

77 Main Street
Post Office Box 369
Warwick, NY 10990
www.villageofwarwick.org



VILLAGE OF WARWICK
INCORPORATED 1867

(845) 986-2031
FAX (845) 986-6884
mayor@villageofwarwick.org
clerk@villageofwarwick.org

Village of Warwick Village Board Meeting – October 5, 2020

Pursuant to Governor Cuomo's Executive Order 202.1, Village of Warwick meetings will be conducted virtually through Zoom Videoconference until further notice.

To View the Meeting:

FACEBOOK LIVE - The public may view the meeting live by going to the Village of Warwick's Facebook page: <https://www.facebook.com/VillageofWarwick>

VILLAGE'S WEBSITE – The public may view the meeting a day or so after its completion by going to the village's website: www.villageofwarwick.org

To Comment - During Privilege of the Floor Only:

FACEBOOK LIVE – Comments may be made during the Village Board Meeting through Facebook Live within privilege of the floor by going to the Village of Warwick's Facebook page: <https://www.facebook.com/VillageofWarwick>

TELEPHONE – Comments may be made during the Village Board Meeting by calling the Village Clerk's Office within privilege of the floor at (845) 986-2031 ext. 102.

**BOARD OF TRUSTEES
VILLAGE OF WARWICK
October 5, 2020
AGENDA**

**Call to Order
Pledge of Allegiance
Roll Call**

1. Introduction by Mayor Newhard.
2. Acceptance of Minutes: September 21, 2020.

The vote on the foregoing **motion** was as follows:

Trustee Cheney ____ Trustee Lindberg ____ Trustee Bachman ____

Trustee McManus ____ Mayor Newhard ____

3. Authorization to Pay all Approved and Audited Claims # _____ –
_____ in the amount of \$ _____.

The vote on the foregoing **motion** was as follows:

Trustee Cheney ____ Trustee Lindberg ____ Trustee Bachman ____

Trustee McManus ____ Mayor Newhard ____

Correspondence

1. Letter from Orange County Department of Public Works regarding Bank Street Bridge.
2. Letter of retirement effective December 31, 2020 – Village Treasurer, Cathy Richards.
3. Letter from Law Office of Blustein, Shapiro, Rich & Barone, LLP regarding Village View Estates – Petition for Annexation and Application for Special use Permit.
4. Letter from Richard E. Nicholas withdrawing the request to place a memorial sundial at Hallowed Grounds.

Discussion

1. Village Assessor.

2. Warwick Grove – Request to store snowplow equipment in the McFarland Drive parking lot.
3. Pump Track.

Privilege of the Floor

(Please limit your comments to five (5) minutes. If reading a document, please submit a copy to the Clerk. Please note all remarks must be addressed to the Board as a body and not to individual Board members. Please state your name clearly before speaking). These rules are taken from the Handbook for Village Officials – New York State Conference of Mayors and Municipal Officials.

Motions

Trustee Cheney's Motions:

1. **MOTION** to grant permission to DPW Laborer, Michael Finelli, to carry over 7.32 vacation days.

The vote on the foregoing **motion** was as follows:

Trustee Cheney ____ Trustee Lindberg ____ Trustee Bachman ____

Trustee McManus ____ Mayor Newhard ____

2. **MOTION** to authorize the Mayor to sign the 'County of Orange Community Block Grant Program Municipal Agreement for FY 2020' for the HUD CDBG FY 2020 Grant Project: "Stanley-Deming Park ADA Walkway" in the amount of \$50,000 and all documents necessary to carry out the terms thereof.

The vote on the foregoing **motion** was as follows:

Trustee Cheney ____ Trustee Lindberg ____ Trustee Bachman ____

Trustee McManus ____ Mayor Newhard ____

3. **MOTION** to make payment to PK Songer Plumbing in the amount of \$128,250.00 for the Wastewater Treatment Plant UV Disinfection Project per Payment Application #2 as certified by Barton & Loguidice. Funds are appropriated in budget code G.8120.4950 in the 2020-21 budget.

The vote on the foregoing **motion** was as follows:

Trustee Cheney ____ Trustee Lindberg ____ Trustee Bachman ____

Trustee McManus ____ Mayor Newhard ____

Trustee Lindberg's Motions:

4. **MOTION** to advertise for the position of full-time Village Treasurer.

The vote on the foregoing **motion** was as follows:

Trustee Cheney ____ Trustee Lindberg ____ Trustee Bachman ____

Trustee McManus ____ Mayor Newhard ____

5. **MOTION** to accept the budget modification as per the Village Treasurer's letter dated September 29, 2020.

The vote on the foregoing **motion** was as follows:

Trustee Cheney ____ Trustee Lindberg ____ Trustee Bachman ____

Trustee McManus ____ Mayor Newhard ____

Trustee Bachman's Motions:

6. **THE NEW YORK STATE ARCHIVES RESOLUTION ADOPTING THE RETENTION AND DISPOSITION SCHEDULE FOR NEW YORK LOCAL GOVERNMENT RECORDS - SCHEDULE (LGS-1)**

RESOLVED, By the Village of Warwick Board of Trustees of the Village of Warwick that the Retention and Disposition Schedule for New York Local Government Records (LGS-1), issued pursuant to Article 57-A of the Arts and Cultural Affairs Law, and containing legal minimum retention periods for local government records, is hereby adopted for use by all officers in legally disposing of valueless records listed therein.

FURTHER RESOLVED, that in accordance with Article 57-A:

(a) only those records will be disposed of that are described in Retention and Disposition Schedule for New York Local Government Records (LGS-1), after they have met the minimum retention periods described therein;

(b) only those records will be disposed of that do not have sufficient administrative, fiscal, legal, or historical value to merit retention beyond established legal minimum periods.

_____ presented the foregoing resolution which was
seconded by _____,

The vote on the foregoing resolution was as follows:

Barry Cheney, Trustee, voting _____

William Lindberg, Trustee, voting _____

George McManus, Trustee, voting _____

Corey Bachman, Trustee, voting _____

Michael Newhard, Mayor, voting _____

Final Comments from the Board

Executive Session (if applicable)

Adjournment

**BOARD OF TRUSTEES
VILLAGE OF WARWICK
October 5, 2020
AGENDA ADDENDUM**

7. **MOTION** to approve and authorization for the Mayor to sign Change Order No. 1 for the UV Disinfection Project Electrical Contract with O'Connell Electric at no additional cost to the Village.

The vote on the foregoing **motion** was as follows:

Trustee Cheney ____ Trustee Lindberg ____ Trustee Bachman ____

Trustee McManus ____ Mayor Newhard ____



ORANGE COUNTY
DEPARTMENT OF PUBLIC WORKS

Erik Denega, P.E., P.M.P.
Commissioner

Steven M. Neuhaus
County Executive

P.O. Box 509, 2455-2459 Route 17M
Goshen, New York 10924-0509
www.orangecountygov.com
TEL (845) 291-2750 FAX (845) 291-2778

September 15, 2020

Mayor Michael J. Newhard
Village of Warwick
PO Box 369
77 Main Street
Warwick, NY 10990

RECEIVED

SEP 18 2020

VILLAGE OF WARWICK
VILLAGE CLERKS OFFICE

**Re: Bank Street Bridge over Wawayanda Creek BIN 3345180
NYS DOT Red Flag requiring closure of sidewalks**

Dear Mayor Newhard,

As discussed during our recent telephone call, this letter shall serve as notification that Orange County DPW intends to close sidewalks on both sides of Bank Street Bridge. This action is a result of the receipt of a red flag from the NYS DOT identifying severe corrosion and perforations of the steel beams supporting both sidewalks. I would like to assure you and the Village Board that the structure of Bank Street bridge supporting the roadway remains in a safe condition.

As you are aware, we are under development of a bridge replacement project in this location which is tentatively scheduled for construction in 2021. Although we have had a few schedule setbacks due to COVID-19 our intention is to maintain that schedule.

During this time, we have made several interim repairs to maintain the bridge for both pedestrian and vehicular use. Unfortunately, the repairs that would be necessary to rehabilitate the sidewalks for continued use would be a significant percentage of the full replacement. At this time, we feel that the best course of action is to close the sidewalks until the bridge can be replaced.

Our evaluation included several options which we discussed during our recent phone call. I have outlined options below with a brief discussion of the pros and cons of each.

Closure of both sidewalks using temporary fencing

This option would involve installation of temporary fencing on the northern sidewalk as was done with the southerly sidewalk last year. This would allow for vehicular traffic to continue in one direction on the 15' lane with both pedestrians and vehicles sharing the road. After our discussions with the Village it is understood that there is a high level of pedestrian traffic in this location. This configuration would create a situation where pedestrians and vehicular traffic were utilizing the same area of this bridge which would be too dangerous as a long term solution and would be prohibitive for those with disabilities.

Closure of both sidewalks and installation of a temporary concrete barrier

This option would provide a pedestrian lane protected by temporary concrete barriers within the 15' travel lane. Both sidewalks would be closed off as in the first option and jersey barriers would be installed on the southerly side of the bridge with asphalt ramps up to the pedestrian lane. This option would provide a 3-foot pedestrian lane and a 10-foot vehicular lane. Due to the narrow vehicular lane an additional jersey barrier would be required on the northerly sidewalk as well. The dead weight load of these barriers would exceed the safe load capacity of the bridge. Additionally, this configuration would create issues with snow and ice removal and an unsafe lane width for vehicles.

