

**THIS INTERMUNICIPAL AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_ 2022, by and between:

**THE COUNTY OF WESTCHESTER**, a municipal corporation organized and existing under the laws of the State of New York, having its offices in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601 (the “County”)

and

**THE VILLAGE OF CROTON ON HUDSON**, a municipal corporation organized and existing under the laws of the State of New York, having its offices at 1 Van Wyck Street, Croton-on-Hudson, New York 10520 (the “Municipality”).

**W I T N E S S E T H:**

**WHEREAS**, the County, in cooperation and agreement with the Municipality, has applied for and has been awarded a grant from the United States Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974, as amended 42 USC § 5301 et seq. (the “Act”), with the eligibility of the County for such grant based, in part, on its status as an “Urban County” as defined under 24 CFR Part 570.307 of the Community Development Block Grant (“CDBG”) Regulations as may be amended from time to time.

**WHEREAS**, the County achieved its “Urban County” status as a result of entering into cooperation agreements (the “Urban County Cooperation Agreement(s)”) with that number of other municipalities in Westchester County whose combined population exceeds 200,000 in number; and

**WHEREAS**, said Urban County Cooperation Agreement(s) 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 CDBG Regulations.

**WHEREAS**, pursuant to the Urban County Cooperation Agreement(s) each municipality has agreed, among other things, to exercise its powers to carry out projects/programs under the Act and CDBG Regulations (24 CFR Part 570); and

**WHEREAS**, the Municipality is one of such cooperating municipalities, and as such has executed an Urban County Cooperation Agreement with the County under the Act and CDBG Regulations and a copy of such agreement is on file with the County; and

**WHEREAS**, it is acknowledged and agreed that the municipality is obligated pursuant to the Urban County Cooperation Agreement to comply with the provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act of 1968 and the Americans with Disabilities Act of 1990 and to do what is necessary, as determined by the County, to comply with each of the above referenced Acts, the rules and regulations thereunder, and the undertakings and assurances in the application form insofar as they relate to the activities and programs conducted by the municipality pursuant to this grant, including to affirmatively further fair housing within its own jurisdiction and not impede the County's action to comply with its fair housing certifications; and

**WHEREAS**, the Municipality has submitted a grant application to the County for performing a project or conducting a program, using CDBG funds and the County has concurred with the validity of the project or program through a grant application process; and

**WHEREAS**, in connection with the aforementioned grant, the County has received and/or will receive grant funds and desires to provide such funds to the Municipality to provide the project or program as more fully set forth in Schedule "A"; and

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the County and the Municipality agree as follows:

**FIRST**: (a) The Municipality will replace the retaining wall on Grant Street in accordance with the terms as contained in and as more particularly described in the Scope of Services, which is attached hereto and made a part hereof as Schedule "A" (hereinafter referred to as the "Work"). The

Work includes, without limitation, services provided directly by the Municipality and by any approved contractor, subcontractor or consultant (together the “Contractor(s)”).

The Municipality agrees, and shall cause any Contractor(s) to agree, that the Work shall be carried out in accordance with all Federal, State, and local laws, including, but not limited to, the Act and its implementing regulations, (24 CFR 570) and any applicable rules issued thereunder and agrees to comply with all applicable CDBG Regulations set forth in 24 CFR Part 570, including without limitation those set forth in 24 CFR 135 (the “Part 135 Regulations”).

(b) Pursuant to the Part 135 Regulations, where applicable the Municipality agrees, and shall cause all Contractor(s) to agree, to comply with the “Section 3 Clause,” as maybe amended from time to time, and as set forth in Section 1 of Schedule “D,” which is attached hereto and forms a part hereof. The Municipality further agrees to include said Section 3 Clause in any section 3 covered subcontract.

**SECOND:** The term of this Agreement shall commence on November 15, 2022, and shall terminate on November 14, 2023, unless terminated sooner in accordance with the terms herein. Any extension of the term must be requested by the Municipality in writing and signed off and approved by the County Commissioner of Planning or her duly authorized designee (the “Commissioner”), subject to the receipt of all applicable approvals, including without limitation, the County Board of Acquisition and Contract.

The Municipality shall report to the Commissioner on its progress at least once a month, or more frequently as the Commissioner may request, and shall immediately inform the Commissioner in writing of any cause for delay in the performance of its obligations under this Agreement.

The Municipality shall be responsible for submitting certain forms and reports as required by the Act and the County. For all projects and programs, a County payment voucher and invoice detailing the work completed shall be submitted, as directed herein, on an agreed upon incremental basis. Where applicable, the Municipality shall submit a sub-recipient report, in the format directed by the County. For construction projects, the Municipality shall submit monthly work progress reports including:

1. Certified Invoice – AIA G702 Form.
2. Progress Schedule as agreed upon by the Municipality and the Contractor(s).
3. Section 3 and Davis Bacon compliance certification forms as described in Section D.
4. Weekly interview reports and payroll records, as described in Schedule E.

The Municipality shall complete those specific Work items identified in Schedule “A” by the interim deadlines set forth therein, if any, unless an interim deadline is extended by the Commissioner in writing.

