

## AGREEMENT

THIS AGREEMENT, bearing the date set forth on the signature page, by and between the COUNTY OF DUTCHESS, a municipal corporation of the State of New York, with its principal place of business at 22 Market Street, Poughkeepsie, New York, 12601 (hereafter the "County") and the \_\_\_\_\_, having offices at \_\_\_\_\_ (hereafter the "Municipality").

WHEREAS, the County has, in cooperation and agreement with the Municipality, applied for and been awarded a Community Development Block Grant ("CDBG") by the United States Department of Housing and Urban Development ("HUD") under the Housing and Community Development Act of 1974 ("Act"), with the eligibility of the County for such grant based, in part, on its status as an "Urban County" under the Act, and

WHEREAS, the County achieved its Urban County status as a result of entering into cooperation agreements with that number of other municipalities in Dutchess County whose combined population exceeds 100,000 in number, and

WHEREAS, said cooperation agreements are required because the County, under applicable law, is not authorized to exercise the full complement of powers necessary or appropriate to carry out all the requirements, or achieve all the goals of the Act, and

WHEREAS, under the cooperation agreements each participating Municipality agrees to exercise its power to carry out programs under the Act, and

WHEREAS, the Municipality is one of such cooperating municipalities by having executed a cooperation agreement with the County under the Act and a copy of such agreement is on file with the County, and

WHEREAS, the Municipality desires to conduct a Project as described in Exhibit "A" ("Project") under the CDBG Program and the County desires that the Municipality conduct such a Project.

NOW, THEREFORE, the County and the Municipality agree as follows:

1. SCOPE OF SERVICES

The Municipality shall be responsible for administering a 20\_\_ CDBG program year Project in a manner satisfactory to the County and consistent with any standards required as a condition of providing these funds. Such Project will include the eligible activities as described in Exhibit "A", which is attached hereto and made a part hereof.

2. BUDGET

It is expressly agreed and understood that the total amount to be paid by the County under this agreement shall not exceed the total amount allocated as specified in Exhibit "B", which is attached hereto and made a part hereof. Vouchers for the payment of eligible expenses shall be made against the line item budgets specified in Exhibit "B" herein and in accordance with performance.

As full and complete consideration for the services so rendered, the County shall pay a total sum not to exceed xx THOUSAND and 00/100 (\$xx,000.00) DOLLARS. The Municipality shall be required

to receive payments electronically by submitting an authorization form to the Dutchess County Comptroller's Office unless an exception has been found where electronic payments are not feasible.

The parties further agree that the County will reimburse according to the following limits:

- A. Project implementation and architectural/engineering costs incurred by consultants implementing each individual project will be limited to 20% of the project's final approved allocation. The County developed this percentage assuming 10% for project implementation and 10% for architectural/engineering.
- B. Requests for Payment shall be for amounts in excess of \$1,000.00 per request, with the exception of the final request, which may be for a lesser amount.
- C. Requests for Payment shall not be submitted with costs incurred prior to March 1, \_\_\_\_ (the start of the \_\_\_\_ CDBG program year) except for the application development cost as described above.
- D. Ten (10%) of the final approved allocation will be held back until project completion.
- E. All Requests for Payment for expenses incurred in a calendar year must be submitted by January 15<sup>th</sup> of the following calendar year.

The Budget may be modified in accordance with the Dutchess County Contracted Services Policies and Procedures Manual (DCCS Policies and Procedures") attached hereto as Exhibit "C", and is also available at: <https://www.dutchessny.gov/County-Government/Contracted-Services-and-Programs-County-Gov.htm>. A substantially revised Budget may require an amendment to this Agreement.

The obligation of the County for payment and obligation of the Municipality for performance of activities hereunder shall be limited to funds received by the County from HUD for the purposes hereof.

### 3. TERM OF AGREEMENT

The term of this Agreement shall be twenty (20) months from March 1, 20\_\_ to October 31, 20\_\_ (the project completion deadline). All eligible activities described in Exhibit "A" must be completed and all costs incurred by the project completion deadline. Documentation in connection with costs incurred within the term of this Agreement must be submitted by December 15, 20\_\_ and paid by the County by January 31, 20\_\_. If an extension of the project completion deadline is granted by the County, costs incurred must be submitted with forty-five (45) days and paid by the County within ninety (90) days of the new project completion deadline.

