildings currently being used for religious purposes; improvements to structures owned by religious or private membership-based organizations (e.g., not including former buildings of this type owned by non-sectarian entities); and activities that have occurred prior to the start of the grant period cannot be funded through this program.

Properties listed for sale or with the intent to sell can be eligible for the program, however grant funds will be subject to pro rata recapture if property is sold within five years of disbursement of funds unless the transaction is approved by ESD³.

Owners with housing court violations are eligible to apply for program. However, all back taxes must be paid prior to receiving funds, and funds cannot be used to pay taxes.

Grants will be provided for 6 months and no longer than 12 months. Extensions on awards will be considered on a case-by-case basis provided substantial progress has been made on the project in the initial 12-month period.

³ It is the intention that this Fund help return buildings to productive use. Therefore, it would not preclude resale of a building that has been improved through this funding. However, resale of properties will be monitored through a Property Maintenance Declaration (see Attachment F) to ensure the buildings continue to provide an opportunity for local residents to redevelop them, would not involve substantial price increases associated with “flipping” practices, or are not sold to another building owner who does not intend to reuse the building in a definable time period.

VI. Project Identification

Building owners will be invited to submit an application for consideration of funding. All properties must submit an application to the LPAs, who will then work with PBN to coordinate review process in consultation with DPIS and ESD.

Applications will be available through the LPAs (see Section III), Preservation Buffalo Niagara (serving as an organization providing technical assistance to ESD), or through referral by the City of Buffalo DPIS directly to PBN or the LPA.

VII. Project Development

A written scope of work and project budget must be maintained for each project receiving assistance. The scope of work will be developed after conducting exterior and, if permissible, interior inspections, and must address:

- Immediate health and safety concerns;
- The correction of code violations; and
- Necessary preventative work to prevent near-term structural issues.

PBN will be responsible for writing each project's scope of work in coordination with the LPAs (for future funding rounds after the pilot program), property owner, and DPIS. The LPA and the property owner must sign off on the formal scope of work and project budget before the LPA seeks bids for the work.

PBN (or the LPA) and the property owner will enter into a Grant Agreement that will, at minimum, outline the agreed financial assistance and scope of work, acknowledge code violations/stabilization issues to be addressed, and acknowledge that maintenance of the building improvements must be upon completion of work and that for a five-year period, the property may not be sold without ESD approval.

All funding will be provided to contractors for stabilization projects directly from PBN (or the LPA), after verification that work has been satisfactorily performed. The LPA will provide construction management services for the project and ensure completion of each project with DPIS and ultimately ESD.

VIII. Project Selection

Funding is anticipated to be awarded twice per year, or as otherwise approved by ESD. Project selection will be undertaken by the Project Selection Committee.

Projects will be scored using the criteria outlined in the Section IX.

IX. Review Criteria

Submitted project applications will be reviewed and prioritized based on the following criteria (in no particular order):

- **Property location:** Commercial or mixed-use properties along commercial corridors especially in the target investment areas of the ESCEDF (see Attachment A: East Side Eligible Geography Map) or located within a local landmark/historic district will be given preference.
- **National Register eligible:** Properties listed on or eligible for the National Register of Historic Places will be given preference.

- **Likelihood of future redevelopment:** Properties that need short-term stabilization solutions but for which a redevelopment/renovation plan exists or there is interest from the owner applicant in future redevelopment or marketing the building as a “preservation ready site” for a new owner will be given preference.
- **Urgency:** Properties that are at high risk for demolition and need timely and critical stabilization interventions to save the property will be given preference.
- **Impact:** Properties that are vacant and/or which stabilization of the building will improve the business environment of the neighborhood will be given preference.
- **Community support:** Properties for which there is strong community support for stabilizing to avoid future demolition will be given preference.
- **Residency:** Those applicants who are residents of the East Side of Buffalo and City of Buffalo will be given preference.
- **Development experience:** Those applicants that have some experience with real estate development and have undertaken redevelopment and/or stabilization activities in the past will be given preference.
- **Preservation Easement:** Building owners who are willing to enter into a 10-year preservation easement on the property with Preservation Buffalo Niagara will be given preference.