**THIRD:** For the services provided by the Municipality pursuant to Paragraph “FIRST” hereof, the Municipality shall be paid in an amount not to exceed FIFTY-NINE THOUSAND SEVENTY-SIX DOLLARS (\$59,076.00), pursuant to the approved budget set forth in Schedule “A”. Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Municipality for out-of-pocket expenses or disbursements made in connection with the services rendered or the work to be performed hereunder.

Any and all requests for payment to be made, including any request for partial payment, shall be submitted by the Municipality on properly executed payment vouchers of the County and paid only after approval by the Commissioner. All payment vouchers must be accompanied by a numbered invoice and must contain the dates that the invoiced work commenced and terminated. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating. In no event shall final payment be made to the Municipality prior to completion of all Work and the approval of same by the Commissioner.

The Municipality shall, at no additional charge, furnish all labor, services, materials, tools, equipment and other appliances necessary to complete the Work, unless specific additional charges are expressly permitted under this Agreement. It is recognized and understood that even if specific additional charges are expressly permitted under this Agreement, in no event shall total payment to the Municipality exceed the not-to-exceed amount set forth above.

**FOURTH:** Prior to the making of any payments hereunder, the County or HUD may audit such books and records of the Municipality as are reasonably pertinent to this Agreement to substantiate the basis for payment. The Municipality will, and will require any approved Contractor(s) to make their books and records available to the County or HUD for audit and inspection. The County will not withhold payment pursuant to this paragraph for more than thirty (30) days after payment would otherwise be due pursuant to the provisions of this Agreement, unless the County or HUD shall find cause to withhold payment in the course of such review or the Municipality and/or any approved Contractor(s) fails to cooperate with such audit.

It is recognized and understood by the Municipality that as part of the County's right to audit the Municipality and/or any approved Contractor(s) to substantiate the basis for payment, the County and/or HUD has the right to audit the performance of the terms of this Agreement by the Municipality and/or an approved Contractor(s). Towards this end, the County and/or HUD may request documentation from the Municipality and/or any approved Contractor(s) to verify performance of the terms of this Agreement, which the Municipality shall provide or cause to be provided. The County and/or HUD may also make site visits to the location(s) where the work is being performed to both review the Municipality's and/or Contractor's records and observe the performance of the Work.

In addition, the County and/or HUD shall have the right to audit the books and records of the Municipality and/or any Contractor(s) in connection herewith, and the Municipality shall, and shall require its Contractor(s) to make its books and records available to the County and/or HUD for audit and inspection at any time during the one year period following termination of this Agreement.

All of the provisions of this Section FOURTH will survive for a period of six (6) years following the later of termination of this Agreement or completion of the Work.

**FIFTH:** The parties hereto acknowledge and agree that, in accordance with paragraph 25(d) of the Settlement Agreement, the grant of funds authorized hereunder is specifically conditioned upon the Municipality's commitment to affirmatively further fair housing ("AFFH") within its borders. Municipality hereby agrees, on a going forward basis, to:

1. Ban local residency requirements and preferences and other selection preferences that do not AFFH for all housing developments approved after the date of this agreement unless such requirements or preferences receive prior approval in accordance with paragraph 25(d) of the Settlement Agreement for the Section Fifth Duration (defined below);
2. Offer the County a “Right of First Refusal” to retain and/or purchase any and all land acquired in rem to be used for housing that AFFH; and
3. Use reasonable efforts to AFFH through the Municipality’s land use regulations and other affirmative measures to assist development of affordable housing, such as promotion of inclusionary zoning.

The County’s audit rights, as referenced in FOURTH, above, shall extend to all documents, reports, and records which relate to the Municipality’s commitment to AFFH as described herein.

All of the provisions of this Section FIFTH will survive until the expiration of the HUD grant which funds the project or program described herein (the “Section Fifth Duration”).

**SIXTH:** (a) The parties acknowledge and agree that the obligations of the County hereunder are subject to the County’s receipt of all appropriate grant funds as detailed in Schedule “A” which is attached hereto and made a part hereof including without limitation, grant funds from New York State, HUD, etc. If for any reason whatsoever, the full amount of grant funds anticipated to be received pursuant to the CDBG or applicable program, or any portion thereof, are not received by the County for any reason whatsoever or are reduced, denied or fail to be approved in full for payments due the Municipality, the County shall have the right to either terminate this Agreement or to renegotiate the amounts and rates as set forth herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

(b) The parties further acknowledge and agree that the obligations of the County hereunder with respect to funds, if any, not received pursuant to a grant (the “Non Grant Funds”) are subject to

further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

(c) The parties further acknowledge and agree that the obligations of the County under this Agreement with respect to any Non Grant Funds are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of such monies being appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County budget by its Board of Legislators during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

**SEVENTH:** (a) The County, upon ninety (90) days notice to the Municipality, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event,

the Municipality shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "A". Upon receipt of notice that the County is terminating this Agreement in its best interests, the Municipality shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Municipality shall direct any approved Contractor(s) to do the same.

In the event of a dispute as to the value of the Work rendered by the Municipality prior to the date of termination, it is understood and agreed that the Commissioner shall determine the value of such Work rendered by the Municipality. The Municipality shall accept such reasonable and good faith determination as final.

(b) Except as may be set forth in this Agreement; in the event the County determines that there has been a material breach by the Municipality of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Municipality of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Municipality. Without limiting the foregoing, upon written notice to the Municipality, repeated breaches by the Municipality of duties or obligations under this Agreement shall be deemed a material breach of this Agreement, justifying termination for cause hereunder without requirement for further opportunity to cure.