If funds are not paid by the County in accordance with Exhibit "A" and this paragraph, the County will rescind the unexpended balance of the grant allocation through the issuance of a Recapture Statement by the Commissioner of Planning and Development to the Municipality. In such event, the funds will be reallocated by the County for other eligible activities and/or projects, although not necessarily for the benefit of the Municipality.

### 4. AMENDMENTS

This Agreement shall not be changed or cancelled except in writing. The parties further agree that each project listed in the Scope of Services specified in Exhibit "A" shall not be entitled to an amended change in scope. However, it is permissible to amend budget items specified in Exhibit "B" in accordance with the DCCS Policies and Procedures.

5. EXTENSIONS

The underlying Agreement may be extended for additional time periods, upon such written terms and conditions as approved by the Commissioner of Planning and Development and/or the DCCS Policies and Procedures.

6. NOTICES

Except as otherwise provided in this Agreement, notice required to be given pursuant to this Agreement shall be made in writing and addressed to the following or such other person as the parties may designate:

Community Development Administrator  
Dutchess County Department of Planning  
and Development  
85 Civic Center Plaza, Suite 107  
Poughkeepsie, NY 12601

Municipality  
Attn.: Mayor/Supervisor  
Address

7. GENERAL CONDITIONS

A. General Compliance

The Municipality agrees to comply with the requirements of Title 24 Code of Federal Regulations, Part 570 of the Housing and Urban Development regulations, as amended, concerning Community Development Block Grants ("CDBG") and all Federal regulations and policies issued pursuant to these regulations. The Municipality further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

The Municipality also agrees to comply with all applicable Federal, State and local laws and regulations governing the funds provided for under this Agreement. The Municipality also agrees to comply with the directives of the County, issued to ensure compliance with HUD regulations and requirements.

The Municipality shall not assign, sublet, subcontract or otherwise dispose of this Agreement, or any right, duty or interest herein, without previous written consent of the County.

The Municipality shall:

1. Prepare plans, specifications and bid documents as may be required to complete approved projects in accordance with Federal, State and local laws. Said plans, specifications and bid documents shall be submitted to the County for review and approval prior to public bidding or the use of municipal labor.
2. Inform the County as to the bid publication date and the bid opening date for placement on Bidnet, if required by the County's Procurement Policy
3. Contact the County after the bid opening for review and approval of the bidding process and to verify the current eligibility status of the contractor or subcontractor(s) prior to awarding the contract.
4. Submit project status reports when submitting a Request for Payment to the County.
5. Hold a pre-construction conference with the County, the principal contractor and all available subcontractors to apprise them of their responsibility and obligations regarding labor standards as required by HUD. This pre-construction conference requirement will also apply when municipal labor is involved.
6. Make no alterations in the work and no extras shall be charged by the contractor except upon written request and approval by the County of such alterations and any modifications in original costs. Such changes are to be incorporated in a written change order, which shall be signed by the Municipality, the contractor and the County.
7. Make application for progress payments. The application shall include an itemization for all monies paid by the Municipality for labor performed and material supplied for the period covered by the application and a statement describing the work that was performed using such labor and materials. Progress payments will be issued upon approval by the Municipality and the County, subject to the 10% holdback described in paragraph 2(D) above.

All amounts due and payable to the Municipality for the work performed under this Agreement shall be payable within thirty (30) days after the work is satisfactorily completed and a properly executed payment request form is submitted to the County. Said payment request form must be approved by the County acting on behalf of HUD.

The County, HUD and any or all authorized representatives of each, reserve the right to enter onto the project location and make periodic inspections. Said inspections are made solely for the purpose of assuring the County and HUD that the Community Development funds are being used in accordance with the agreement, and are not made in an effort to inspect or assure the Municipality that the work performed is being done in accordance with any plans, specifications, and/or work write-ups, and thus no duty or obligation to the Municipality is created or implied by same.

The Municipality is responsible for making periodic visits to the site sufficient to be familiar with the progress and performance of the work in order to protect the Municipality's interest.