X. Application Deadline and Timeline

December 4, 2020

January 15, 2021, 4:00 P.M.

Spring 2021

Program guidelines released

Deadline for applications to be considered in Round 1

Awards announced

XI. Proposal Submission Instructions

All applicants must participate in a two-step application process. Applications received or postmarked after the deadline will not be considered.

Step 1: Contact Bridge Rauche at Preservation Buffalo Niagara to discuss your project and receive guidance on completing an application.

Email: brauche@pbnsaves.org

Phone: (716) 852-3300

Step 2: Complete an application.

A fillable PDF application can be downloaded from the following link:

<https://preservationbuffaloniagara.org/east-side-commercial-building-stabilization-fund/>.

Completed applications and all required attachments can be returned by mail or email as follows:

Mail to:

Bridge Rauche
Preservation Buffalo Niagara
617 Main Street
Buffalo, New York 14203

Email to: brauche@pbnsaves.org

XII. Administrative Guidelines

The following sections provide process information for administration of the program.

a. Outreach and Marketing

LPAs will serve as the point of contact between prospective participants and ESD, working to (1) ensure that buildings are properly prioritized for inclusion in the Fund and (2) that the outreach and marketing of the Fund is a grassroots effort, identifying structures in neighborhoods that hold high community significance and interest in redevelopment, and that the priorities are driven by the community.

The LPA will work with PBN to ensure that building owners are appropriately contacted, and that local neighbors and stakeholders are fully informed about the process. Using marketing materials developed by ESD, the LPAs will distribute informational materials to market program availability and explain program requirements. At a minimum:

- Materials will be distributed to property owners in the target area and made available for distribution to local governments, libraries, chambers of commerce, business associations, and other local partners;
- Public informational meetings will be held to present the Fund information and answer questions; and
- The LPA must retain distribution lists, public notices and other documentation of marketing and outreach efforts in program files.

b. Project Development

i. Work Write-up/Scope of Work

Upon ESD approval of an application for assistance, PBN will work with the LPA and property owner to develop a Scope of Work and an initial estimate of costs and will coordinate work write-ups with DPIS officials, the State Historic Preservation Office (SHPO; for S/NRHP-listed or -eligible properties), and other regulators. In their role of providing technical support, PBN may (but are not required to) engage professional architecture or engineering (A/E) consulting services to assist in developing such scopes of work or cost estimates. The costs of such services may be reimbursed through use of a portion of a stabilization grant, if awarded, but in no case shall equate to more than 10% of a stabilization grant, or \$5,000, whichever the lesser.

In the event that A/E services are engaged for a potential stabilization effort that does ultimately result in a project/grant, ESD reserves the right, in their sole discretion, to reimburse such costs out of program funds on a case-by-case basis, where a project fails to move forward out of no fault of or action by the applicant.

The Scope of Work will be submitted by the LPA and PBN to ESD for each project selected for funding. Both the LPA and the property owner must sign-off on the formal Scope of Work before seeking bids for the work.

The LPA, on behalf of the property owner, 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.

See **Attachment E** for Scope of Work suggested template.

ii. Contractor Selection

The LPA will assist selected property owners in obtaining at least three (3) bids or quotes for stabilization costs to establish the reasonableness of project costs. 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, with assistance from PBN, will review the bids and will advise the property owner of acceptability of bids/proposed cost.

iii. Contracting Procedures

1. LPA and Property Owner Grant Agreement

The LPA and property owner will enter into a Grant Agreement to provide the agreed financial assistance; and the property owner, with the assistance of the LPA, will engage a contractor and begin construction within 30 days of LPA approval.

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. The LPA & Property Owner Grant Agreement must specify the following, but not limited to:

- agreed upon Scope of Work;
- amount of financial assistance awarded;
- project timeline; and
- payment process.