**EIGHTH:** The Municipality agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "B", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "B", the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, elected officials, employees and agents from and against any and all liability, damage, claims,

demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Municipality or third parties under the direction or control of the Municipality; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

(c) In the event the Municipality does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Municipality shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

**NINTH:** The Municipality represents and warrants that it has not employed or retained any person, other than a bona fide full-time salaried employee working solely for the Municipality to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full-time salaried employee working solely for the Municipality) any fee, commission, percentage, gift or other consideration, contingent upon, or resulting from, the award or making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled, or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

**TENTH:** (a) The Municipality agrees that neither it nor any Contractor(s), employees or any other person acting on its behalf, shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Municipality acknowledges and understands

that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

(b) The Municipality hereby acknowledges and agrees:

A. That in the hiring of employees for the performance of work under this contract or subcontract hereunder, no Municipality, Contractor(s), nor any person acting on behalf of such Municipality, Contractor(s), shall by reason of race, creed, color, religion, gender, age, ethnicity, disability, sex, alienage or citizen status, national origin, marital status, sexual orientation, familial status, genetic predisposition or carrier status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

B. That neither the Municipality, nor any Contractor(s), nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, religion, gender, age, ethnicity, disability, sex, alienage or citizen status, national origin, marital status, sexual orientation, familial status, genetic predisposition or carrier status;

C. That there may be deducted from the amount payable to the Municipality by the County, under this contract, a penalty of fifty (50) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

D. That the Agreement may be cancelled or terminated by the County, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Agreement; and

E. The aforesaid provisions of this section covering every contract for or on behalf of the County, for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

**ELEVENTH:** Notwithstanding the foregoing, the Municipality shall, and shall ensure that all third parties under its direction and control, (i) comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, including, but not limited to the Federal and State Labor laws, the State Worker's Compensation Law, the State Unemployment Insurance Law, State Environmental Quality Review Act, the Federal Social Security Law, the Community Development Act, Section 3 of the Housing and Urban Development Act of 1968, the Civil Rights Act of 1964, the Fair Housing Act of 1968, the Americans with Disabilities Act, Executive Order 11246, the Clean Air Act, the Water Pollution Control Act, and all HUD regulations and directives; and (ii) design and construct, at no expense to the County, all new and gut rehab residential buildings up to three stories to meet the standard for Energy Star Qualified New Homes ( $\leq$  [85 for South]) on the HERS Rating Scale, including that all procedures used for this rating shall comply with National Home Energy Rating System guidelines.

**TWELVETH:** The Municipality acknowledges that to the extent the County provides any deliverables hereunder, including without limitation, written reports, studies, construction and detail drawings, blueprints, computer printouts, graphs, charts, plans, and specifications, all rights, title and interest (including ownership of copyright) in the foregoing shall be retained by the County. The Municipality shall not use such deliverables other than to perform its obligations as stated in this Agreement and shall not distribute the deliverables to third parties without the County's express written consent except as may be necessary in connection herewith.

Moreover, all records or recorded data of any kind (together the "Records") compiled by the Municipality and/or any Contractor(s) in completing the Work described in this Agreement shall become and remain the property of the County. The term "Records" shall be deemed to include, but not be limited to, written reports, studies, construction and detail drawings, blueprints, computer printouts, graphs, charts, plans, specifications. The Municipality may retain copies of such Records for its own use and shall not disclose any such information without the express written consent of the Commissioner. The County shall have the right to reproduce and publish such Records, if it so desires, at no additional cost to the County.

Notwithstanding the foregoing, all deliverables, if any, created under this Agreement by the Municipality, County and/or any Contractor(s) are to be considered “works made for hire.” If any of the deliverables do not qualify as “works made for hire,” the Municipality hereby assigns to the County all rights, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Municipality agrees to assist the County, if required, in perfecting these rights. The Municipality shall provide the County with at least one original of each deliverable.

The Municipality agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Municipality agrees to enable the County's continued use of the deliverable, or to modify or replace it. If the County determines that none of these alternatives is reasonably available, the deliverable may be returned.

Notwithstanding the foregoing the parties hereto acknowledge that they are both subject to the New York State Freedom of Information Law, as set forth in Public Officers Law, Article 6, which mandates public access to government records. The parties hereby acknowledge and agree that they shall have the right to disclose such information as is required by law and that any such disclosure will be limited to the extent that the applicable party considers proper under the law; however, such party will assert any exemptions or exclusions if applicable, if confidential information is sought pursuant to such law or regulation. If either party is directed or ordered to provide or disclose any information or otherwise required to do so by law, such party shall promptly notify the other that the information is being provided or disclosed.

**THIRTEENTH:** The Municipality shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Municipality shall not subcontract any part of the Work without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. The Municipality shall ensure that all such County-approved subcontracts provide that Contractor(s) are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the

Municipality that for the purposes of this Agreement, all Work performed by a County-approved Contractor(s) shall be deemed Work performed by the Municipality. The Municipality shall ensure that all subcontracts for the Work shall expressly provide that Contractor(s) are subject to all terms and conditions set forth in this Agreement. notwithstanding the foregoing, the Municipality shall remain liable to the County for the performance of all obligations under this Agreement.