Closure of the bridge to vehicular traffic but retaining pedestrian traffic

This option would close Bank Street to traffic from Main Street to the end of Bank Street Bridge. Both sidewalks will be closed off with temporary fencing as in the first option with semi-permanent barriers placed at the intersection of Bank Street and Main Street and the East end of the bridge. Pedestrians traffic would utilize the full 15-foot lane of the bridge. We feel that this is the safest option for the volume of pedestrian traffic in this area and due to short detours available for vehicular traffic around the Bridge.

We plan to begin implementation of the closure of Bank Street Bridge as soon as possible to respond to the red flag issued by the NYS DOT and to protect the travelling public.

If you should require additional information or have any questions, please don't hesitate to contact me at (845) 291-2768.

Sincerely,

Orange County Department of Public Works



Ryan A. McGuire, P.E.
Director of Project Management

RAM

cc: Erik Denega, P.E., P.M.P., Commissioner
Travis Fwald, P.E., Deputy Commissioner
Barry J. Cheney, County Legislator

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clerk@villageofwarwick.org

VILLAGE OF WARWICK
INCORPORATED 1867

September 28, 2020

Mayor Michael Newhard
Village of Warwick

Dear Michael,

Kindly accept this letter as my official notification of my retirement as Village Treasurer from the Village of Warwick effective December 31, 2020. After much planning over the years, Tod and I decided that now is the best time for us to move forward with our plans and our relocation to St. Augustine, Florida. Our plan is to move in mid-December; and I will use the vacation time I have accumulated to cover the remaining days through December 31, 2020.

I am very thankful for the opportunity I have had over the past ten years to work at the Village of Warwick. As you know, running a government municipality is not easy work. It takes an incredible amount of hard work and dedication from everyone to work together to run a beautiful Village such as ours successfully; and it has been rewarding for me to be part of that team. Most importantly, the friendships and camaraderie I was fortunate enough to experience will be one the hardest things to leave behind, but a gift I will take with me always.

Once my replacement is hired, I will work diligently to provide training for a successful transition.

Thank you.

Sincerely,

Cathy Richards

RECEIVED

SEP 28 2020

VILLAGE OF WARWICK
VILLAGE CLERKS OFFICE

BLUSTEIN, SHAPIRO, RICH & BARONE, LLP

ATTORNEYS AT LAW

MICHAEL S. BLUSTEIN
 RICHARD J. SHAPIRO ♦
 GARDINER S. BARONE
 RITA G. RICH
 JAY R. MYROW
 WILLIAM A. FRANK

10 MATTHEWS STREET
 GOSHEN, NEW YORK 10924
 (845) 291-0011
 FAX (845) 291-0021
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DIANA PUGLISI
 JEANINE GARRITANO WADESON
 BRIAN M. NEWMAN^
 MEGAN R. CONROY
 STEPHANIE TUNIC
 JACOB TUCKFELT^
 LYNDIA J. MITCHELL^
 SUSIE C. SOHN^
 ARTHUR SHAPIRO
 OF COUNSEL
 BURT J. BLUSTEIN
 RETIRED

ALSO ADMITTED IN PA^
 ALSO ADMITTED IN NJ^
 ALSO ADMITTED IN CT^

VIA FACSIMILE: (845) 986-6884
 and REGULAR MAIL

September 29, 2020

Mayor Michael Newhard
 Village of Warwick
 PO Box 369
 Warwick, New York 10990

RECEIVED

SEP 29 2020

VILLAGE OF WARWICK
 VILLAGE CLERKS OFFICE

Re: Village View Estates, LLC Subdivision
 Petition for Annexation and Application for Special Use Permit

Dear Mayor Newhard and Village Trustees:

I represent Village View Estates, LLC with respect to its Petition for Annexation and Application for Special Use Permit that were previously filed with the Village Clerk. The Village Planning Board has completed the SEQRA process by its adoption of its Statement of Environmental on September 8, 2020 on the Village View Estates Subdivision and Site Plan Application. The completion of SEQRA allows the Village Board to proceed on the Annexation Petition and SUP application.

I am in receipt of revisions made to the proposed development agreement. The fee payment provisions that were removed were originally proposed to provide for an equitable sharing of the cost of upgrading the Robin Brae pump station. The approval documents for the 28 lot subdivision plan previously approved by the Planning Board indicated that the pump station would be upgraded with a "fair share contribution" made by Village View. The upgrade will ultimately serve the approximately 137 existing dwellings connected to the Robin Brae pump station plus the 42 additional units in the Valley View development, bringing the total to 179 dwelling units. Based on these numbers Village View would comprise 23.4 percent of dwellings within the service area once completed. The applicant has in the past indicated a willingness to contribute 25% to the cost of improvements. The proposal we made in the development agreement provided for an equitable sharing of the cost by a reduction in fees, thus avoiding an out-of-pocket charge to the Village.

The fee payment provisions in the original draft development agreement also took into account the willingness of Valley View to provide 10 townhouse units that would be lower in price and provide an "affordable housing" option in the development. Prior discussions between the

Mayor Michael Newhard

2 | Page

September 29, 2020

parties indicated that the \$50,000.00 per "unit" density bonus fee for the townhouse unit was inequitable and we proposed a \$50,000.00 fee per building (two units) to offset the financial impact to Valley View in providing lower cost units.

Based on the foregoing, we request the Village Board to propose a manner to accomplish the equitable sharing of costs and imposition of fees.

Finally, the letter of Elizabeth Cassidy dated August 24, 2020 to the Village Board (copy enclosed) raise issues as to the enforceability of the density bonus provisions for cluster developments in the Zoning Law. I disagree with her conclusion that the Village cannot provide the density bonus but I believe that the language in the Zoning Law in that respect should be reviewed for clarity.

Please place this matter on the next available Village Board agenda for further proceedings. Thank you for your courtesies.

Respectfully,

BLUSTEIN, SHAPIRO, RICH & BARONE, LLP

JAY R. MYROW

cc: Robert Silber
Steven J. Gaba, Esq. (via email)
Kirk Rother (via email)

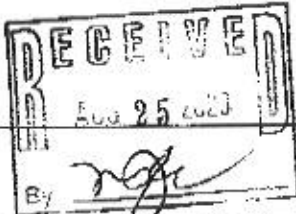
LAW OFFICE OF ELIZABETH K. CASSIDY, PLLC

7 GRAND STREET

WARWICK, NEW YORK 10990

P: 845.987.7223 | F: 888.549.3886

WWW.EKCASSIDYLAW.COM



August 24, 2020

Village of Warwick Planning Board
 Village of Warwick
 77 Main Street
 Warwick, NY 10990

Village of Warwick Village Board
 Village of Warwick
 77 Main Street
 Warwick, NY 10990

Re: Application of Village View
 Our File: 307-001

Dear Mayor Newhard, Chairman Patterson, Village Trustees and Planning Board Members:

As you are aware, my office has been following the approval process of the Village View project on behalf of Eugene and Raymond Maher for the past two years.

Throughout this time, we have repeatedly noted that the Village's cluster scheme violates New York State Village Law on its face. The sole response in the FEIS is found on page 96 and reads,

The commenter is referencing a section of New York State Law which provides the guiding principles regarding processing planning board applications. This section of law applies when communities have zoning regulations but have not adopted standards for clustering, and allows them to consider this method of development to preserve open space. Incentive zoning, such as the provisions in this law are permitted and are incorporated into many other community's [sic] zoning provisions across New York State. The authorization for incentive zoning is provided in Section 145-29D.4 of the Zoning Code, and allows an applicant to request an increase of the allowable lots over and above the established base density.

Such statement misreads New York State Law and conflates cluster subdivision and incentive zoning. Specifically, Village Law 7-738(2)(a) reads, "Approval of a cluster development shall be **subject to the conditions set forth in this section** and in such local law." (emphasis added). Nowhere in 7-738 is a Village authorized to accept cash payments to buy increased density as part of a clustering scheme. In addition, 7-738 restricts the total lot count to what could be achieved under base zoning.

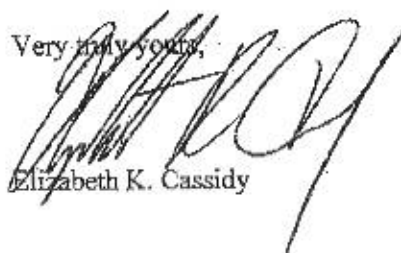
While it is true that the Village Board has the authority to establish incentive zoning, that authority is strictly proscribed by New York Village Law 7-703. That law defines incentive zoning as "the system by which *specific* incentives or bonuses are granted to applicants pursuant to this section on condition that *specific* physical, social, or cultural benefits or amenities would inure to the community." (emphasis added). In addition, the law provides that if a community

benefit is not immediately feasible, a payment in lieu may be made, but it must be held in trust until a specific community benefit may be constructed. I note that the Village's annexation zoning scheme, TND scheme and affordable housing schemes all authorize density bonuses for the provision of specific community benefits such as affordable housing, civic space, municipal improvements, recreational areas, etc. These provisions are much more closely aligned with the state law.

In contrast, the application before you merely seeks to deposit \$ 50,000.00 per additional lot into the Village's general fund. Such contribution is not authorized by State Law and has been struck down by the Courts. See *Municipal Art. Soc. v. New York*, 137 Misc. 2d 832 (New York 1987) ("Zoning benefits are not cash items.").

I urge both boards to consider the legal infirmities of the application before you and the requirements as set forth in State Law. Again, I thank both boards for their thoughtful and continued consideration.