Payments will be made upon receipt of:

- applicable permits;
- record of Inspection, including but not limited to LPA, utility company, and City of Buffalo;
- 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 if applicable; and
- project cost documentation, including but, not limited to, invoices and purchase orders. *Owner labor or purchased materials will not be reimbursed.*

See **Attachment B** for agreement template.

2. Property Owner and 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 with the LPA.

It is expected that construction will begin within 30 days of LPA approval.

See **Attachment C** for agreement template.

c. Construction Management/Quality Control

LPAs will be responsible for ensuring work is completed in a manner that is compliant with requirements of SHPO, Buffalo Green Code, and any other applicable municipal code. In addition, the LPA, with assistance from PBN as needed, will verify that all work was completed properly and consistent with the contracted Scope of Work.

i. Design Standards

All work must be completed in a manner that is compliant with requirements of the SHPO, the City of Buffalo Preservation Board (if applicable), the Buffalo Green Code, and any other applicable municipal code. PBN will provide LPAs technical assistance in identifying stabilization measures that would not impair the design integrity of historic structures.

ii. 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 monitoring visits.

d. Financial Management

The LPA will be working directly with ESD to receive grant funds and will disburse the funding. The LPAs will execute a Grant Disbursement Agreement (“GDA”) with ESD and ensure all activity adheres to the requirements set forth in the GDA document.

Projects are expected to be completed within 12 months of ESD approval and the LPA’s initial request to ESD to release funds, unless officially extended by ESD.

i. LPA Program Administration Staff Requirements

The LPA will be responsible for all financial transactions under the executed Grant Disbursement Agreement (“GDA”) between the LPA and ESD.

ii. ESD to LPA Payment Procedures

ESD payments to LPAs under the Stabilization Fund will only be disbursed upon receipt of all required documentation listed in their respective GDAs. In turn, LPAs will not award nor disburse more than the costs identified in the LPA & Owner Grant Agreement for that building. 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.

iii. LPA to Contractor Payment Procedures

In the event additional project costs arise during construction, and the project costs exceed the maximum allowable of grant funds, 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 funds to the contractor.

e. Ongoing Maintenance

i. Obligations

ESD will not require that property owners contribute matching funds, however, upon completion of work conducted under this grant, the property owner will need to ensure that these investments are protected.

Property owners will be required to maintain the property assisted with the Fund 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 program for the enforcement period. Upon completion of work conducted under this grant, the LPA will require each property owner receiving funds to file a Property Maintenance Declaration with the Erie County Clerk. In the Declaration the property owner will declare that s/he has received assistance from the Fund 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. See **Attachment F** for Property Maintenance Declaration sample.

ii. Responsible Parties

PBN will monitor projects assisted under the Stabilization Fund during the five-year enforcement period and during the life of the Easement Program (if applicable). PBN will ensure maintenance of Stabilization Fund investments. PBN will 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, PBN will periodically inspect assisted properties and conduct any inspections directed by ESD.

f. Environmental/Regulatory Review Procedures

ESD, as lead agency, determined that all aspects of the program (i.e., building stabilization/repair activities without expansion) would be classified "Type II Actions" under the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation and thus would be not subject to formal review.

Nevertheless, prior to the expenditure of funds for stabilization projects, the applicants/LPAs must evaluate whether the stabilization activities would encounter any

environmental/regulatory issues and address these accordingly. These could include, but would not be limited to determining whether the stabilization project would directly encounter:

1. Asbestos-containing materials;
2. Hazardous materials; and/or
3. Other environmental/regulatory issues that would in any way directly affected by the proposed stabilization.

In the event of encountering such substances/conditions, the applicant and LPA must demonstrate compliance with all applicable federal, state, and local handling, abatement, and/or disposal regulations.

g. SHPO Consultation

In the case of historic properties (i.e., buildings/sites listed on or are eligible for inclusion on the S/NRHP), the LPAs/applicants must work with PBN to consult with the SHPO 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 SHPO and summarized in a “Letter of Resolution”. Any work conducted prior to receipt of a SHPO determination will not be an eligible expense. Properties that are local landmarks or included in a local historic district will also need to comply with City of Buffalo Preservation Board policies. PBN will assist LPAs in this process.