**FOURTEENTH:** The Municipality acknowledges and agrees that the Municipality and its officers, employees, agents, Contractor(s) and/or consultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Municipality covenants and agrees that neither the Municipality nor any of its officers, employees, agents, Contractor(s) and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

**FIFTEENTH:** Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any invoice or fee due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

**SIXTEENTH:** All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail, postage pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

Commissioner  
Department of Planning  
Michaelian Office Building  
148 Martine Avenue  
White Plains, New York 10601

with a copy to:

County Attorney  
Michaelian Office Building  
148 Martine Avenue  
White Plains, New York 10601

To the Municipality:

Village of Croton-on-Hudson  
1 Van Wyck Street  
Croton-on-Hudson, NY 10520  
Att. Village Manager

**SEVENTEENTH:** This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments, agreements and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling.

**EIGHTEENTH:** Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

**NINETEENTH:** The Municipality recognizes that this Agreement does not grant the Municipality the exclusive right to perform the Work for the County and that the County may enter into similar agreements with other recipients on an "as needed" basis and the County may contact and direct any Contractor(s) and delegate any and/or all portions of the Work herein to either the Municipality and/or Contractor(s) at its sole discretion. However, all billing and payments shall be

administered through the Municipality and it shall be Municipality's sole responsibility to tender payments to any Contractor(s).

**TWENTIETH:** This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

**TWENTY- FIRST:** The Municipality shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The Municipality shall also use all reasonable means to avoid any appearance of impropriety.

**TWENTY-SECOND:** All payments made by the County to the Municipality will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct program. Any Municipality or Contractor(s) doing business with Westchester County, who are not already enrolled in the Vendor Direct Program, will be required to fill out and submit an EFT Authorization Form in order to receive payment. The EFT Authorization Form and related information are annexed hereto as Schedule "C". The completed Authorization Form must be returned by the Municipality to the Commissioner prior to execution of the contract. In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, please contact the Westchester County Finance Department.

**TWENTY-THIRD:** The Municipality agrees to comply with, and where applicable complete, all attached the schedules to this Agreement, including without limitation the following which are

attached hereto and made a part hereof: "Other Federal Requirements" (Schedule "D"); the "Federal Labor Standards Provisions" (Schedule "E"); "Certification Regarding Lobbying" (Schedule "F"); the "Certification Regarding Drug Free Workplace Requirements" (Schedule "G"); and "Certification Regarding Debarment and Suspension" (Schedule "H").

**TWENTY-FOURTH:** The recitals preceding the body of this Agreement are hereby incorporated by reference into the body of this Agreement.

**TWENTY-FIFTH:** This Agreement shall not be enforceable until it is signed by the parties and approved by the Office of the County Attorney.

**IN WITNESS WHEREOF**, The County of Westchester and the Municipality have caused this Agreement to be executed.

**THE COUNTY OF WESTCHESTER**

By: \_\_\_\_\_  
Name: Norma V. Drummond  
Title: Commissioner of Planning

**THE VILLAGE OF CROTON ON HUDSON**

By: \_\_\_\_\_  
Name: Bryan Healy  
Title: Village Manager

Approved by the Board of Acquisition and Contract of the County of Westchester on the 23<sup>rd</sup> day of November, 2022.

Approved as to form  
and manner of execution

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\_\_\_\_\_  
County Attorney  
The County of Westchester

**MUNICIPALITY'S ACKNOWLEDGMENT**

STATE OF NEW YORK              )  
    ss.:  
COUNTY OF WESTCHESTER)              )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_,  
(Officer other than officer signing contract)

certify that I am the \_\_\_\_\_ of  
(Title)  
the \_\_\_\_\_  
(the "Municipality")

a municipal corporation duly organized and in good standing under laws of the State of New York  
named in the foregoing agreement; that \_\_\_\_\_  
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution  
\_\_\_\_\_  
(Title of such person)

of the Municipality and that said agreement was duly signed for and on behalf of said Municipality  
by authority of its Board of \_\_\_\_\_, thereunto duly authorized and that  
such authority is in full force and effect at the date hereof.

\_\_\_\_\_  
(Signature)

STATE OF NEW YORK )  
ss.:  
COUNTY OF WESTCHESTER)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally came  
\_\_\_\_\_, whose signature appears above, to me known,  
and known to me to be the \_\_\_\_\_ of \_\_\_\_\_  
(Title)  
\_\_\_\_\_, the Municipality described in and which  
executed the above certificate, who being by me duly sworn did depose and say that he/she,  
signed his/her name hereto by order of the Board of \_\_\_\_\_ of said Municipality.

Notary Public

SCHEDULE "A"

SCOPE OF SERVICES BETWEEN THE COUNTY OF WESTCHESTER AND THE VILLAGE OF CROTON-ON-HUDSON TO REPLACE THE RETAINING WALL ON GRAND STREET IN THE VILLAGE OF CROTON-ON-HUDSON.

A. PURPOSE

The plans to replace the retaining wall as it has deteriorated, and is now unsafe and past its useful life. This Project will include, but not be limited to, the replacement of the retaining wall. The work is an important component of the existing roadway in this area (the "Project").