Very truly yours,



Elizabeth K. Cassidy

EKC/kc
Enclosure

6 Hillside Ave.
Warwick, NY 10990
September 28, 2020

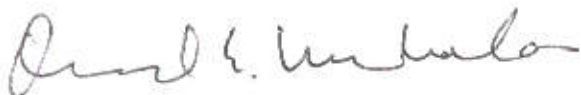
Hon. Michael Newhard
Village of Warwick Mayor

Dear Mayor Newhard

This is to advise you that I am withdrawing my request to place a memorial sundial in the Warwick Village Hallowed Grounds.

Please notify any other parties involved in this process.

Very truly yours

A handwritten signature in dark ink, appearing to read "Richard E. Nicholas", written in a cursive style.

Richard E. Nicholas

RECEIVED

SEP 29 2020

VILLAGE OF WARWICK
CLERK

Raina Abramson

From: Cathy Richards
Sent: Tuesday, September 29, 2020 11:20 AM
To: Raina Abramson
Subject: FW: Village of Chester Assessing Unit Info

Please see info below from Angela O'Neill – Village of Chester Treasurer

From: Angela O'Neill <treasurer@villageofchesterny.com>
Sent: Friday, September 18, 2020 11:46 AM
To: Cathy Richards <treasurer@villageofwarwick.org>
Subject: RE: Board of Trustees payroll

As far as the assessing unit matter, please share with your Mayor and consider the following:

- If the Village is no longer an assessing unit – by default, the Village will assume the Town's tax roll, which means the Village will always be one year behind as far as assessments, owner info, etc. When establishing your budget, you need to keep this in mind. Also, think about this scenario....The Village purchases a parcel in the Village, because the Village is one year behind as far as the taxable status date, the Village will have to budget for village/school/town taxes on that parcel.
- The Village will have to be proactive in implementing new owner info as soon as it becomes available from the assessor's office. This lag in deed changes, is a challenge, because owners may not have their bills on time and incur late fees, penalties, etc.
- Is the Village willing to change their fiscal year to annual in order to be in sync with the Town? This in itself will be an accounting nightmare for you.

These are just some of the major challenges we continue to face here in the Village of Chester. We have established processes and procedures to address these nuances, but the first couple of years were rough.

Good Luck! And as always, feel free to call me with any other questions. My personal opinion....If I could turn back the clock on this I would! 100%! Keep your own assessor.

Angela O'Neill
Village of Chester
Treasurer
47 Main Street
Chester, N.Y. 10918
treasurer@villageofchesterny.com
PH: 845-469-2388 ext. 232
FX: 845-469-5999
www.villageofchesterny.org

From: Cathy Richards <treasurer@villageofwarwick.org>
Sent: Thursday, September 17, 2020 11:59 AM

Office of the Mayor
Board of Trustees
Village Clerk
Treasurer
Telephone: 845-986-2031
Fax: 845-986-6884

Public Works Supervisor
Telephone: 845-986-2081
Fax: 845-987-1215



OFFICE OF THE CORPORATION
MEETINGS HELD 1ST & 3RD MONDAY OF EACH MONTH

Village of Warwick

77 MAIN STREET
P.O. BOX 369
ORANGE COUNTY

Warwick, NY 10990

Village Justice
Telephone: 845-986-7044
Fax: 845-986-2870

Building, Planning, Zoning
and Historical District
Review Board
Telephone: 845-986-9888
Fax: 845-987-1215

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SEP 28 2020

VILLAGE OF WARWICK
VILLAGE CLERKS OFFICE

VACATION CARRY OVER

I Michael Fielli request to carry-over 58.50 vacation ^{hours} ~~days~~.
(Name of employee) (Amount)

The reason time accrued or vacation was not used: Covid 19

under article X sec.2(B) of the Village of Warwick Department of Public Works Collective Bargaining Agreement and the Employee Handbook.

[Signature]
(Signature of employee)

9-24-20
(Date)

[Signature]
(Signature of Department Head)

9/25/2020
(Date)

VILLAGE USE ONLY

☐ Approved by Village Board
☐ Denied by Village Board

(Time Accrued) (Time Used) (Anniversary Date)

Comments: _____

(Board Signature)

(Date)

COUNTY OF ORANGE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
MUNICIPAL AGREEMENT FOR FY 2020

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, _____ by and between the County of Orange ("County"), a municipal corporation and county of the State of New York, by and through its Office of Community Development ("OCD"), with offices at 40 Matthews Street, Suite 307C, Goshen, New York 10924, and the Village of Warwick, a New York municipal corporation with offices at 77 Main Street, PO Box 369, Warwick, New York 10990 ("Municipality").

WHEREAS, Municipality, has entered into a municipal cooperation agreement with County, in accordance with Section 99-h (2) of New York State General Municipal Law, to apply for and receive Community Development Block Grant ("CDBG") funds from the United States Department of Housing and Community Development ("HUD") under Title I of the Housing and Community Development Act of 1974, ("HCD Act"), as part of the Orange County Urban County Consortium for the Fiscal Year 2020 and

WHEREAS, pursuant to 24 C.F.R § 570.501(b) and § 570.503, this separate agreement is necessary for Municipality to receive the CDBG funds through County to implement community development activities; and

NOW THEREFORE, it is agreed, between County and Municipality as follows:

I. SCOPE OF SERVICES

A. Activities

OCD's FY 2020 CDBG Request for Applications and Municipality's funding application as approved by OCD (attached and incorporated as **Exhibit 1** to this Agreement) outlines an activity(ties) to be undertaken by Municipality as further described in this Agreement (the "Project"). Municipality will be responsible for administering the Project in a manner satisfactory to County and HUD and consistent with 2 C.F.R. Part 200, 24 C.F.R. Part 570 and all other applicable federal, New York State and County laws, regulations and policies required as a condition of providing these CDBG funds. The Project will include the following CDBG-eligible activities:

1. Program Delivery:

Type of Project: Public Facilities Improvements

Project Location: One Park Way, Warwick, NY 10990

Service Area: Entire Village
Zip Code: 10990

Matrix Code: 03L – Sidewalks & 03B – Facilities with Disabilities

Project Scope: Public Facilities Improvements-- This project would add 580 feet of ADA compliant walkways in the park. The village created a brick pathway at the entrance of the park and added another brick pathway around. This section is another phase of the project that will lead to the new Warwick Playground Dreams, an inclusive playground for children of all abilities. The playground is a volunteer community project. All funds were raised through donations and grants. The building of the playground is being done with a volunteer workforce.

The Village of Warwick will submit to the Community Development Office an updated cost estimate and proof of sufficient funding prior to advertisement for bids.

2. Special Conditions:

- a. The U.S. Department of Housing and Urban Development (HUD) has notified Orange County that the final actual amount of CDBG funding allocated to the County cannot be determined or finalized at this time. If the final actual amount of CDBG funding allocated to Orange County from HUD is less than the total estimated CDBG grant amount, it is stipulated that the County will deduct a total to be determined from the CDBG grant award allocated in this agreement. Further, CDBG funding will not be available to the municipality until HUD has received congressional release and has issued a grant agreement to the County of Orange. **The County will notify the municipality when CDBG funds are available for project expenditures.**
- b. **The parties understand and acknowledge that the County must complete its requirements under 24 CFR Part 58 (environmental responsibilities) before CDBG funds made available hereunder may be committed to a particular project or activity. The Municipality shall not commit any funds under this Agreement until express written consent is received from the OCD.**

3. General Administration:

The **Village of Warwick** is responsible for all general administration duties. The **Village of Warwick** shall maintain program and financial records documenting eligibility and the performance of the activity(ies) carried out with CDBG funds. No CDBG funding is provided for general administration.

B. CDBG Eligibility and National Objectives

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 C.F.R. § 570.208. The Subrecipient certifies that the activity(ies) carried out under this Agreement are CDBG eligible and will meet the following National Objective(s):

National Objective: Low/Moderate Benefit—Low to Moderate Clientele (LMC). This project meets the definition of Presumed Benefit due to the primary beneficiaries served. Pursuant to U.S. Census Data, there are approximately 460 disabled persons residing in the Village of Warwick that could potentially benefit from this activity.

C. Levels of Accomplishment – Goals and Performance Measures

The levels of accomplishment may include such measures as units rehabilitated; persons or households assisted, or meals served, and should also include time frames for performance.

Municipality agrees to provide the following levels of program services:

<u>Activity</u>	<u>Units per Month</u>	<u>Total Units/Year</u>
ADA Sidewalk Improvements	0	460

Units of service shall be considered: (Definition of Units of Services i.e. Persons with Disabilities)

D. Staffing

Municipality shall allocate the appropriate staff and time commitments to the performance of the Project. Any changes in the key personnel assigned or their general responsibilities under this Project are subject to the prior approval of OCD.

E. Performance Monitoring

OCD will monitor the performance of Municipality against goals and performance standards as stated above. Substandard performance as determined by OCD will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by Municipality within a reasonable period of time after being notified by OCD, Agreement suspension or termination procedures will be initiated by County in accordance with subsection VI(G) of this Agreement.

II. TIME OF PERFORMANCE

The term of this Agreement shall start on the ___ day of ___, 20__ and end on the **31st day of December, 2021**. Pursuant to 24 C.F.R. §570.503(a), the term of this Agreement and the provisions herein shall be extended to cover any additional time period during which Municipality or a Subrecipient, if applicable, remains in control of CDBG funds or other CDBG-funded assets, including program income. Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, perform its/their duties and obligations in completing the Project, in a prompt and expeditious manner, without undue or unreasonable delay including, but not limited to, taking actions necessary to secure, authorize and appropriate local or other funds, necessary to complete the funding activities in accordance with the Project Implementation Schedule in the attached and incorporated **Exhibit 3**. The Project, as outlined in Section I of this Agreement, shall be completed no later than **December 31, 2021**. If the Project is not completed by this date, this Agreement may be suspended or terminated, at County's discretion, in accordance with Section VI(G) of this Agreement, unless Municipality seeks and receives approval for an extension from County, at its sole discretion.