**B. Indemnification**

The Contractor agrees to the fullest extent permitted by law to defend, indemnify and hold

the County and its employees harmless from any and all such losses, claims, liens, demands and causes for action, including but not limited to, judgments, penalties, interest, court costs, and legal fees incurred by the County on behalf of any party, in connection with or arising from the Contractor's work. The Contractor shall investigate, handle, respond to and defend any such claims, demands or suits at its sole expense, and shall bear all other related costs and expenses even if such claims, demands, or suits are groundless, false or fraudulent. This indemnification section shall survive the expiration or termination of this Agreement.

In any matter in which indemnification hereunder would violate Section 5-322.1 of the New York General Obligations Law or any other applicable legal prohibition, the foregoing provision shall not be construed to indemnify the County for damage arising out of bodily injury to persons or to property caused by or resulting from the sole negligence of Dutchess County employees. The term "employee" shall include all officers, advisory board members and/or volunteers serving the County.

C. Insurance

At all times during the term of this Agreement, the Municipality and its sub-contractor(s), if any, shall maintain at its own cost the following insurance and shall provide proof thereof to the County, in the form of a Certificate of Insurance, prior to commencing work under this Agreement:

**Workers' Compensation** Employer's Liability (statutory limits). In compliance with the Workers' Compensation Law of the State of New York, the Municipality shall provide:

1. a certificate of insurance on an Acord form indicating proof of coverage for Workers' Compensation, Employer's Liability, **OR**
2. a New York State Workers' Compensation Notice of Compliance (Form C-105, Form U-26.3, Form SI-12 or Form SI-105.2P).
3. In the event that the Municipality is exempt from providing coverage, they must provide a properly executed copy of the Certificate of Attestation of Exemption from NYS Workers' Compensation Board, Form CE-200.
4. A certificate of participation in a self-insurance program. The department responsible for the implementation of the Agreement will obtain verification from the Director of Risk Management for those municipalities participating in the Dutchess County Self-Insured Plan.

**Commercial General Liability** Insurance coverage including blanket contractual coverage for the operation of the program under this Agreement with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. This insurance shall be written on an occurrence coverage form and include bodily injury and property damage liability. The County must be listed as additional insured. The additional insured endorsement for the Commercial General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations.

**Automobile Liability** Insurance coverage for all owned, hired, and non-owned vehicles with a combined single limit of liability of not less than \$1,000,000. This insurance shall include coverage for bodily injury and property damage. The County must be listed as additional insured.

The Acord form certificate of insurance must contain the following provisions:

The County of Dutchess must be listed as certificate holder and additional insured on the commercial general, umbrella/excess, and automobile liability policies. In addition, the commercial general liability policy must include the additional insured endorsement forms cg 2037 July 2004 edition and the cg 2010 April 2013 edition or their equivalent.

The commercial general and automobile policies are primary and noncontributory.

The commercial general liability, auto liability and Workers' Compensation policies must contain a waiver of subrogation in favor of the County of Dutchess.

The umbrella/excess policy is primary and noncontributory and must contain a waiver of subrogation in favor of the County of Dutchess.

If the Workers' Compensation Notice of Compliance is used instead of the Acord certificate of insurance, the Notice of Compliance must indicate that a waiver of subrogation in favor of the County of Dutchess is provided.

All policies of insurance referred to above shall be underwritten by companies authorized to do business in the State of New York with an A.M. Best financial strength rating of A- or better. In the alternative, the policies of insurance referred to above may be underwritten by Non-Admitted companies with an A.M. Best financial strength rating of A+ or higher. In addition, every policy required above shall be primary and noncontributory. Any insurance carried by the County, its officers, or its employees shall be excess and noncontributory insurance to that provided by the Municipality. The Municipality and its sub-contractor(s), if any, shall be solely responsible for any deductible losses under each of the policies required above.

Payment(s) to the Municipality may be suspended in the event the Municipality and its sub-contractor(s), if any, fails to provide the required insurance documentation in a timely manner.

Prior to cancellation or material change in any policy, a thirty (30) day notice shall be given to the County Attorney at the address listed below:

Dutchess County Attorney  
County Office Building  
22 Market Street  
Poughkeepsie, New York 12601

On receipt of such notice, the County shall have the option to cancel this Agreement without further expense or liability to the County, or to require the Municipality to replace the cancelled insurance policy, or rectify any material change in the policy, so that the insurance coverage required by this paragraph is maintained continuously throughout the term of this Agreement in form and substance acceptable to the County. Failure of the Municipality to take out or to maintain any of the required insurance shall not relieve the Municipality from any liability under this Agreement nor shall the

insurance requirements be construed to conflict with or to limit the obligations of the Municipality concerning indemnification.