B. SCOPE OF SERVICES/BUDGET FOR PROJECT

<b>Croton-on-Hudson</b>	
<i>Item</i>	<i>Scheduled Value</i>
Replace Retaining Wall on Grand Street	\$120,000.00
<b>Construction Cost Totals</b>	<b>\$120,000.00</b>

**CDBG CONTRIBUTION** **\$59,076.00**

The Municipality is responsible for all costs above the CDBG contribution of \$59,076.00.

C. TIME OF PERFORMANCE

The contract between the County of Westchester and the Village of Croton-on-Hudson will begin on November 15, 2022, and end on November 14, 2023.

D. PAYMENT

The County of Westchester will reimburse the Village for expenses incurred in connection with the Project in an amount not to exceed \$59,076.00.

The Catalog of Federal Domestic Assistance (CFDA) Number for the Community Development Block Grant (CDBG) Program is 14.218.

Any and all requests for payment to be made, including any partial payment made in proportion to the work completed, shall be submitted on properly executed payment vouchers of the County and paid only after approval by the Commissioner of Planning of the County of Westchester or her duly authorized designee (the "Commissioner"). All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize sequential numbering and be non-repeating. The Municipality, as a subrecipient must submit a "CDBG Subrecipient Report" with each voucher. The CDBG Subrecipient Report must include accomplishment data as per the scope of services.

It is understood that the Municipality will comply with the federal regulations for equal employment opportunity, labor, and Section 3 as specified in the Community Development Act. Failure to comply will result in the withholding of payment by the Westchester County Department of Planning.

It is also understood that the Department of Planning staff will visit the site during construction and will inspect the project for substantial completion.

It is also understood that the Municipality will comply with all requirements and provisions under the Americans with Disabilities Act as it may be amended from time to time, with regard to the work under this contract.

The Municipality fully understands and acknowledges its responsibility to comply with the Americans with Disabilities Act ("ADA"), the rules and regulations thereunder, and that nothing contained herein shall be construed to absolve the Municipality from these obligations.

It is further understood that all ADA work must be performed pursuant to the United States Department of Housing and Urban Development Rule 24, CFR Part 9.

The Municipality further acknowledges and agrees that if, in order to comply with the ADA, it should become necessary to perform certain work not covered in the terms of this Agreement, or if it should become necessary to modify or redo work already performed pursuant to the terms of this Agreement, then such work will be the sole responsibility of the Municipality to perform and the County will not be obligated, in any way, to further compensate the Municipality.

As of July 1, 1996, all recipients of grants in amounts of \$300,000.00 annually or more of direct federal financial assistance, including awards received indirectly from the state and which may contain a mix of federal and state funds, must provide the County of Westchester with an annual audit performed at the recipient's expense.

As a subrecipient, the Municipality, at its sole cost and expense, shall submit each year hereunder to the Commissioner no later than ninety days following the conclusion of each fiscal year of the subrecipient an audited statement of its operations in accordance with the terms of the contract. Submission of the audited statement shall not limit the

County's right to inspect and audit the subrecipient records and books of account. Such statement shall comply with respective federal or state grant compliance requirements and governmental auditing standards applicable to the program and shall be prepared by a public accountant meeting the independence standards included in generally accepted government auditing standards. The subrecipient further agrees to furnish all reports and materials necessary to permit the County to fulfill its reporting requirements to state and federal authorities. The subrecipient shall include in its Agreement with an independent auditor selected to perform the audit required hereunder a provision providing the County, state and federal authorities with access to the auditor's work papers. Unless the County, state or federal authorities shall advise the subrecipient in writing to the contrary, the subrecipient and its independent auditor shall retain all financial records and work papers for a period of three years after the expiration or termination of this Agreement.

All publicity and press releases regarding the project will include details regarding the funds provided by the Westchester County Community Development Block Grant Program.

The County of Westchester requires that bid specifications for this project include the clause:

Pursuant to Section 308.01 of the Laws of Westchester County, the policy of the County is to encourage the meaningful and significant participation on County contracts for business enterprises owned by persons of color and women - Minority Business Enterprise (MBE) and Women Business Enterprise (WBE).

A business owned and controlled by women or persons of color is defined as a business enterprise including a sole proprietorship, partnership or corporation that is:

- a. At least 51% owned by one or more persons of color or women;
- b. An enterprise in which such ownership by persons of color or women is real, substantial and continuing;
- c. An enterprise authorized to do business in this state which is independently owned and operated.

In addition, any business enterprise certified as an MBE or WBE pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 NYCRR subtitle N part 540 et seq., or as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., automatically qualifies.

The Municipality must provide statistics to the Department of Planning on the participation of MBE/WBE. The records must indicate the type and amount of each prime contract, and indicate whether the business is owned by someone who is African-American, Hispanic, Asian-American, American Indian or Alaskan Native.

## **SCHEDULE "B"**

### **STANDARD INSURANCE PROVISIONS** **(Municipality)**

1. Prior to commencing work, and throughout the term of the Agreement, the Municipality shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Municipality shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Municipality maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Municipality. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

2 The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

- a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:
  - i. Premises - Operations.
  - ii. Broad Form Contractual.
  - iii. Independent Contractor and Sub-Contractor.
  - iv. Products and Completed Operations.