III. BUDGET

Modify this section as applicable to the project type. It is strongly recommended that a full project budget be used either in this Agreement or as a separate Schedule to the Agreement, particularly with construction projects, listing each funding source for each line item in separate columns, adding line subtotals and calculating a project grand total.

A. Total project cost is **\$50,000.00**

The line items and budget(s) for activities described in Part I is set forth in **Exhibit I Application Section** entitled "Budget" which is annexed hereto and the terms and conditions of which are hereby incorporated into this Agreement and made part hereof. Any amendments to the budget(s) must be approved in writing by OCD and if the total cost of this Agreement increases, in a written amendment executed by both County and Municipality.

B. Municipality is responsible for all general administration duties and its administrative costs incurred pursuant to this Agreement.

C. The CDBG funding allocated under this Agreement is based on a projected anticipated award to County from HUD and the congressional budget allocation to HUD for the CDBG Program for the applicable federal fiscal year. County shall have no liability under this Agreement to Municipality or to anyone else beyond HUD CDBG funds accepted and appropriated by the County Legislature to OCD for this Agreement.

D. Prior to commencing any activity funded under this Agreement, including, but not limited to, commitment or expense of CDBG funds or advertisement for any applicable request for proposals or bids, Municipality shall confirm with OCD 1) the actual amount of CDBG funds available for this activity and 2) whether HUD has issued a Release of Funds, as may be applicable to the activity(ies) funded under this Agreement. An activity can neither be commenced, nor advertised for proposals or bid, and construction, as applicable, shall not be started (whether bid out or by force account), until the availability of CDBG funds and the HUD Release of Funds is confirmed to

Municipality by OCD.

IV. PAYMENT

A. It is expressly agreed and understood that the total amount to be paid by County under this Agreement shall not exceed **\$50,000.00** and shall be limited to CDBG funds received by County from HUD and appropriated by the County Legislature to OCD for the purposes of this Agreement.

B. Payments may be contingent upon certification of Municipality's and Subrecipient's, if any, financial management system in accordance with the standards specified in 2 C.F.R. Part 200, Subpart D per 24 C.F.R. §570.502.

C. Payments will be made to Municipality per 2 C.F.R. Part 200, Subpart D, for eligible expenses actually incurred by Municipality and/or Subrecipients, if any, and not to exceed actual cash requirements. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in **Exhibit 1 Application Section** entitled "Budget" and in accordance with performance. Municipality shall submit claims to County in accordance with the attached and incorporated template for the Municipal Voucher Submission Checklist in **Exhibit 4**.

D. Payments will be disbursed to Municipality within sixty (60) days of receipt of accurate, proper and complete claims. However, County reserves the right to liquidate funds available under this Agreement for costs incurred by County on behalf of Municipality. Municipality shall disburse payments to Subrecipients and subcontractors, if any, in accordance with 2 C.F.R. Part 200, Subpart D.

E. The acceptance by Municipality or its assignees of the final payment under this Agreement (whether based on invoice, judgment of any court of competent jurisdiction, administrative or any other means) shall constitute and operate as a general release to County from any and all claims of Municipality arising out of the performance of this Agreement.

F. Set-Off

1. County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, County's right to withhold for the purposes of set-off any monies otherwise due to Municipality:

- a. under this Agreement;
- b. under any other agreement or contract with County, including any agreement or contract for a term commencing prior to or after the term of this Agreement; or
- c. from County by operation of law.

2. County also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to County for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

3. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded the County, nor shall it constitute a waiver of that the County's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity, or pursuant to this Agreement.

G. The provisions of this Section IV shall survive expiration or earlier termination of this Agreement.

V. NOTICES

- A. Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery. Any notice delivered or sent as aforesaid shall be effective on the date of personal delivery or mailing.
- B. Communication and details concerning this Agreement shall be directed to the following representatives unless otherwise modified by subsequent written notice to all contacts listed below.

County

Alaina Walag, Project Manager
Office of Community Development
40 Matthews Street, Suite 307A

Municipality

Michael Newhard, Mayor
Village of Warwick
77 Main Street
Warwick, NY 10990

- B. The provisions of this Section V shall survive expiration or earlier termination of this Agreement.

VI. GENERAL CONDITIONS

A. General Compliance

1. Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to comply with the requirements of Title 24 Code of Federal Regulations, Part 570 (the HUD regulations concerning CDBG), including, without limitation, Subpart K of these regulations, except that (1) Municipality does not assume County's environmental responsibilities described in 24 C.F.R. §570.604, and (2) Municipality does not assume County's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52. Municipality shall, and shall cause its Subrecipients and subcontractors, if any, to, comply with all other applicable federal, New York State, County and local laws, regulations and policies governing the funds provided under this Agreement. Municipality further agrees that funds available under this Agreement are being used to supplement rather than supplant funds otherwise available to Municipality or its Subrecipients, if any. In the event of any conflict between this Agreement and the provisions of 24 C.F.R. Part 570, then the provisions of 24 C.F.R. Part 570 shall control.

2. Municipality understands that it may be necessary for County to submit to governmental agencies or to a court of law part of or all of the data, analyses and/or conclusions developed in the performance of the Scope of Work as well as certification, payment applications or other documentation certified and/or signed by Municipality or its officers, directors, partners, members, employees, subcontractors, agents, assignees, Subrecipients or other representatives. Municipality is aware that there are significant state and/or federal civil and criminal penalties for submitting false information, including the possibility of fines and imprisonment. Municipality is responsible for such penalties resulting from false information submitted by Municipality or its officers, directors, partners, members, employees, subcontractors, agents, assignees, Subrecipients or other representatives and shall, to the fullest extent permitted by law, defend, indemnify and hold harmless County and its officers, employees, contractors, agents, assignees and other representatives, from and against any and all claims, liabilities, expenses, costs, losses, damages and causes of action (including without limitation, reasonable attorneys' fees and costs of litigation and/or settlement) arising out of, directly or indirectly, the submission of any false information by Municipality or its officers, directors, partners, members, employees, subcontractors, agents, assignees, Subrecipients or other representatives.

B. Independent Contractor

1. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Municipality shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. County shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or

medical insurance and Worker's Compensation Insurance as Municipality is an independent contractor.

2. The provisions of this subsection VI(B) shall survive expiration or earlier termination of this Agreement.

C. Indemnification and Hold Harmless

1. To the fullest extent permitted by law, Municipality shall be fully liable for the actions of its officers, employees, subcontractors or other representatives and shall fully indemnify, defend and hold harmless County and HUD from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any negligence or willful misconduct of Municipality, its officers, employees, agents, Subrecipients, subcontractors, or other representatives.

2. The provisions of this subsection VI(C) shall survive expiration or earlier termination of this Agreement.

D. Insurance & Bonding

1. Municipality shall comply with the bonding and insurance requirements of 2 C.F.R. § 200.310 and New York State Finance Law §137, and shall require subcontractors and Subrecipients, if any, to comply with 2 C.F.R. § 200.310, New York State Finance Law §137, and any other applicable federal, New York State and County laws and regulations. Prior to commencing work Municipality and all Subrecipients and/or subcontractors, if any, shall obtain and, during the term of this Agreement and as otherwise required by this subsection VI(D), shall maintain, at their own cost and expense, the coverages listed below from insurance companies licensed in the state of New York, and shall provide certificates of insurance to OCD for County approval. The certificates shall provide that a) the County of Orange c/o Office of Community Development (and Municipality on any Subrecipient certificates) is named as "Additional Insured" (except for Workers Compensation and Professional Liability policies) and b) at least fifteen (15) days prior to cancellation or material change in a policy, notice shall be given to the Risk Management Officer of County, the Director of OCD and Municipality (for Subrecipient policies), by registered mail, return receipt requested. All notices shall state the name of Municipality, Subrecipient and subcontractor, as applicable, and refer to this Agreement.

a. Workman's Compensation & Disability in statutory amounts.

b. General Liability Insurance with a minimum comprehensive single limit of liability per occurrence of \$1,000,000.00 for bodily injury and for property damage. The certificate of insurance shall indicate the following coverage:

- i. Premises - Operations
- ii. Broad Form Contractual

c. Automobile Liability Insurance with a minimum comprehensive single limit of liability per occurrence of \$1,000,000 for bodily injury and property damage unless otherwise indicated in the contract specifications. This coverage shall include the following for bodily injury and property damage:

- i. Owned automobiles
- ii. Hired automobiles
- iii. Non-owned automobiles

2. If, at any time, any policy of Municipality, or its subcontractors and/or Subrecipients, if any, or

Subrecipients' subcontractors, if any, becomes unsatisfactory to County, as to form or substance, or if an insurer becomes unsatisfactory to County; Municipality shall, upon notice from County, promptly obtain, or cause such subcontractor or Subrecipient to promptly obtain, a new policy and submit the same to County for approval.

3. Upon failure of Municipality or any Subrecipient and/or subcontractor, as applicable, to furnish, deliver and maintain such insurance, this Agreement, at the election of County, may be declared suspended or terminated in accordance with subsection IV(G) of this Agreement. Failure of Municipality and/or any Subrecipient, and/or subcontractor, as applicable, to take out and/or maintain any required insurance shall not relieve Municipality and/or such Subrecipient and/or such subcontractor, as applicable, from any liability under this Agreement, or otherwise, to County or HUD; nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of Municipality and/or any Subrecipient and/or any subcontractor, as applicable, concerning indemnification.

