DISCLAIMER

This sample grant agreement is provided for illustrative purposes only and should not be construed as an offer of legal advice or counsel. Nothing herein constitutes the establishment of an attorney client relationship between you and any attorney involved in the drafting of material included in this sample grant agreement. The Housing Trust Fund Corporation (”HTFC”) makes no claims, promises, or guarantees about the accuracy, completeness, or adequacy of any information contained in this sample. Therefore, you should not use this sample grant agreement without first consulting an attorney.

GENERAL RELEASE AND WAIVER

By utilizing this sample, you: (i) assume full responsibility for any loss, damage, or liability resulting from the use of this sample Grant Agreement; and (ii) release HTFC and the authors of the sample grant agreement, their contributors, agents, licensees, successors and assigns from any and all known or unknown claims, demands or causes of action that may arise, at any time, out of or relating to your use of the sample grant agreement.

**BUFFALO MAIN STREETS INITIATIVE PROGRAM**

**PARTICIPANT GRANT AGREEMENT**

This Agreement is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 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 an Agreement with the Housing Trust Fund Corporation (“HTFC”) to distribute and administer funds for projects under the Buffalo Main Streets Initiative Program (“Program”) to eligible properties selected in accordance with Program guidelines; and

**WHEREAS**, *LPA* must administer the distribution of grant funds to the Owner, for the project in accordance with all the terms and conditions of their Grant Agreement with the HTFC, and the HTFC’s applicable rules, regulations, policies and procedures, as amended from time to time.

**WHEREAS,** the Owner intends to complete improvements of the property located at STREET ADDRESS using funds to be provided through the Program 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 Agreement shall be

\_\_\_\_\_ months, commencing on the effective date of this Agreement and ending on \_\_\_\_\_(“Term”), unless sooner terminated as provided for herein. The Owner is required to engage a contractor and begin construction within thirty (30) calendar days of *LPA* approval.

1. **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.

1. **Project Costs.**
   1. A minimum of two bids is required for each separate construction project or professional service to establish the reasonableness of project costs. All bidders must have equal access to relevant information, including information on the property itself. The process shall be free of collusion or intimidation. All quotes shall be received directly by the *LPA*. The *LPA* will advise the Owner of acceptability of bids/proposed cost. If the Owner chooses other than the lowest bidder, re-imbursement will be based on the amount of the lowest bid.
   2. Eligible contractors shall be those selected from any list maintained by the *LPA*, or otherwise approved. To be eligible, a contractor must provide references and proof of adequate and proper insurance coverage.
   3. Proof of insurance must include general liability coverage in a minimum amount of one million dollars and workers’ compensation coverage. The LPA, State of New York, **and** the Housing Trust Fund Corporation must be listed as additional insured.
   4. Owners and/or family members shall not be involved in the bidding process. The Owner must obtain written consent from the *LPA* prior to performing their own renovations and/or hiring a family member to perform renovations. In cases where an Owner or family member is selected to perform renovations, the Owner will be reimbursed only for the cost of construction materials.
   5. The *LPA* agrees to reimburse the Owner for a percentage of project costs described in the agreed upon Scope of Work attached as Attachment A. Any modification, amendment or rescission of project costs must be requested in writing, and approved in writing by the *LPA*.
   6. The maximum amount of Program funds to be provided to the Owner is *BMSI Award Amount*.
2. **Reimbursement.**
   1. The Program operates fully as a reimbursement program and the Owner is responsible for paying for all agreed upon repairs, and payment of grant funds will be made only upon satisfactory completion of building projects and payment of renovation expenses.
   2. No reimbursement shall be paid to the Owner pursuant to this agreement until a final inspection of the work has been completed by the *LPA*, its representative(s) or agent(s). All completed work shall comply with all applicable building codes and standards.
   3. 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 will not be reimbursed.
   4. The payment of any amount(s) due and payable by the HTFC through the *LPA* to the Owner, as a reimbursement pursuant to this Grant Agreement for work completed shall be payable within forty five (45) calendar days after all work is satisfactorily completed and sufficient supporting documentation is provided to the HTFC.
3. **Inspection of Work: Unsatisfactory Work.**

The Owner agrees that the *LPA* shall at all times have access to the job site and premises for the purpose of inspecting and reviewing the renovation work. In the event that the Owner or the *LPA* 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 said notice. In the event that the contractor fails or refuses to complete such corrections in the work within said period of time the *LPA* shall have the right to cancel this Grant Agreement and, upon such cancellation, shall have no obligation to provide any reimbursement for the work completed.