All losses of County property shall be adjusted with and made payable directly to the County.

All Certificates of Insurance shall be approved by the County's Director of Risk Management or designee prior to commencement of any work under this Agreement.

In the event that claims in excess of these amounts are filed in connection with this Agreement, the excess amount or any portion thereof may be withheld from payment due or to become due the Municipality until the Municipality furnishes such additional security as is determined necessary by the County.

D. Executory Clause

The Dutchess County fiscal year begins on January 1<sup>st</sup> and ends on December 31<sup>st</sup> of any given year. Notwithstanding anything to the contrary contained herein, it is understood and agreed that this Agreement shall be deemed executory only to the extent of the funds, irrespective of their source, available to the County for the performance of the terms herein. In the event the necessary funds to effect payment during the term of this Agreement become unavailable for whatever reason, then this Agreement shall cease and terminate at the option of either of the parties.

Notice of the exercise of this option by either party shall be in writing and delivered by certified mail, return receipt requested. Upon receipt of the notice of termination from the County, any advance payment received and not expended, shall immediately be returned to the County.

No liability on account thereof shall be incurred by the County beyond the funds available for the performance of the terms of this Agreement. It is further understood and agreed that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of this Agreement.

E. Funding

The Municipality agrees to secure additional funding as noted in the application, if applicable. The municipality shall notify the County, in writing, if it receives additional sources of funding for the program(s) that are the subject of this agreement.

F. Attribution

The Municipality, through whatever medium it uses to communicate its mission, program or services, shall identify Dutchess County as a funding source. It shall do so by placing on its stationery, brochures, newsletters and other printed materials the following statement: "Paid for in part by Dutchess County." Whenever appropriate the Dutchess County Seal should be displayed along with the statement. Attribution in other media where the above statement would be cumbersome shall appropriately convey the role of Dutchess County as a funding source.

G. Suspension or Termination

In accordance with 24 CFR 85.43, this Agreement may be suspended or terminated if the Municipality materially fails to comply with any term of the Agreement and that the Agreement may be terminated for convenience in accordance with 24 CFR 85.44.

The County may terminate this Agreement, in whole or in part, on ten (10) day's written notice to the Municipality when the County deems such termination to be in the best interest of the County and after the occurrence of any of the following events:

1. A determination by the appropriate administrative authority of HUD that the Municipality has violated a provision of the Act, or any other Federal law, rule or regulation, or administrative order applicable to this Agreement, after the Municipality has been notified and provided reasonable opportunity to demonstrate to the contrary as provided by applicable HUD rules and regulations.
2. A determination by the Community Development Administrator of the County that the municipality has violated a provision of Federal or State law, rule or regulation or administrative or executive order applicable to this Agreement, or has breached a term of this Agreement or has failed, in whole or part, to carry out its program as the same is described in Exhibit "A" provided that before making such determination, the Community Development Administrator shall first notify the Municipality of the potential violation or breach and shall afford the Municipality, if the Municipality requests, the opportunity to submit written documentation and present oral evidence in support of its position to the Commissioner who shall consult with the Community Development Advisory Committee ("CDAC") in its advisory capacity.
3. The termination of the Urban County Program.

In the event of any termination, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Municipality under this Agreement shall, at the option of the County, become the property of the County, and the Municipality shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

#### H. Non-Compliance

In the event there is probable cause to believe the Municipality is in non-compliance with any applicable rules or regulations, the County may withhold funds until such time as the Municipality is found to be in compliance by the County or is otherwise adjudicated to be in compliance.

Upon termination of this Agreement, the Municipality shall transfer to the County any Community Development funds on hand at the time of expiration and any accounts receivable attributable to the use of Community Development funds.

#### I. Performance Monitoring

The County will monitor the performance of the Municipality against the project description and outcomes in Exhibit "A". Substandard performance as determined by the County will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken



by the Municipality within a reasonable period of time after being notified by the County, Agreement suspension or termination procedures will be initiated.