4. In the event that a judgment arising out of this Agreement is in excess of the insured amounts, the excess amount or any portion thereof, may be withheld from payment due or to become due Municipality until such time as Municipality shall furnish such additional security covering the judgment(s) as may be determined by County.

5. All policies and certificates of insurance shall contain the following clauses.

a. such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of County with respect to its interests;

b. it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to County (directed to County's Risk Management Division and the Director of OCD); and

c. County shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to Municipality.

6. County requires that the certificate holder is named as "County of Orange c/o Office of Community Development, 40 Matthews Street, Suite 307A, Goshen, NY 10924". Certificates indicating proof of Municipality's, Subrecipient's and/or subcontractors, if any, insurance coverage required by this subsection VI(D) are attached as **Exhibit 5**. Proof of each Subrecipient's and/or subcontractor's bonds and/or insurance certificates, as applicable, shall be submitted to OCD for review and approval, prior to commencement of funded activities by each subcontractor.

7. The provisions of this subsection VI(D) shall survive expiration or earlier termination of this Agreement.

E. Grantee Recognition

1. Municipality shall insure recognition of the role of County and HUD in providing services through this Agreement. The funding source shall be clearly acknowledged for all activities, facilities and items utilized pursuant to this Agreement and in all publications made possible with funds provided by Agreement.

2. The provisions of this subsection VI(E) shall survive expiration or earlier termination of this Agreement.

F. Modifications

1. County or Municipality may modify this Agreement in writing at any time provided that such

modifications make specific reference to this Agreement and are signed by a duly authorized representative of both organizations. Such modifications shall not relieve or release County or Municipality from its obligations under this Agreement, unless otherwise specified in that modification.

2. County may, in its discretion, amend this Agreement to conform with federal, state or local government guidelines, policies and available funding amounts, or for other reasons. All amendments will be incorporated only by a writing making specific reference to this Agreement and signed by a duly authorized representative of both organizations.

G. Suspension or Termination

1. In accordance with Appendix II to 2 C.F.R. Part 200 and 2 C.F.R. Part 200, Subpart D (§§ 200.338 - 200.342), County may suspend or terminate this Agreement if Municipality materially fails to comply with any terms of this Agreement, which include, but are not limited to the following:

- a. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- b. Failure, for any reason, of Municipality to fulfill in a timely and proper manner its obligations under this Agreement;
- c. Ineffective or improper use of funds provided under this Agreement (including, but not limited to use of funds for activities which are ineligible under or otherwise not in compliance with the HCD Act or 24 CFR Part 570); or
- d. Submission by Municipality to County of reports that are incorrect or incomplete in any material respect.

2. OCD will monitor the performance of Municipality against the terms and conditions of this Agreement. Substandard performance as determined by OCD will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by Municipality within 30 days after written notification by County (or earlier if required by County, HUD or other federal or New York State law or regulation), the Agreement shall be terminated on a date specified by County. During the thirty (30) day cure period, County may withhold CDBG funds until such time as Municipality is found to be in compliance by OCD or is otherwise adjudicated to be in compliance. If Municipality fails to comply and this Agreement is terminated, in addition to and without limiting the other remedies provided by 2 C.F.R. Part 200, Municipality shall disgorge and refund to County the amount of CDBG funds previously paid to Municipality under this Agreement and any funds due Municipality shall be retained by County for the CDBG program.

3. In accordance with Appendix II to 2 C.F.R. Part 200 and 2 C.F.R. § 200.339 this Agreement may also be terminated for convenience by either HUD, County or Municipality, in whole or in part. HUD termination for convenience requires consent of County and Municipality. County or Municipality termination requires setting forth the reasons and the effective date for such termination in writing to HUD. In the case of a partial termination, if HUD determines that the remaining portion of the award will not accomplish the purpose for which the award was made; HUD may terminate the award, in its entirety under 2 C.F.R. § 200.339. If this Agreement is terminated under this subdivision VI(G)(3), in addition to and without limiting other remedies of County or HUD, County may require that the Municipality disgorge and refund to County the amount of CDBG funds previously paid to Municipality under this Agreement and any funds due Municipality shall be retained by County for the CDBG program.

4. In the event of any termination, in addition to any obligations that survive termination of this

Agreement, Municipality shall still completely fulfill all of its obligations under Section VII. Administrative Requirements, applicable up to the date of termination, and all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by under this Agreement Municipality, Subrecipients, or subcontractors of Municipality or Subrecipients, as applicable, shall be turned over to OCD and Municipality shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

5. The provisions of subdivision VI(G)(2), (3) and (4) shall survive expiration or earlier termination of this Agreement.

H. Procurement of Agreement

1. Municipality represents and warrants that no person or selling agency has been employed or retained by it to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Municipality further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Municipality makes such representations and warranties to induce County to enter into this Agreement and County relies upon such representations and warranties in the execution hereof.

2. For a breach or violation of such representations or warranties, County shall have the right to annul this Agreement without liability, entitling County to recover all monies paid hereunder and Municipality shall not make claim to or be entitled to recover, any sum(s) otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded County, nor shall it constitute a waiver of County's right to claim damages, or otherwise refuse payment, or to take any other action provided by law, in equity or pursuant to this Agreement.

I. Current or Former County Employees

1. Municipality represents and warrants that it shall not retain the services of any County employee or former County employee in connection with this Agreement or any other agreement that Municipality has, or may have, with County without the express written permission of County. This limitation period covers the greater of the preceding three (3) years or as long as the County employee or former County employee has or may have an actual or perceived conflict of interest due to his or her position with County.

2. For a breach or violation of such representations or warranties, County shall have the right to annul this Agreement without liability, entitling County to recover all monies paid hereunder and Municipality shall not make claim to or be entitled to recover, any sum(s) otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded County, nor shall it constitute a waiver of County's right to claim damages, or otherwise refuse payment, or to take any other action provided by law, in equity or pursuant to this Agreement.

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Municipality agrees to comply with 2 C.F.R. § 200.302 and to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Sub-recipient shall administer its program in conformance with 2 C.F.R. Part 200, Subpart E, "Cost Principles". These principles shall be applied for all direct and indirect costs incurred during performance of the Project.

3. Internal Controls

The Municipality agrees to comply with 2 C.F.R. § 200.303 and to maintain effective internal controls over the funds awarded herein.

B. Public Hearings

All public hearings required by New York State and federal law and regulations, as applicable to the funded activities, shall be conducted as required by such laws and regulations and, in accordance with Municipality's citizen participation plan, as indicated in Municipality's application for the funded activities (**Exhibit 1**), as applicable.

C. Documentation and Record-Keeping

1. Records to be Maintained

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, maintain all records required by the federal regulations specified in 24 C.F.R. § 570.506 and that are pertinent to the Project funded by this Agreement. Such records shall include, but not be limited to:

- a. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in Subpart C of 24 C.F.R. Part 570 under which it is eligible.
- b. Records demonstrating that each activity undertaken meets one of the criteria set forth in 24 C.F.R. § 570.208.
- c. Records that demonstrate that OCD has made the determinations required as a condition of eligibility of certain activities, as prescribed in 24 C.F.R. §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.
- d. Records which demonstrate compliance with 24 C.F.R. §570.505 regarding any change of use of real property acquired or improved with CDBG assistance.
- e. Records that demonstrate compliance with the citizen participation requirements prescribed in 24 C.F.R. Part 91, Subpart B, for entitlement recipients, or in 24 C.F.R. Part 91, Subpart C, for HUD-administered small cities recipients.
- f. Records which demonstrate compliance with the requirements in 24 C.F.R. §570.606 regarding acquisition, displacement, relocation, and replacement housing.
- g. Fair housing and equal opportunity records containing the requirements specified in 24 C.F.R. § 570.506(g).
- h. Financial records, in accordance with the applicable requirements listed in
- i. 24 C.F.R. § 570.502, and 2 C.F.R. Part 200, Subpart D.
- j. Other records necessary to document compliance with Subpart K of 24 C.F.R. Part 570,

Municipality shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a Project architect), and/or other documentation appropriate to the nature of the activity.

- k. Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in 24 C.F.R. §570.513; and
- l. Records required to be maintained in accordance with other applicable laws and regulations set forth in Subpart K of this Part.

2. Retention

Municipality shall and shall cause its subcontractors and all government entity Subrecipients and their subcontractors, if any, to, retain all financial records, supporting documents, statistical records, and all other records pertinent to this Agreement for a period of six (6) years in accordance with County record retention policy, 2 C.F.R. § 200.333, and 24 C.F.R. § 570.502. The retention period begins on the date of the submission of County's annual performance and evaluation report (CAPER) to HUD in which the activities assisted under this Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involved any of the records cited and that have started before the expiration of the six-year period, then such records must be retained until completion of the actions and resolutions of all issues, or the expiration of the six-year period, whichever occurs later. Records for property and equipment acquired with funds under this Agreement shall be retained for three (3) years after final disposition, replacement or transfer at the direction of HUD or the six-year period, whichever occurs later. Records for any displaced person must be kept for three (3) years after he/she has received final payment or the six-year period, whichever occurs later.

3. Client Data

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, confidentially maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to County or HUD monitors or their designees for review upon request.

4. Disclosure

Municipality understands that client information collected under this Agreement is private and the use or disclosure of such information when not directly connected with the administration of County's, Municipality's, Subrecipients or either of their subcontractor's responsibilities, as applicable, with respect to services provided under this Agreement, is prohibited unless written consent is obtained from the client and, in the case of a minor, that of a responsible parent/guardian.

