

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 ("County") and _____, a not-for-profit agency, having offices at _____ ("Agency").

WHEREAS, the County has, in cooperation and agreement with the Agency, 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, the County has the authority under the Urban County Program to allocate fifteen percent of its Community Development allocation to public service projects, and

WHEREAS, the Agency desires to conduct an activity as described in Exhibit "A" ("Activity") under the CDBG Program and the County desires that the Agency conduct such an Activity.

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

1. SCOPE OF SERVICE

The Agency shall be responsible for administering a 20__ CDBG program year Activity in a manner satisfactory to the County and consistent with any standards required as a condition of providing these funds. Such Activity will include the eligible activities and outcomes 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 as 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 Agency 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. 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.
- B. Requests for Payment shall not be submitted with costs incurred prior to March 1, 20___; the start of the 20___ CDBG program year.
- C. All Requests for Payment for expenses incurred between March 1, 20__ through December 31, 20__ must be submitted by January 15th 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”, 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 Agency 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 one (1) year from March 1, 20___ to February 28, 20___ (the activity completion deadline). All eligible activities described in Exhibit “A” must be completed and all costs incurred by the Activity completion deadline. Final Requests for Payment with backup documentation in connection with expenses incurred within the last quarter of this Agreement must be submitted by April 15, 20___ and paid by the County by May 30, 20__ .

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 Agency. 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 Agency.

4. AMENDMENTS

This Agreement shall not be changed or cancelled except in writing. The parties further agree that each activity 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

Executive Director
[Agency Name]
[Address]

7. GENERAL CONDITIONS

A. General Compliance

The Agency 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 CDBG and all Federal regulations and policies issued pursuant to these regulations. The Agency further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

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

The Agency has been identified as a “sub-recipient”, a non-Federal entity that expends Federal awards received from a pass-through entity (“County”) to carry out a Federal program.

B. Non-Assignment

1. The Agency 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.

2. An assignment of this Agreement shall not relieve the assignor of its obligations hereunder. In the event of assignment, all the provisions hereof shall be binding upon and inure to the benefit of the respective successors and assignees to the same extent as if each such successor or assignee were named as a party to the Agreement.

C. Independent Contractor

The Agency agrees: that it is an independent contractor and that it shall not hold itself out to be an employee or officer of the County, and that therefore, neither Federal, State nor local income tax nor payroll tax on any kind shall be withheld or paid by the County on behalf of the Agency or its employees; that it shall not be eligible for, and shall not be entitled to participate in, any employee pension, health, retirement or other fringe benefit plan of the County; that it shall not have Workers' Compensation or disability coverage through the County for the Agency or its employees, and that the Agency shall not be entitled to make any claim against the County for these or any other rights or privileges of an officer or employee of the County.

D. Defense and 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.

E. Insurance

At all times during the term of this Agreement, the Agency 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, each Agency 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 Agency is exempt from providing coverage, it 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 claim 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, and sexual abuse and molestation and medical coverage for the participants in the program. 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, scheduled, 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.

Excess/Umbrella Liability, with limits not less than \$5,000,000 per occurrence, \$5,000,000 in the aggregate. The County must be included 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 Agency. The Agency 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 Agency may be suspended in the event the Agency, 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 Agency 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 Agency to take out or to maintain any required insurance shall not relieve the Agency from any liability under this Agreement nor shall the insurance requirements be construed to conflict with or to limit the obligations of the Agency 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 Agency until the Agency furnishes such additional security as is determined necessary by the County.

F. Qualifications of Agency

The Agency specifically represents that its members, officers, employees, agents, servants, consultants and subcontractors have the experience, knowledge and character necessary to perform their particular duties under this Agreement.

G. Declaration by Agency

The Agency declares that it has complied with all Federal, State and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this Agreement.

H. Executory Clause

The Dutchess County fiscal year begins on January 1st and ends on December 31st 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.

I. Funding

The Agency agrees to secure additional funding as noted in the application, if applicable. The Agency shall notify the County, in writing, if it receives additional sources of funding for the activity(ies) that are the subject of this Agreement.

J. Attribution

The Agency, 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.

K. Suspension or Termination

In accordance with 24 CFR 85.43, this Agreement may be suspended or terminated if the Agency 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) days written notice to the Agency 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 Agency has violated a provision of the Act, or any other Federal law, rule or regulation, or administrative order applicable to this Agreement, after the Agency 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 Agency 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 Agency of the potential violation or breach and shall afford the Agency, if the Agency 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 Agency under this Agreement shall, at the option of the County, become the property of the County, and the Agency shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

L. Non-Compliance

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

Upon termination of this Agreement, the Agency 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.

M. Non-Waiver

Failure of either party to exercise any rights under this Agreement for a breach thereof shall not be deemed a waiver thereof or a waiver of any subsequent breach.

N. Severability

If any provision of this Agreement shall be held unenforceable, the rest of the Agreement shall nevertheless remain in full force and effect.

O. Choice of Law, Venue

Any dispute arising directly or indirectly out of this Agreement shall be determined pursuant to the laws of the State of New York. The parties hereby choose the New York State Supreme Court, Dutchess County as the forum for any such dispute.

P. No Arbitration

Disputes involving this Agreement, including breach or alleged breach thereof, may not be submitted to binding arbitration but must instead be heard in accordance with the paragraph above entitled "Choice of Law, Venue".