- c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

- d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:
  - (i) Owned automobiles.
  - (ii) Hired automobiles.
  - (iii) Non-owned automobiles.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

- (a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- (b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.
- (c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.
- (d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

## **SCHEDULE "C"**

### **Westchester County Vendor Direct Program Frequently Asked Questions**

#### **1. WHAT ARE THE BENEFITS OF THE ELECTRONIC FUNDS TRANSFER (EFT) ASSOCIATED WITH THE VENDOR DIRECT PROGRAM?**

There are several advantages to having your payments automatically deposited into your designated bank account via EFT:

Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your bank account is more secure.

You save time – Money deposited into your bank account is automatic. You save the time of preparing and delivering the deposit to the bank. Additionally, the funds are immediately available to you.

#### **2. ARE MY PAYMENTS GOING TO BE PROCESSED ON THE SAME SCHEDULE AS THEY WERE BEFORE VENDOR DIRECT?**

Yes.

#### **3. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?**

Payments are deposited two business days after the voucher/invoice is processed. Saturdays, Sundays, and legal holidays are not considered business days.

#### **4. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT AND WHAT IT IS FOR?**

Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on your check stub, and will contain the date that the funds will be credited to your account.

#### **5. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT RECEIVED?**

Please contact your Westchester County representative as you would have in the past if there were a discrepancy on a check received.

#### **6. WHAT IF I DO NOT RECEIVE THE MONEY IN MY DESIGNATED BANK ACCOUNT ON THE DATE INDICATED IN THE E-MAIL?**

In the unlikely event that this occurs, please contact the Westchester County Accounts Payable Department at 914-995-4708.

#### **7. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?**

Whenever you change any information or close your account a new Vendor Direct Payment Authorization Form must be submitted. Please contact the Westchester County Accounts Payable Department at 914-995-4708 and we will e-mail you a new form.

#### **8. WHEN COMPLETING THE PAYMENT AUTHORIZATION FORM, WHY MUST I HAVE IT SIGNED BY A BANK OFFICIAL IF I DON'T INCLUDE A VOIDED CHECK?**

This is to ensure the authenticity of the account being set up to receive your payments.



## **Schedule “D”**

### **Other Federal Requirements**

#### **1. (i) Compliance with Title 1 of the Housing and Community Development Act of 1974, as amended 42 USC § 5301 et seq.**

The County has applied for and has been awarded a grant from the United States Department of Housing and Urban Development (“HUD”) under Title 1 of the Housing and Community Development Act of 1974, as amended 42 USC § 5301 et seq. (the “Act”). The Municipality acknowledges that the County’s receipt of the aforementioned grant funding, including the CDBG Funds, is conditioned, *inter alia*, on compliance with the provisions of the Act, including the requirement that it affirmatively further fair housing (“AFFH”) as set forth in 42 U.S.C. §5304(b)(2) and its implementing regulations, 24 CFR Part 570 and any applicable rules issued thereunder (the collectively the “CDBG Regulations”), including without limitation those set forth in 24 CFR 135 (the “Part 135 Regulations”), the procurement standards set forth in 24 CFR 85 (“Part 85”) and such guidance as may be issued by HUD from time to time.

The Municipality, as sub-recipient of the CDBG Funds, represents that the improvements are eligible improvements under the Act and CDBG Regulations.

The Municipality expressly agrees, and will cause any contractors or subcontractors, to agree, to comply with 24 CFR Part 85. The Municipality will cause procurement of the work to be carried out in accordance with 24 CFR 85.36.

Pursuant to 24 CFR Part 85.35, the Municipality shall not contract with, or permit any subcontract to be made, with a debarred party.

The below items are included in accordance with Section 24 CFR 570.503.

The Municipality must comply with all applicable requirements of 24 CFR Part 85.40, 85.41 and 85.42, with respect to reports, records, and retention, and will furnish, such reports as deemed necessary by the Commissioner and as required by HUD. The Municipality and the Developer will prepare, or will cause to be prepared, a final report describing the work performed, together with such supporting information and documentation in such form and at such times as the County may reasonably require.

The Municipality must comply with applicable uniform administrative requirements, as described in 24 CFR 570.502.

The provisions of this Schedule “D” shall, in accordance with 24 CFR 570.503(a), survive Closing and shall remain in effect until the later of termination of the agreement or such time as the Municipality no longer has control over the CDBG funds, including without limitation program income, if applicable.

To the extent any specific requirement of the CDBG Regulations is not set forth herein it is deemed incorporated herein by reference.

**1(ii). “Section 3” Compliance in the Provision of Training, Employment and Business Opportunities:**

The work to be performed hereunder is on a project assisted under a program providing direct Federal financial assistance from the 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. 1701u (Section 3). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

All parties hereto will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. All parties hereto certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

The requirements of Section 3 apply to recipients of Housing and Community Development Assistance that invest in \$200,000 or more into projects/programs; involving housing construction, rehabilitation or other public construction. All contractors (subcontractors) receiving covered funds in excess of \$100,000 to complete projects involving housing construction, rehabilitation, or other public construction are required to comply with all requirements of set forth in Section 3

The Municipality acknowledges that it is their sole responsibility to determine whether it or its sub-contractors are in compliance with all terms and conditions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).

The recipients of these funds shall adhere to the following, and, pursuant to § 135.38, all section 3 covered contracts and subcontracts shall include the following clause (referred to as the “Section 3 Clause”):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties

to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

The recipient shall provide such copies of 24 CFR Part 135 as may be necessary for the information of parties to contracts required to contain the Section 3 clause.