5. Close-Outs

Notwithstanding any other terms and conditions of this Agreement, Municipality's obligation to County shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to County), and determining the custodianship of records. Notwithstanding the foregoing, to ensure compliance with 24 C.F.R. §570.503(b)(7), the terms of this Agreement shall remain in effect during any

period that Municipality has control over CDBG funds, including but not limited to program income or real property funded in whole or in part with CDBG funds.

6. Audits and Inspections

a. Municipality shall, and shall cause all Subrecipients and subcontractors of Municipality, if any, to comply, at their own expense, with the requirements of the Single Audit Act of 1984, and to have an annual audit conducted in accordance with 2 C.F.R. Part 200, Subpart F, as applicable. Any deficiencies noted in audit reports must be fully cleared by Municipality, Subrecipients and/or subcontractors within thirty (30) days after receipt of notice by Municipality, Subrecipients and/or subcontractors, as applicable.

b. All of Municipality's, Subrecipient's, and/or subcontractor's, if any, records with respect to any matters covered by this Agreement shall be made available to County, HUD and the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as County or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

c. Failure of Municipality to comply with the above audit and inspection requirements will constitute a violation of this Agreement and may include but not be limited to withholding of future payments.

7. Survival

The provisions of this subsection VII(C) shall survive expiration or earlier termination of this Agreement.

D. Reporting

1. Program Income

Any program income earned by Municipality and/or a Subrecipient, as applicable, as a result of this CDBG funding, shall be returned to County, in a check payable to the "Commissioner of Finance", within seven (7) days of receipt by Municipality. Municipality shall require Subrecipients, as applicable, to return any program income to Municipality within seven (7) days of receipt by Subrecipient.

2. Progress and Financial Reports

a. Municipality shall submit regular Progress reports to County at the frequency required by County, and in a timely manner to enable County's reporting to HUD and shall require Subrecipients, if any, to, submit the same reports to Municipality in a timely manner to enable Municipality's reporting to County.

b. The following Progress Report in the template attached and incorporated as **Exhibit 6 Quarterly Project Progress Report** shall be compiled by Municipality and all Subrecipients, as applicable, for each quarter and submitted to County **within ten (10) working days of the end of the quarter.**

c. **Failure to submit the above report may result in suspension or termination of this Agreement in accordance with subsection VI(G) of this Agreement.**

3. Survival

The provisions of this subsection VII(D) shall survive expiration or earlier termination of this Agreement.

E. Procurement

1. Compliance

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, comply with all applicable New York State and federal laws and regulations and Municipality policies concerning the purchase of all real and personal property and shall maintain an inventory of records of all real and personal property as may be procured with funds provided under this Agreement. Unless provided elsewhere in this Agreement, all program assets (unexpended program income, property, equipment, etc.) shall revert to County upon expiration or earlier termination of this Agreement. The provisions of this subdivision VII(E)(1) shall survive expiration or earlier termination of this Agreement.

2. 2 C.F.R. §§ 200.317 - 200.326- Procurement Standards

Municipality shall, and shall cause all government entity Subrecipients and all non-government entity Subrecipients, if any, to, procure all materials, property, or services in accordance with the requirements of 2 C.F.R. Part 200 Subpart D (§§ 200.318 - 200.326).

Municipality shall comply with 2 C.F.R. § 200.322 "Procurement of recovered materials". A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

3. Travel

Municipality shall obtain written approval from County for any travel outside County, by Municipality, Subrecipients and subcontractors, if any, using funds provided under this Agreement.

4. Equipment

a. Municipality and Subrecipients shall comply with 2 C.F.R. § 200.313 with regard to equipment procurement and use except that, pursuant to 24 C.F.R. §570.502(a)(6), in all cases where the equipment is sold, the proceeds shall become program income (prorated to reflect the extent to which funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Municipality for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee (an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment).

b. The provisions of this subdivision VII(E)(4) shall survive expiration or earlier termination of this Agreement.

5. Procedure for Subcontracts

a. Procurement of Subcontracts

With regard to procuring subcontracts, Municipality shall, and shall cause all government entity Subrecipients all non-government entity Subrecipients, if any, to comply with the provisions of 2 C.F.R.

Part 200, Subpart D.

b. Solicitation

Municipality shall, and shall cause all Subrecipients, if any, to, submit to OCD all requests for bids or proposals, independent cost estimates, etc. necessary for the completion of the Project prior to the requests for bids or proposals being published.

Solicitations for all goods and services funded under this Agreement, including but not limited to, requests for quotations, bids or proposals; shall be developed in compliance with applicable federal and New York State law and regulations and Municipality's procurement policy, to include the following:

- (i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
- (ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
- (iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- (iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
- (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

c. Selection Process

Municipality shall ensure that all subcontracts let in the performance of this Agreement by Municipality or Subrecipients, if any, shall be awarded on a fair and open competitive basis. A list of all bids or offers received shall be forwarded to OCD for submission to HUD.

Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and condition of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; financial and technical resources or accessibility to other necessary resources. A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared negligible under statutory or regulatory authority other than Executive Order 12549.

d. Contract Content

Municipality and all Subrecipients, as applicable, shall cause all of the terms and conditions of this Agreement to be included in and made a part of any Subrecipient Agreement and/or subcontract, as applicable, executed in the performance of this Agreement.

c. Approvals

Draft copies of all Subrecipient contracts and all of Municipality's and Subrecipient's subcontracts shall be forwarded to OCD along with documentation concerning the selection process. Municipality and Subrecipients, if any, shall not enter any subcontracts with any subcontractor for the performance of this Agreement without the written consent of OCD prior to the execution of such subcontract.

f. Staff Designation for Projects Involving Construction or Building Services

Municipality shall designate an appropriate staff member to act on behalf of Municipality to ensure compliance with applicable labor laws, regulations and standards and to liaise with OCD and shall require the same of all Subrecipients and subcontractors of Municipality or Subrecipients, if any. The designation shall be made and forwarded to OCD prior to the commencement of the Project. The designated staff member shall:

- i. inform the subcontractors performing work as to the federal and New York State labor requirements and obligations; and
- ii. ensure the inclusion of applicable wage determination and labor standards provisions in all bid specifications and contract documents and will perform all duties necessary for Municipality's compliance with federal Davis-Bacon and New York State labor laws and regulations; and
- iii. maintain full documentation attesting to all administrative and enforcement activities with respect to New York State and federal labor law requirements. Such documents include, but are not limited to: certified payrolls, requests for wage decisions, requests for additional classifications, copies of wage decisions and any effective change or modifications, notice of start of construction, on-site inspection reports and employee interviews, copies of correspondence, memoranda, apprentice registration records and pre-commencement conference records. These documents are to be made available to OCD upon request.

g. Pre-Commencement Conference

OCD, Municipality, Subrecipients, if any, and subcontractors, if any, shall hold a conference, prior to commencement of the Project (or for each Subrecipient activity, depending on the Project), to review their responsibilities under this Agreement, each Subrecipient agreement, and each subcontract, as applicable, including, as applicable, obligations regarding federal and state labor laws applicable to construction or building services work. After each conference, Municipality shall provide a report to OCD containing the following:

- i. Project name, location and description;
- ii. Name of Subrecipient and subcontractors, as applicable;
- iii. Contract amount;
- iv. Date and place of conference;
- v. Conference attendees; and
- vi. Summary of items covered.

h. Construction & Building Services Certified Payroll

i. For Municipality and Subrecipient subcontracts involving construction or building services, Municipality shall, and shall cause Subrecipients, if any, to, require subcontractors to submit to Municipality weekly payroll certifications compliant with New York State and federal law for each workweek from the time the Project is commenced until completion. Municipality's agreement with Subrecipients, if any, shall also contain the same requirement for each Subrecipient's agreement with subcontractors, if any. If no work is performed during any given week, subcontractors shall submit a certification that "no work was performed during this work week". The first and final payrolls are to be marked as such. The subcontractor(s) shall use payroll certification form(s) that meet New York State and federal requirements.

A. The federal form (WH-347) may be found here:
<http://www.dol.gov/whd/forms/wh347instr.htm>

B. The New York state form (PW-18.1) may be found here:
<http://www.labor.state.ny.us/workerprotection/publicwork/PDFs/PW18.1%20Certification%20Of%20Payroll%20By%20Officer.pdf>

ii. The provisions of this subdivision VII(E)(5)(h) shall survive expiration or earlier termination of this Agreement.

i. Monitoring and Inspections

Municipality will monitor all Subrecipient and subcontractor services on a regular basis to assure contract compliance, and shall require Subrecipients, if any, to do the same with Subrecipients' subcontractors, if any. Results of MWBE and EEO/AA efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. In addition, appropriate staff of Municipality shall visit the site during the performance of the Project and OCD shall also have the right to monitor and inspect the Project and the expenditure of funds in order to insure compliance with HUD regulations and the provisions of this Agreement. The provisions of this subdivision VII(E)(5)(i) shall survive expiration or earlier termination of this Agreement.

F. Use and Reversion of Real Property Assets

1. The use and disposition of real property by Municipality and all Subrecipients, if any, funded by this Agreement shall be in compliance with the requirements of 2 C.F.R. § 200, 24 C.F.R. 570.505, 24 C.F.R. 570.502 (a)(5), §570.503 and §570.504, as applicable.
2. Pursuant to 24 C.F.R. §570.505, 24 C.F.R §570.503(b)(7)(i), 24 C.F.R. §570.501(b) and OCD Policy, real property under Municipality's or Subrecipient's control that was acquired or improved, in whole or in part, with CDBG funds in excess of \$25,000 shall be used to meet one of the CDBG National Objectives defined in 24 C.F.R. §570.208 until ten (10) years after Municipality is no longer considered by HUD to be a part of the urban county in the case of Municipality and for ten (10) years after expiration of the Subrecipient Agreement between Municipality and Subrecipient, as applicable.
3. If Municipality and/or Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, Subrecipient shall pay to Municipality, as applicable, and/or Municipality shall pay to County an amount equal to the current market value of property less any portion of the value

attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to County. Municipality and/or Subrecipient, as applicable, may retain real property acquired or improved under this Agreement after the expiration of the ten-year period.