Q. Service of Process

In addition to the methods of service allowed by the New York State Civil Practice Law & Rules ("CPLR"), the Agency hereby consents to service of process on it by registered or certified mail, return receipt requested or by facsimile (fax) transmission. Service hereunder shall be complete when deposited in the United State mail, duly addressed and with proper postage or when the fax has connected. The Agency must promptly notify the County, in writing, of each and every address change to which the service of process can be made. Service by the County to the last known address shall be sufficient. The Agency shall have thirty (30) calendar days after the service is complete in which to respond.

R. Monitoring

Agency agrees that its program and financial records shall be available to the County and to auditors upon reasonable notice during normal business hours in order to ensure compliance with Federal award requirements. Agency further agrees to cooperate with other sub-recipient monitoring by the County including, but not limited to, site visits, intended to provide assurance that the Agency is administering Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

The County will monitor the performance of the Agency against the Activity 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 Agency within a reasonable period of time after being notified by the County, Agreement suspension or termination procedures will be initiated. The period to correct substandard performance is reasonable if it does not exceed that which would be expected by a prudent person under the prevailing circumstances.

S. 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 Agency 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.

T. Agency's Obligations Post Termination With or Without Cause

Upon termination of this Agreement, the Agency 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 Agency(ies) so as to prevent any disruption in services; (2) provide the 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 Agency agrees to comply with the 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 Agency shall administer its program in conformance with OMB Guidance and if the Agency is a governmental or quasi-governmental agency, with 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.

All costs must be reasonable. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstance prevailing at the time the decision was made to incur the cost.

3. Direct Cost

Direct costs are those costs that can be identified specifically with a particular final cost objective or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved the cost may be allocated or transferred to benefitting projects on any reasonable documented basis.

4. Indirect Costs

Indirect costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

The Agency may elect to charge a 10% indirect costs rate or negotiate a higher rate via the development and submission of an indirect cost allocation plan in accordance with Appendix IV of the OMB Guidance for the County's review and approval.

5. Consistent Treatment of Costs

Costs must be accorded consistent treatment between all Federal and County awards. A cost may be assisted to another Federal or County award as a direct cost if any other cost for the same purpose in like circumstances has been allocated to the Federal or County award as an indirect cost.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Agency shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506 and 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 each Activity, including location, amount of funds budgeted, obligated and expended.
- b. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG funds.

- c. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Activity.
- 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. Outcome reports, client demographics, payment requests and supporting, program income reports and annual audits.

2. Records Retention

The Agency 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. Audits & Inspections

Agency 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 Agency, 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. Agency 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 Agency 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 Agency are determined to be irregular by the auditor***. This paragraph shall survive the termination of the Agreement.

The Agency 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 Agency 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. Reporting

The Agency shall submit outcome reports, as set forth in Exhibit “B”, quarterly and unduplicated client demographic information annually in accordance with the DCCS Policies and Procedures.

2. Program Income

The Agency 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 Agency 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 Agency with community development funds.
- c. Net income from the rental or sale of real property owned by the Agency that was constructed or improved with CDBG funds.
- d. Interest earned on program income pending disposition of such income.

3. Payment Procedures

The Agency shall submit payments at least quarterly in accordance with DCCS Policies and Procedures. The County will pay to the Agency funds available under this Agreement based upon information submitted by the Agency and consistent with any approved budget and County policy concerning payments. Payments will be made for eligible expenses actually incurred by the Agency 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 Agency 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 Agency.

4. Supporting Documentation

The Agency shall provide supporting documentation for eligible expenses which are required by the 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 85.36 and OMB Guidance. The contract should be awarded to the lowest responsible bidder. The Agency shall follow the process outlined in the *Dutchess County Policies & Procedures*, dated March 21, 2018.

9. ENVIRONMENTAL CONDITIONS

The Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 701), as amended, which prohibits discrimination against the handicapped in any Federally assisted program. The County shall provide the Agency 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 Agency 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 Agency 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 Agency 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 African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Agency may rely on written representations by Agencies regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Equal Employment Opportunity and Affirmative Action Statement

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

4. Agreement Provisions

The Agency 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 Agency 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 Activity or who are in a position to participate in a decision making process or gain inside information with regard to the Activity, may obtain a financial interest or benefit from the Activity or have a financial interest or benefit from the Activity or with respect to the proceeds of the Activity either for themselves or the parties noted below during their tenure or one year thereafter. No employee, officer or agent of the Agency or County may participate in the selection, award or administration of the Activity if he or she has a real or apparent conflict of interest.

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 Activity. 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 which is receiving funds under the CDBG program.

2. 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.

3. Religious Organization

The Agency 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 primarily by 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).

11. 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 Agency at the address indicated in the introductory paragraph of this Agreement.

12. ENFORCEMENT EXPENSES

The Agency 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 expense and reasonable attorney's fees incurred in connection with any appeals, whether the County is an appellant or a respondent.

13. 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 Agency 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.

14. CAPTIONS

The captions are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms hereof.

15. 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.

16. 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."

17. 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:

County Attorney's Office

APPROVED AS TO CONTENT:

Eoin Wrafter, Commissioner
Dept. of Planning and Development

ACCEPTED: COUNTY OF DUTCHESS

Acting County Executive

[AGENCY NAME]

[name]
Executive Director