## **2. Flood Disaster Protection:**

This Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which three sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 24 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

### **3. Equal Employment Opportunity:**

(a) **Minority and Woman Business Outreach Programs:** The Municipality agrees to be bound by and comply with any policies and procedures established by any controlling jurisdiction, including but not limited to the State of New York or the County, regarding any outreach programs for woman and minority owned business required by Section 281 of the National Affordable Housing Act, as amended.

(b) **Activities and contracts not subject to Executive Order 11246, as amended.** In carrying out the program, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment; without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor shall incorporate the foregoing requirements of this paragraph (a) in all of its contracts for program work, except contracts governed by paragraph (b) of this section, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for program work.

(c) Contracts subject to Executive Order 11246 as amended. Such contracts shall be subject to HUD Equal Employment Opportunity regulations at 24 CFR Part 130, applicable to HUD assisted construction contracts.

The Contractor shall cause or require to be inserted in full in any nonexempt contract and subcontract for construction work, for modification thereof, as defined in said regulations, which is paid for in whole or in part with the assistance provided under this Agreement, the following equal opportunity clause:

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**During the performance of this contract, the Contractor agrees as follows:**

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract of understanding, a notice to be provided by the County advising the said labor union or workers' representatives of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1963, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared

ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 25, 1965, so that such provisions will be binding upon each sub-contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as HUD or the County may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontract or vendor as a result of such direction by HUD or the County, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

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The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Contractor so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and sub-contractors with the equal opportunity clause and the rules, regulations, and relevant order of the Secretary of Labor; that it will furnish HUD and the Secretary of Labor such information as they might require for the supervision of such compliance; and that it will otherwise assist HUD in the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub-contractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the executive order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, HUD or the County may take any or all of the following actions: Cancel, terminate or suspend in whole or in part the grant or loan guarantee or this contract; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

4. **Lead-Based Paint Hazards**

The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 CFR Part 35, as modified by Section 570.608 of Subpart K. Any grants or loans made by the Contractor for the rehabilitation of residential structures with assistance provided under this Agreement shall be made subject to the provisions for the elimination of lead-based paint hazards under Sub-Part B of said regulations, and the Contractor shall be responsible for the inspections and certifications required under Section 35.14(f) thereof.

5. **Compliance with Air and Water Acts:**

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

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In compliance with said regulations, the Contractor shall cause or require to be inserted in full in all contracts and subcontracts with respect to any nonexempt transaction thereunder funded with assistance provided under this Agreement, the following requirements:

(1) A stipulation by the Contractor or Sub-contractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

(2) Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857-c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

(3) A stipulation that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

(4) Agreement by the contractor that he will include or cause to be included the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the contractor will take such action as HUD and/or the County may direct as a means of enforcing such provisions.

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In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309 (c) of the Federal Water Pollution Control Act.

6. **Federal Labor Standards Provisions:**

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, the Contractor and all Contractors engaged under contracts in excess of \$2,000.00 for the construction prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen: Provided, that if wage rates higher than those required under such regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher rates. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and, for such contracts in excess of \$10,000, 29 CFR 5a.3.

No award of the contracts covered under this section of the Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

7. **Nondiscrimination Under Title VI of the Civil Rights Act of 1964**

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and HUD regulations with respect thereto, including the regulations under 24 CFR Part I. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor, the United States, and the County are beneficiaries of and entitled to enforce such covenant. The Contractor in undertaking its obligation in carrying out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

8. **Obligations of Contractor with respect to Certain Third Party Relationships:**

The Contractor shall remain fully obligated under the provisions of the Agreement notwithstanding its designation of a third party or parties for the undertaking of all or any part of the program with respect to which assistance is being provided under this Agreement to the Municipality. The Contractor shall comply with all lawful requirements of the County necessary to insure that the program with respect to which assistance is being provided under this Agreement to the Contractor is carried out in accordance with the County's Assurances and Certifications to HUD, including those with respect to the assumption of environmental responsibilities of the Applicant under Section 104(h) of the Housing and Community Development Act of 1974.

9. **Interest of Certain Federal Officials:**

No member of or Delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

10. **Interest of Members, Officers, or Employees of Contractor, Members, of Local Governing Board, or Other Public Officials:**

No Member, officer, or employee of the Contractor, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement. The Contractor shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

11. **Prohibition Against Payments of Bonus or Commission:**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining HUD approval of the application for such assistance, or HUD approval of applications for additional assistance, or any other approval or concurrence of HUD required under this Agreement, Title I of the Housing and Community Development Act of 1974, or HUD regulations with respect thereto; provided, however, that reasonable fees or bona fide technical Contractor, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as a program cost.

12. **Debarment:** The Municipality further agrees to comply with the requirements set forth in 24 CFR part 85 that assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR part 24.

13. **Conflicts of Interest:** The Municipality further agrees with the conflict of interest provisions in 24 CFR 85.36 and 84.42, respectively, shall apply and that the Municipality shall fully comply with same. In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section, Part 570.611 (a)(2) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its sub recipients to individuals, businesses or other private entities under eligible CDBG activities that authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities pursuant to §570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §§570.203, 570.204, 570.455, or 570.703(i) shall apply.