4. HUD may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.
5. The provisions of this subsection VII(F) shall survive expiration or earlier termination of this Agreement.

G. Reversion of Funds and Receivable Assets

Pursuant to 24 C.F.R. §570.503(b)(7), Municipality shall transfer to County any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement held by Municipality, Subrecipients or subcontractors, as applicable, at the time of expiration, cancellation, or termination of this Agreement. The provisions of this subsection VII(G) shall survive expiration or earlier termination of this Agreement.

VIII. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

Municipality agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, ("URA"), and implementing regulations at 49 C.F.R. Part 24 and 24 C.F.R. §570.606(b); (b) the requirements of 24 C.F.R. §570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 C.F.R. §570.606(d) governing optional relocation policies. Municipality shall provide relocation assistance to displaced persons as defined by 24 C.F.R. §570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for the Project. Municipality also agrees to comply with applicable OCD policies concerning displacement of individuals from their residences. The provisions of this Section VIII shall survive expiration or earlier termination of this Agreement.

IX. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, comply with all federal, New York State and County and civil rights laws and regulations including, but not limited to, Article 15 of the New York State Executive Law (also known as the "Human Rights Law"), Titles II and VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act"), 24 CFR §570.904, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246.

2. Nondiscrimination

- a. Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. §570.607, as revised by Executive Order 13279 and the applicable non-discrimination provisions in Section 109 of the HCD Act, Article 15 of the New York State Executive Law (otherwise known as "The Human Rights Law") and New York State Labor Law.

b. Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, abide by all applicable provisions of federal and state laws and regulations, as applicable to its officers, employees, agents, Subrecipients, subcontractors, and other representatives. In hiring and employment practices, Municipality, its Subrecipients and subcontractors, if any, shall not in any manner discriminate on the basis of race, creed, color, religion, sex (including gender identity or expression), national origin, citizenship status, age, marital status, disability, genetic information or predisposing genetic characteristics, sexual orientation, military status, marital status or domestic violence victim status.

c. Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, abide by all applicable provisions of federal and New York State laws and regulations, as applicable to sale or rental of the property, if this Agreement funds the purchase improvement of any property which is later sold or rented. With respect to any sale of any real property and selection and treatment of tenants, Municipality, Subrecipients and subcontractors, if any, shall not in any manner discriminate on the basis of race, color, religion, sex (including gender identity or expression), familial status, national origin, disability, age, sexual orientation, military status or marital status.

3. Land Covenants

a. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 C.F.R. §570.601 and §570.602. In regard to the sale, lease or other transfer of land acquired, cleared or improved with CDBG assistance, Municipality shall and shall cause its Subrecipients, if applicable, to, cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination on the basis of race, color, religion, sex, familial status, national origin, disability, age, sexual orientation, military status or marital status, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that County and the United States are beneficiaries of and entitled to enforce such covenants. Municipality, and any applicable Subrecipient, shall in undertaking its obligation to carry out the program assisted hereunder, agree to take such measures as are necessary to enforce such covenants, and will not itself so discriminate.

b. The provisions of this subdivision IX(A)(3) shall survive expiration or earlier termination of this Agreement.

4. Section 504

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, comply with all federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794) which prohibits discrimination against individuals with disabilities or handicaps in any federally-assisted program. The provisions of this subdivision IX(A)(4) shall survive expiration or earlier termination of this Agreement.

5. Fair Housing

The Municipality agrees to comply with Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary of the Department of Housing and Urban Development requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act.

The Municipality agrees to take all actions necessary to assure compliance with the Fair Housing Act, and affirmatively further fair housing. The Municipality also agrees to affirmatively further fair housing

within its own jurisdiction and support the County's actions to comply with the County's fair housing certification. This provision is required because noncompliance by a unit of general local government included in an urban county may constitute noncompliance by the grantee (i.e., the county) that can, in turn, provide cause for funding sanctions or other remedial actions by the Department of Housing and Urban Development.

6. Benefits to Legal Resident Aliens

Under Section 214, the Secretary of Housing and Urban Development may not make financial assistance available to an alien unless the alien both is a resident of the United States and is:

- an alien lawfully admitted for permanent residence as an immigrant excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;
- an alien who is deemed to be lawfully admitted for permanent residence [under the registry provisions of the INA];
- an alien who has qualified as a refugee or asylee;
- an alien who is lawfully present in the United States as a result of an exercise of the Attorney General's parole authority;
- an alien within the United States as to whom the Attorney General has withheld deportation on the basis of prospective persecution; or
- an alien lawfully admitted for temporary or permanent residence under Section 245A of the Immigration and Nationality Act.

Unauthorized aliens are not eligible for financial assistance under Section 214-covered programs.

B. Affirmative Action

1. Equal Employment Opportunity, Affirmative Action, Executive Order 11246

In all solicitations or advertisements for employees placed by or on behalf of Municipality, Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, state that it is an Equal Opportunity and Affirmative Action employer. Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, comply with the principles as provided in the federal Executive Order 11246 of September 24, 1965 which is incorporated by reference into this Agreement.

2. Minority- and Women- Owned Businesses (MWBE)

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, use its best efforts to afford small businesses, minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, (15 U.S.C. §632) and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. Municipality, its Subrecipients and subcontractors, if any, may rely on New York State and/or federal MWBE certifications as to the status of a MWBE in lieu of an independent investigation.

3. Access to Records

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, furnish all information and reports hereunder and will permit access to its books, records and accounts by County, HUD, other authorized state and federal officials, or any of their designees, for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated in this Section IX(B)

of this Agreement. The provisions of this subdivision IX(B)(3) shall survive expiration or earlier termination of this Agreement.

4. Subcontract Provisions

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, include the provisions of subsections IX(A) Civil Rights and (B) Affirmative Action in every Subrecipient Agreement and subcontract, specifically or by reference, so that such provisions will be binding upon each Subrecipient and each of Municipality's and Subrecipient's subcontractors.

C. Employment Restrictions

1. Prohibited Activity

Municipality, its subcontractors, Subrecipients and their subcontractors, if any, are prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities, lobbying, political patronage, and nepotism activities.

2. Labor Standards

a. Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. Chapter 37), and all other applicable federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Municipality shall, and shall cause its Subrecipients and subcontractors, if any, to, comply with the Copeland Anti-Kickback Act (18 U.S.C. §874 et seq.) and its implementing regulations of the U. S. Department of Labor at 29 C.F.R. Part 5. Municipality shall, and shall cause its Subrecipients and subcontractors, if any, to, maintain documentation which demonstrates compliance with hour and wage requirements of 29 C.F.R. Part 5. Such documentation shall be made available to County for review upon request.

b. With the exception of activities involving the rehabilitation or construction of residential property designed for residential use for less than eight (8) units, Municipality agrees that, all subcontractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply, with the applicable requirements of the regulations of the Department of Labor, under 29 C.F.R. Parts 1, 3, 5, and 7, including but not limited to 29 C.F.R. §5.5; provided, that if wage rates higher than those required under the regulations are imposed by New York State or local law, nothing hereunder is intended to relieve Municipality of its obligation, if any, to require payment of the higher wage. Municipality shall cause or require to be inserted in full, in all such Subrecipient Agreements and subcontracts subject to such regulations, provisions meeting the requirements of this subdivision IX(C)(2).

3. "Section 3" Clause

a. Compliance with the provisions of Section 3 (as defined below), the regulations set forth in 24 C.F.R. §135, and all applicable rules and orders issued thereunder prior to the execution of this Agreement, shall be a condition of the CDBG assistance provided under this Agreement and binding upon Municipality which shall require such a binding commitment from its Subrecipients, subcontractors and Subrecipient subcontractors, if any. Failure to fulfill these requirements shall subject Municipality and its Subrecipients and subcontractors, if any, to all New York State or federal remedies available at law or in equity to County or HUD, including but not limited to

termination of this Agreement. Municipality certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

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

i. The work to be performed under this Agreement 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.

ii. The parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. Part 135 which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with 24 C.F.R. Part 135 regulations.

iii. Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, send to each labor organization or representative of workers with which Municipality has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Municipality's, Subrecipient's and subcontractors of Municipality or Subrecipients, as applicable, 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; the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.

iv. Municipality agrees to include this Section 3 clause in every Subrecipient Agreement and subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the Subrecipient agreement or subcontract or in this Section 3 clause, upon a finding that the Subrecipient or subcontractor is in violation of the regulations in 24 C.F.R. Part 135. Municipality will not enter into any Subrecipient agreement or subcontract where Municipality has notice or knowledge that the Subrecipient or subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

v. Municipality certifies that any vacant employment positions, including training positions, that are filled (1) after Municipality is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Municipality's obligations under 24 C.F.R. Part 135.

vi. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

4. Drug-Free Workplace

Municipality will or will continue to 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 Municipality's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing an ongoing drug-free awareness program to inform employees about:
 - i. the dangers of drug abuse in the workplace;
 - ii. Municipality's policy of maintaining a drug-free workplace;
 - iii. any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. 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 subdivision IX(C)(4)(a);
- d. Notifying the employee in the statement required by subdivision IX(C)(4)(a) that, as a condition of employment under the performance of the Project funded by this Agreement, the employee will:
 - i. abide by the terms of the statement; and
 - ii. notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- e. Notifying OCD and HUD in writing, within ten (10) calendar days after receiving notice under subdivision IX(C)(4)(b) from any employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification numbers of each affected grant;
- f. Taking one of the following actions, within 30 calendar days of receiving notice under subdivision IX(C)(4)(b), with respect to any employee who is so convicted.
 - i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - ii. 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 this subdivision IX(C)(4).