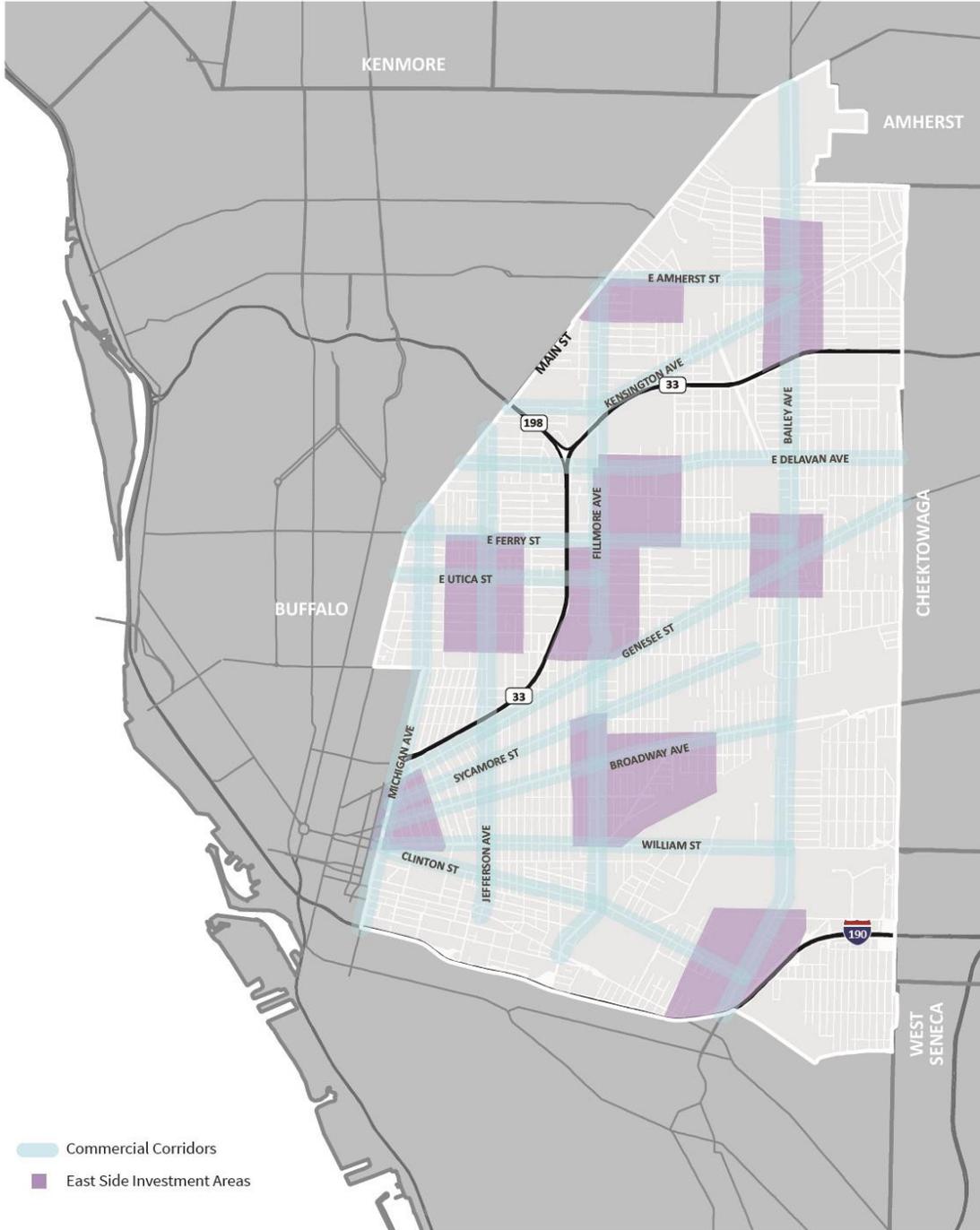
In cases where an existing use of a building proposed for stabilization is not in compliance with City zoning or land development regulations, prior to being eligible for a grant, applicants must confirm with the City that undertaking the subject stabilization is permitted, and if not, the applicant must obtain a variance or zoning change that would permit the existing use of the building.