J. Severance Pay

The County Shall Not Be Charged for Severance Pay Incentives. The County is aware that from time to time contract agencies engage in programs such as early retirement plans, which reward employees with a severance payment as an incentive toward voluntary resignation. The County of Dutchess is prohibited by the New York State Constitution from making a gift of public funds and such severance pay incentives amount to such a gift. Therefore, notice is hereby given that County funds shall not be used for the purpose of a severance pay or any such incentive. If an audit of payments made under this contract reveals that such payments have been made, the Municipality shall immediately reimburse the County for the full amount with interest upon receipt of a written demand from the County. In addition, the County may declare this agreement null and void.

K. Municipality's Obligations Post Termination With or Without Cause

Upon termination of this Agreement, the Municipality shall: (1) cooperate with the County to develop a transition plan and assist in affecting an orderly transfer of services and obligations to any successor Municipality(s) so as to prevent any disruption in services; (2) provide County with access to and a copy of, all books, records and other non-proprietary documents including, but not limited to digital records, relating to the performance of services under this Agreement that are required or requested, at no charge, and if so directed by the County; (3) continue to perform such services prior to actual termination at the agreed upon contractual rate for up to an additional one hundred twenty (120) days following the notice of termination. The obligations of this paragraph shall survive the termination of this Agreement whether the agreement is terminated for cause or terminated for convenience.

8. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The municipality agrees to comply with U.S. Office of Management and Budget's ("OMB") 2 CFR Chapter 1, Chapter II, Part 200 et al – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule dated December 26, 2013 ("OMB Guidance") and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Municipality shall administer its program in conformance with OMB Guidance and if the Municipality is a governmental or quasi-governmental agency, the applicable sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", for all costs incurred whether charged on a direct or indirect basis.

## B. Documentation and Record-Keeping

### 1. Records to be Maintained

The Municipality shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506 and those that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of the project undertaken.
- b. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance.
- c. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program.
- d. Financial records as required by 24 CFR Part 570.502, and OMB Guidance.
- e. Other records necessary to document compliance with Subpart K of 24 CFR 570.
- f. Records which demonstrate compliance with citizen participation requirements.
- g. Project status reports, labor compliance documentation and supporting payment request documentation, program income reports and annual audits.
- h. Performance and evaluation reports containing completed copies of all forms and narratives, including a summary of the citizen comments received on the report.
- i. Equal employment opportunity and minority business enterprise reports.

### 2. Records Retention

The Municipality shall retain all records pertinent to expenditures incurred under this Agreement for a period of ten (10) years after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for ten (10) years after final disposition of such property. Records for any displaced person must be kept for ten (10) years after he/she has received final payment.

### 3. Property Records

The Municipality shall maintain real property inventory records, which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the “change in use” restrictions as specified in 24 CFR Parts 570.503(b)(8) set forth below:

Any real property under the Municipality’s control that was acquired or improved in whole or in part with community development funds in excess of \$25,000 must be:

- a. Used to meet one of the national objectives until five years after expiration of the agreement or such longer period of time as determined appropriate by the County, or
- b. Disposed of in a manner which results in the County being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-community development funds for acquisition of, or improvement to, the property.

### 4. Audits & Inspections

Municipality shall maintain an accounting system that enables the County to readily identify assets, liabilities, revenues, expenses and disposition of County funds. Records should include, but not be limited to, those kept by the Municipality, its employees, agents, assigns, and subcontractors.

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which the vouchers or invoices are based are subject to review by the responsible department and audit by the County Comptroller. Municipality shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the County.

The audits may include examination and review of the source and application of all funds from the County, State, or Federal governments. The Municipality shall not be entitled to any interim or final payment under this Agreement, ***and any overpayment may be recouped***, if any audit requirements and/or requests have not been satisfactorily met ***or if any expenditures or fees by the Municipality are determined to be irregular by the auditor***. This paragraph shall survive the termination of the Agreement.

The Municipality hereby agrees to have an annual agency audit conducted in accordance with OMB Guidance, issued pursuant to the single Audit Act of 1984 P.L. 98-502 and the Single Audit Act Amendments of 1996 P.L. 104-156, Standards for the Audits of States, Local governments, and Non-Profit Organizations expending Federal Awards.