14. **Miscellaneous:** The parties represent that none of them has, nor will have any understanding, oral or written, with any other person or party relating to the misuse, misappropriation, or "kickback" of any of three federal monies paid or to be paid hereunder. The parties agree to comply with all applicable federal, state and local laws, codes, ordinances, rules, and regulations including, but not limited to, the Housing and Community Development Act of 1974 and the rules and regulations thereunder, as the same may be amended. Without limiting the generality of the foregoing, the parties will comply with 24 CFR Part 35 regarding elimination of lead based paint hazards, with 24 CFR Part 15 regarding the requirements of the Clean Air Act and Federal Water Pollution Act, and with Title VI of the Civil Rights Act of 1964 together with 24 CFR Part 570.601, 24 CFR Part 1 and Executive Order 11246, to the effect that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded for participation in, denied the benefits of, or be otherwise subjected to, discrimination under any activity involving federal assistance. The Owner (but not any of the Contractors) agrees to cause to be included in any instrument of sale, lease, or conveyance of the property improved with federal assistance hereunder, a clause obligating the transferee and successors to observe the requirements of Title VI of the Civil Rights Act of 1964. Where applicable, the Municipality shall comply with the conditions prescribed by HUD for the use of CDBG funds by religious organizations

15. **Exhibit 1**

Where applicable, attached hereto and made a part hereof is Exhibit 1, which exhibit contains certain of the regulations referred to in this agreement.

16. **Subpart K – Other Program Requirements:**

The recipient agrees to comply in all respects with the program requirements set forth in Subpart K of Part 570 of the Federal Regulation (24 CFR 570.600 et seq.), including without limitation, 570.610 Uniform administrative requirements and cost principles. Additional guidance on this subject can be found in OMB circular No. A-87 "Cost Principles for State, Local and Indian Tribal Governments"; OMB Circular A-128 "Audits for State, Local and Tribal Governments" and 24 CFR Part 85 "Uniform Administrative Requirements". Further, the recipient will comply with 570.613 Eligibility restrictions for certain resident aliens as described in 24 CFR Part 49, as well as the Architectural Barriers Act and the Americans Disabilities Act as set forth in 570.614 of the CDBG Regulations.

The subrecipient must carry out construction of the Improvements in compliance with all Federal laws and regulations described in Subpart K of the regulations, except that:

- (i) The subrecipient does not assume the recipient's environmental responsibilities described at 24 CFR 570.604; and
- (ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

17. **Program Income:**

Prior to the disbursement of any funds pursuant to this agreement, the recipient shall execute and deliver to the county either (1) a written statement by the Public Officer of the municipality, Officer of the authorized representative of the recipient that there will be any "program income" as that term is defined pursuant to 24 CFR 530.3; or (2) a program income agreement between the County and the recipient regarding the disposition of program income prepared in the form specified pursuant to 24 CFR 504.(c).

18. **Reversion of Assets:**

The Municipality accepts all terms and provisions of 24 CFR 85.43 ("Enforcement") if the Municipality fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

The recipient agrees that upon the expiration of this agreement with the County, that any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds shall be transferred to the County, for recommital to the CDBG program. The recipient further agrees that it will ensure that any real property under the recipient's control that has been acquired or improved in whole or in part by CDBG funds in excess of \$25,000 is either:

- 1) Used to meet one of the National Objectives in s. 570.208 until five years after expiration of the agreement, or such longer period of time as determined appropriate by the County; or
- 2) Is disposed of in a manner which results in the County being reimbursed in the amount of the Fair Market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such reimbursement is not required after the period of time specified in accordance with 1) above.

## Schedule "E"

### **Federal Labor Standards Provisions**

### **U.S. Department of Housing and Urban Development Office of Labor Relations**

#### **Applicability**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination, and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract. HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (1) **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347insir.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(III) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(I) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(II) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(III) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (1) **Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(II) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(III) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**Schedule "F"**

**Certification Regarding Lobbying**

**Certification for Contracts, Grants, Loans and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief,

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- 2) If any funds other than the Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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(Name of Organization)

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(Signature of Responsible Official)

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(Date)

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(Grant Number)

## Schedule "G"

### Certification Regarding Drug Free Workplace Requirements

#### GRANTEEES OTHER THAN INDIVIDUALS

This certification is required by regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), 7 CFR Part 3017, Subpart F, Section 3017.699 and 45 CFR Part 76, Subpart F. The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (Pages 21681-21691).

The grantee certifies that it will provide a drug-free workplace by:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b) Establishing a drug-free awareness program to inform employees about:
  - 1) The dangers of drug abuse in the workplace;
  - 2) The grantee's policy of maintaining a drug-free workplace;
  - 3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
  - 1) Abide by the terms of the statement; and
  - 2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- e) Notifying the agency within ten days of receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2) with respect to any employee who is so convicted:
  - 1) Taking appropriate personnel action against such an employee, up to and including termination; or
  - 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency;
- g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

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(Organization)

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(Authorized Signature)

## **Schedule "H"**

### **Certification Regarding Debarment and Suspension**

1) As required by Federal Executive Order 12549, and prescribed by federal regulations, including 40 CFR Part 32, the contractor certifies that it, and its principals:

- (a) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
- (b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and
- (d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Contractor is unable to certify to any of the statements in this paragraph, the Contractor shall attach an explanation to this certification.

Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