1. **Regulatory Period.**

The Owner, for a period of five (5) years from project completion (“Regulatory Period”), shall take all necessary steps to ensure that the property improved under the Program is maintained in good condition. It is essential that Owners ensure that their properties remain free of lead hazards after compliance has been documented. The Owner agrees to maintain paint in all residential spaces using lead-safe work practices for the five year Regulatory Period. The Owner or a representative should visually assess the property on a routine basis, and whenever the occupant reports loose, peeling or damaged paint. The property owner may elect to hire a lead inspector to perform this assessment.

The Owner of a property improved under the Program (“Assisted Property”) will be required to execute a Declaration, in the form attached as *Attachment D*, which shall be filed in the County Clerk’s Office for the county in which the Assisted Property is located. The Owner agrees to maintain the Assisted Property in compliance with the terms of this Grant Agreement, throughout the Regulatory Period. The Owner shall further declare that in the event of any non-compliance or sale of the property, the amount of grant funds distributed shall be subject to repayment, the amount of which 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 shall have the right, pursuant to its agreement with the HTFC, to inspect the Assisted Property to monitor the Owner’s compliance with this requirement.

1. **Reports and Access to Records.**

During the Term and the Regulatory Period, the *LPA* will require an annual inspection and confirmation of regulatory term compliance. The Owner further agrees to provide the *LPA* with reports or records in such form, content and frequency as required by the *LPA* and the HTFC.

1. **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 by reimbursing the Owner (or its heirs or successors) for the work satisfactorily completed prior to the date of any such termination, death, or change in ownership. Upon such payment to the Owner, the *LPA* shall be released and discharged from any further claim on behalf of the Owner pursuant to this Grant Agreement. Any remaining funds of the Owner held by the *LPA* shall be released and discharged from any further claim on behalf of the Owner, and returned to the HTFC.
2. **Compliance with Local Laws and Codes.**

Any contract or agreement to be executed relative to the work contemplated by this Grant Agreement shall require that the Owner give all notices required by, and comply with, all applicable laws, ordinances, regulations and codes of the City/Town/Village of \_\_\_\_\_, the State of New York, and the United States, and shall at its own expense, secure and pay the fees or charges for all permits required for the performance of the work.

1. **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; 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 project; or (iii) allegation of ineligible or prohibited activities. Upon receipt of such notification, the *LPA* and the HTFC 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.

1. **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 the HTFC or the LPA;

(ii) if at any time any representation or warranty made by the Owner shall be incorrect or materially misleading;

(iii) if the Owner has failed to commence the improvements as specified in Attachment 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 equity:

(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 HTFC 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. Notwithstanding any such termination or closeout, the Owner shall remain liable to the LPA for any unspent Program funds, the expenditure or use of Program funds in a manner or for a purpose not authorized by this Agreement, or damages as a result of any breach of this Agreement by the Owner. The LPA shall have the right, at any time prior or subsequent to any such termination or closeout, to pursue any and all available remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this Agreement and to recover Program funds which are unspent, expended or used in an unauthorized manner or for an unauthorized purpose.

1. **Indemnification.**Any contract or agreement to be executed in furtherance of this Grant Agreement shall require the contractor to defend, indemnify and hold harmless the Owner, the *LPA*, the City/Town/Village of \_\_\_\_\_ and the HTFC 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.
2. **Assignment.**

The Owner shall not assign this Grant Agreement without the prior written consent of the *LPA* and any such request for assignment of said Grant Agreement must be addressed to the *LPA*, \_\_\_\_\_.

1. **Waiver of Liability**.

Nothing in this Agreement nor any act of the *LPA,* HCR or the HTFC, 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 Grant Agreement, and the Owner hereby expressly waives any such claim.

1. **Property Release**.

The Owner agrees to complete a written consent, in the form attached as Attachment E to permit the *LPA* and the HTFC to publish photographs of assisted properties for promotional or public relations purposes.

1. **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*.

1. **Attachments:**

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

Attachment A – Scope of Work

Attachment B – Copy of Owner’s Application for BMSI Assistance

Attachment C – Program Rules and Design Guidelines

Attachment D – Draft BMSI Property Maintenance Declaration

Attachment E – Property Release Form

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year set forth above.

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| --- | --- |
| ***LPA***  Signature → \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name:    Title:  Date: | Owner  Signature →\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name:  Title:  Date: |