Non-Federal entities that expend \$750,000 or more in a year in Federal Awards shall have a single or program specific audit conducted for that year in accordance with OMB Guidance. The Municipality shall send to the County a copy of the single or program specific audit performed pursuant to this section. For Federal Awards totaling less than \$750,000 records must be available for review or audit by the appropriate officials of the Federal Agency, the State of New York and Dutchess County.

C. Reporting and Payment Procedures

1. Program Income

The Municipality shall report monthly all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Municipality shall comply with the requirements set forth at 24 CFR 570.504.

Program income includes but is not limited to the following:

- a. Proceeds from disposition of equipment purchased with community development funds.
- b. Net income from the rental or sale of real or personal property acquired by the Municipality with community development funds.
- c. Net income from the rental or sale of real property owned by the Municipality that was constructed or improved with CDBG funds.
- d. Interest earned on program income pending disposition of such income.

2. Payment Procedures

The County will pay to the Municipality funds available under this Agreement based upon information submitted by the Municipality and consistent with any approved budget and County policy concerning payments. Payments will be made for eligible expenses actually incurred by the Municipality and not to exceed actual cash requirements. Payments will be adjusted by the County in accordance with advance fund and program income balances available in Municipality accounts. In addition, the County reserves the right to liquidate funds available under this Agreement for costs incurred by the County on behalf of the Municipality.

3. Supporting Documentation

The Municipality shall provide supporting documentation for eligible expenses required by the current DCCS Policies and Procedures.

D. Procurement

All procurement transactions must be conducted in a manner that provides, to the maximum extent practical, open and free competition in accordance with 24 CFR 85.26 and OMB Guidance. The contract should be awarded to the lowest responsible bidder. The Agency shall follow the process outlined in the Dutchess County Contracted Services Policies and Procedures Manual.

E. Relocation, Acquisition and Displacement

The Municipality agrees to comply with 24 CFR 570.606 relating to the acquisition and disposition of all real property utilizing grant funds, and to the displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. The Municipality agrees to comply with applicable County Resolutions and Policies, if any, concerning displacement of individuals from their residences.

F. Labor Standards

1. Davis Bacon Requirements

The Municipality agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Federal Labor Standards, Contract Work Hours, the Safety Standards Act as amended, the Copeland "Anti-Kickback" Act as amended (40 U.S.C. 276, 327-333) and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Municipality shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

The Municipality agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) households, all contractors engaged under contracts in excess of \$2,000 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under

this Agreement, shall comply with Federal requirements and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR, Part 5 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Municipality of its obligations, if any, to require payment of the higher wage. The Municipality shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, for such contracts in excess of \$10,000.

2. Bonding

Bonding for construction or facility contracts or subcontracts exceeding \$100,000 must use the following minimum requirements:

- a. Bid Guarantee - A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. Performance Bond - A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. Payment Bond - A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3. "Section 3" Clause

a. Compliance

Compliance with the provisions of "Section 3", the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the County, the Municipality and any subcontractors, their successors and assigns, to those sanctions specified by the agreement through which Federal assistance is provided. The Municipality certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

The Municipality further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of "Section 3" of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. "Section 3" requires 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 areas of the project".

The Municipality certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.

b. Notifications

The Municipality agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this "Section 3" clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Municipality will include this "Section 3" clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Grantor Agency. The Municipality will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

9. ENVIRONMENTAL CONDITIONS

The Municipality shall carry out the Project in compliance with all Federal laws and regulations except that:

- A. The County shall assume such environmental review, decision-making, and action responsibilities established in the execution of this agreement.
- B. The County shall assume the responsibility for initiating the environmental review process under Executive Order 12372.
- C. The Municipality shall comply with all environmental conditions required as a result of the County's environmental review process.

10. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Municipality agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 as amended, the Age Discrimination Act of 1975 as amended, Executive Order 11063 and Executive Order 11246 as amended by Executive Orders 11375 and 12086.

2. Non-Discrimination

The Municipality will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Municipality will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Municipality agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

3. Section 504

The Municipality agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 as amended (20 U.S.C. 701) which prohibits discrimination against the handicapped in any Federally assisted program. The County shall provide the Municipality with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Municipality agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.