XIV. Attachments

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

Attachment A – East Side Eligible Geography Map

Commercial Corridors and Investment Areas



Attachment B – LPA and Property Owner Grant Agreement

[ON LPA LETTERHEAD]

COMMERCIAL BUILDING STABILIZATION FUND LPA & PROPERTY OWNER GRANT AGREEMENT

This Agreement is made effective as of the ____ day of _____, 20____, by and between LPA NAME (“LPA Abbreviation if applicable”), with an office at _____, _____ and _____ (“Owner”), residing at or having a principal place of business at _____.

WITNESSETH:

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

WHEREAS, 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 LPA; and

NOW, THEREFORE, 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, LPA agrees to pay up to 100% of project related costs, in an amount not to exceed \$_____ on behalf of the Owner of the total project related costs 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. Payment of Program Funds shall exceed \$50,000, only with prior written approval from ESD.

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 legal requirements, 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 may conduct 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 which consent may be withheld in the LPA's sole and absolute discretion.

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 ESCBSF Assistance

Exhibit B: Scope of Work [Use Attachment E provided within Program Guidelines]

Exhibit C: Program Rules and Design Guidelines

Exhibit D: Property Maintenance Declaration [Use Attachment F provided within Programs Guidelines]

Exhibit E: Anti-Bribery Certification [Use Attachment G provided within Program Guidelines]

Exhibit F: Preservation Deed- Sample [Use Attachment I provided within Program Guidelines]

Attachment C – Property Owner and Contractor Agreement

[ON LPA LETTERHEAD]

COMMERCIAL BUILDING STABILIZATION FUND 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] (“LPA”) for funds to accomplish this work under the East Side Building Stabilization Fund Program (“ESBSFP”) 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 ESBSFP, 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 fifteen (15) working days of receiving a written Notice to Proceed from the Owner, unless otherwise approved by the LPA. 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.

4. INSPECTION OF WORK: UNSATISFACTORY WORK

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 (any amount over the amount provided by the LPA under the Grant Agreement)) of the Project Budget for the Scope of Work specified under this Agreement and attached hereto. [LPA] will pay the Contractor directly for the remaining costs up to \$_____. Prior to remitting payment to the Contractor, [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, [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 [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 [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 [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 [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. 108; 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 [LPA] or, of the Owner. I agree to indemnify and hold harmless [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 [Use Attachment H provided within Program Guidelines]
- Exhibit B: Scope of Work [Use Attachment E provided within Program Guidelines]
- Exhibit C: Anti-Bribery Certification [Use Attachment G provided within Program Guidelines]

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

Attachment D – Project Participant Sign Template



**Empire State
Development**



East Side Commercial Building Stabilization Fund

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

Attachment E – Scope of Work Suggested Template

COMMERCIAL BUILDING STABILIZATION FUND 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 (if applicable):	\$xx,xxx.xx
b. [LPA] ESD Grant Amount	\$xx,xxx.xx
Total Project Budget:	\$xx,xxx.xx

5. Description of Work:

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

7. Date of Notice to Proceed: ____/____/____

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 Nancy Burkhardt (nancy.burkhardt@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 Nancy Burkhardt (nancy.burkhardt@esd.ny.gov)

Attachment F – Property Maintenance Declaration

COMMERCIAL BUILDING STABILIZATION FUND 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 Building Stabilization Fund 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 (1/5th) 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):

MAILING ADDRESS:

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

Attachment G – Anti-Bribery Certification

[On LPA/PBN letterhead]

COMMERCIAL BUILDING STABILIZATION FUND 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: _____

Attachment H- Contractor Bid Submittal Form

[On LPA Letterhead]

COMMERCIAL BUILDING STABILIZATION FUND 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