2. Women and Minority Business Enterprises

The Municipality will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. The Municipality shall use the State's current minority and women-owned business enterprises list when issuing all bid notices and provide the County with documentation that this was followed. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Municipality may rely on written representations by the contractor regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Equal Employment Opportunity and Affirmative Action Statement

The Municipality will, in all solicitations or advertisements for employees placed by or on behalf of the Municipality; state that it is an Equal Opportunity or Affirmative Action employer.

4. Agreement Provisions

The Municipality will include the provisions herein of Paragraphs 8(A) Civil Rights and 8(B) Affirmative Action, in every contract or purchase order, specifically or by reference, so that such provisions will be binding upon each contractor or vendor.

C. Conduct

1. Conflict of Interest

The Municipality agrees to abide by the provisions of 24 CFR 570.611 and OMB Guidance with respect to conflicts of interest, and covenants that no persons who exercise or have exercised any functions or responsibilities with respect to the Project, or who are in a position to participate in a decision making process or gain inside information with regard to the Project, may obtain a financial interest or benefit from the Project or have a financial interest in any contract, subcontract, or agreement with respect to the Project, or with respect to the proceeds of the Project, either for themselves or those with whom they have business or immediate family ties during their tenure or one year thereafter. No employee, officer or agent of the Municipality or County may participate in the selection, award or administration of the Project if he or she has a real or apparent conflict of interest.

2. Persons Covered

These provisions apply to any person who is an employee, officer, or agent, any member of his or her immediate family, his or her partner, or any organization which employs any of the parties indicated herein, who has a financial or other interest in or a tangible personal benefit from a firm considered for a contract under the Project. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the County, or of any designated public agency or Municipality which are receiving funds under the CDBG Entitlement program.

3. Copyright

If this Agreement results in any material subject to copyright laws, the County reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes.

4. Religious Organization

The Municipality agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious



organization in accordance with the Federal regulations specified in 24 CFR 570.200(j). Funds may be used to rehabilitate buildings owned by primarily religious entities to be used for secular purposes or eligible public services provided primarily through a primarily religious entity under the conditions set forth in 24 CFR 570.200(j).

5. Binding

This Agreement shall be valid and binding once it has been approved by the Dutchess County Attorney's Office, executed by the County Executive and delivered to the Municipality at the address indicated in the introductory paragraph of this Agreement.

6. Enforcement Expenses

The Municipality shall pay all costs and expenses, including reasonable Attorney's fees (in-house or retained counsel), that the County incurs in enforcing any of the terms of this Agreement including all costs and expenses and reasonable attorney's fees incurred in connection with any appeals, whether the County is an appellant or a respondent.

7. Set-Off Rights

The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purpose of set-off any moneys due to the Municipality under this Agreement up to any amounts due and owing to the County with regard to this Agreement, any other agreement with the County or any of its departments or agencies. This right of set-off includes any agreement for a term commencing prior to or subsequent to the term of this Agreement. The right of set-off shall include any amounts due to the County for any reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

11. COUNTERPARTS; SIGNATURES TRANSMITTED BY ELECTRONIC MEANS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. A facsimile or signature transmitted by electronic means applied hereto or to any other document shall have the same force and effect as a manually signed original. This provision contemplates giving legal force and effect to copies of signatures. This provision does not contemplate the use of "electronic signatures" as regulated by New York State Technology Law Article 3, "Electronic Signatures and Records Act."

12. NON-ASSIGNMENT

This Agreement may not be assigned by the Contractor without prior written consent of the County, and the County shall be relieved of all liability and obligations consistent with the New York State General Municipal Law Section 109 in the event of such unauthorized assignment.

13. ENTIRE AGREEMENT

The terms of this Agreement, including its attachments and exhibits, represent the final intent of the parties. Any modification, rescission or waiver of the terms of this Agreement must be in writing and executed and acknowledged by the parties with the same formalities accorded this basic Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED AS TO FORM:

ACCEPTED: COUNTY OF DUTCHESS

\_\_\_\_\_  
County Attorney's Office

\_\_\_\_\_  
Acting County Executive

APPROVED AS TO CONTENT:

MUNICIPALITY:

\_\_\_\_\_  
Eoin Wrafter, Commissioner  
Dept. of Planning and Development

\_\_\_\_\_  
\_\_\_\_\_(name)  
Mayor/Supervisor