D. New York Law Requirements

1. Labor Law. For any contract(s) funded by this Agreement and involving public work or building

services as respectively defined by Article 8 and Article 9 by New York State Labor Law, Municipality, shall and shall cause its Subrecipients, if any, to, prepare all solicitation documents and contract terms and conditions and administer such contracts in accordance with the applicable provisions of Article 8 or Article 9.

2. Non-Collusive Bidding. For any contract(s) funded by this Agreement to which New York State General Municipal Law §103-d is applicable, Municipality shall, and shall cause its Subrecipients, if any, to, enclose the required Non-Collusive certification in the solicitation documents.

3. Non-Responsibility Determination. For any contract(s) funded by this Agreement to which New York State State Finance Law §§139-j and 139-k are applicable, Municipality shall, and shall cause its Subrecipients, if any, to, enclose the required non-responsibility disclosure and certification in the solicitation documents.

4. Iran Divestment Act. For any subcontract(s) funded by this Agreement to which New York State General Municipal Law §103-g is applicable, Municipality shall, and shall cause Subrecipients, if any, to, enclose the required Iran Divestment Act certification in the solicitation documents.

5. Conflicts of Interest. Pursuant to New York State General Municipal Law § 801, except as provided in General Municipal Law §802, (1) no municipal officer or employee shall have an interest in any contract with the municipality of which he or she is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above and (2) no chief fiscal officer, treasurer, or his or her deputy or employee, shall have an interest in a bank or trust company designated as: a depository, paying agent, registration agent or for investment of funds of the municipality of which he or she is an officer or employee. The provisions of General Municipal Law §801 shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

6. Identification Number(s).

a. For granting, renewing, amending, supplementing or restating the license of any person, and for every invoice or other claim for payment submitted to County by Municipality under this Agreement, the application, invoice or claim must include Municipality's payee identification number. This number is any or all of the following:

- i. the payee's federal employer identification number;
- ii. the payee's federal social security number, and/or
- iii. the payee's Vendor Identification Number assigned by County, if any.

Failure to include such number(s), as required by County, may delay payment. Where Municipality does not have such number(s), on its application, invoice or other claim for payment, Municipality must give the reason or reasons why it does not have a payee number(s).

b. Privacy Notification.

- i. The County's authority to request the above personal information from Municipality, and its authority to maintain such information, is found in New York State Tax Law §5. Disclosure of this information by Municipality to County is mandatory. The principal purpose for collection of the information is for New York State to identify

individuals, businesses and others who have been delinquent in filing tax returns, or may have understated their tax liabilities, and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

ii. The County may forward the personal information to the New York State Commissioner of Taxation and Finance upon that Commissioner's request pursuant to New York State Tax Law §5(3).

7. Prohibition on Purchase of Tropical Hardwoods

a. Municipality certifies and warrants that all wood products to be used in performing the Scope of Work under this Agreement, or Subrecipient Agreement(s) if any, will be in accordance with, but not limited to, the specifications and provisions of New York State State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by New York State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of Municipality to establish to meet with the approval of OCD.

b. In addition, when any portion of this Agreement or Subrecipient Agreement(s) involving the use of woods, whether supply or installation, is to be performed by any Subrecipient or Municipality's or Subrecipient's subcontractors, as applicable, the Municipality or Subrecipient and/or subcontractor, as applicable, will indicate and certify in the submitted bid or proposal that the Subrecipient and/or subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in New York State Finance Law §165. Under bidder certifications, proof of qualification for exemption will be the responsibility of Municipality to meet with the approval of OCD.

c. Municipality certifies that any use of tropical hardwood in the Scope of Work meets with the exception requirements of New York State State Finance Law §165(2)(d)(iii), as established by the Municipality and was approved by County during the quote, bid or proposal process.

8. Compliance with New York State Information Security Breach Notification Act

Both during and after the performance of the Scope of Work under this Agreement and any Subrecipient Agreement(s), with respect to all data involved in the performance of this Agreement and any Subrecipient Agreement(s), Municipality shall, and shall cause Subrecipients and subcontractors, if any, to comply with the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208, both as may be amended).

9. Compliance with Executive Order 38

Municipality is and shall remain, and shall ensure that all Subrecipients and subcontractors, if any, are and shall remain, in compliance with New York State Executive Order 38 of 2013, as may be amended. More information may be found at: <http://www.executiveorder38.ny.gov/>.

10. Sexual Harassment Certification. Pursuant to the New York State Finance Law §139-l, by execution of this Agreement, Municipality and the individual signing this Agreement on behalf of the Municipality certifies, under penalty of perjury, that Municipality has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the

requirements of Section 201-g of the New York State Labor Law. A model policy and training has been created by the New York State Department of Labor and can be found on its website at: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

The County's policy against sexual harassment and other unlawful discrimination and harassment in the workplace can be found on the County's website at:

<https://www.orangecountygov.com/1137/Human-Resources>.

11. Compliance with Other New York Laws and Regulations

Municipality shall, and shall cause all Subrecipients and subcontractors, if any, to, comply with all other New York State laws and regulations applicable to this Agreement and the performance of the Project by Municipality and its Subrecipients and/or subcontractors, if any.

E. Conduct

1. Assignability

Pursuant to New York State General Municipal Law §109, Municipality shall not assign, transfer, convey, sublet, or otherwise dispose of any of its rights, interest or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without County's previous written consent. Any assignment, transfer, conveyance, subletting or other disposal without the required written consent shall cause the contract to be revoked and annulled by County and Municipality shall forfeit and lose all moneys due under the Agreement, except so much as may be required to pay Municipality's employees performing activities under the Agreement. Any assignment, transfer, conveyance, subletting or other disposal properly consented to by County shall be subject to all of the terms and conditions of this Agreement. The provisions of this subdivision IX(E)(1) shall survive expiration or earlier termination of this Agreement.

2. Hatch Act

Municipality agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of 5 U.S.C. Chapter 15.

3. Conflict of Interest

a. Municipality shall comply with the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Municipality further covenants that in the performance of the Agreement no person having such a financial interest shall be employed or retained by the Municipality hereunder. These conflicts of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or of any designated public agencies or Municipalities which are receiving funds under the CDBG Entitlement program.

b. The provisions of this subdivision IX(E)(3) shall survive expiration or earlier termination of this Agreement.

4. Lobbying

a. By execution of this Agreement Municipality certifies to the best of the knowledge and belief of the undersigned, that:

i. No federal appropriated funds have been paid or will be paid, by or on behalf of Municipality, to any person for influencing or attempting to influence an officer or employee of an 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.

ii. If any funds other than 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 this federal contract, grant, loan, or cooperative agreement, Municipality shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

iii. Municipality shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subrecipients, subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients and subcontractors (of Municipality and Subrecipients) shall certify and disclose accordingly.

b. 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 31 U.S.C. §1352. 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.

c. The provisions of this subdivision IX(E)(4) shall survive expiration or earlier termination of this Agreement.

5. Copyright

In addition to any other rights HUD may have pursuant to 2 C.F.R. § 200.315, if this Agreement results in any copyrightable material or inventions, County and HUD reserve the right to royalty-free, non-exclusive and irrevocable licenses to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes. The provisions of this subdivision IX(E)(5) shall survive expiration or earlier termination of this Agreement.

6. Rights to Inventions Made under Contract or Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Municipality or Subrecipient, if any, wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Municipality or Subrecipient, if any, must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7. Religious Organization

Municipality agrees, and shall cause all Subrecipients and their subcontractors, if any, to agree, that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 C.F.R.

§570.200(j) (such as worship, religious instruction, or proselytization) as part of the programs or services funded under this Agreement. If Municipality or any Subrecipient or either of their subcontractors, if any, conduct such activities, the activities must be offered separately, in time or location, from the programs or services funded under this Agreement, and participation must be voluntary for the beneficiaries of the CDBG-funded programs or services. Municipality, its Subrecipients or either of their subcontractors, if any, shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. The provisions of this subdivision IX(E)(6) shall survive expiration or earlier termination of this Agreement.

8. Excessive Force

a. Pursuant to Section 519 of the 1990 HUD Appropriations Act (P.L. 101-140) and Section 906 of the National Affordable Housing Act (NAHA) of 1990 (P.L. 101-625) Municipality and all of its government entity Subrecipients, if any, have adopted and are enforcing:

i. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

ii. A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

b. The provisions of this subdivision IX(E)(7) shall survive expiration or earlier termination of this Agreement.

X. ENVIRONMENTAL CONDITIONS

A. Air, Water and Environmental Review

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to comply with the following laws and regulations applicable to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C. §1857, et seq., and all regulations and guidelines issued thereunder;
2. Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., and all regulations and guidelines issued thereunder;
3. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50 as amended
4. HUD Environmental Review Procedures (24 C.F.R. Part 58);
5. New York State Environmental Quality Review Act, and all regulations and guidelines issued thereunder;
6. All other federal, state and local laws, regulations and ordinances applicable to the activities funded under this Agreement.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4001), Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of CDBG Municipal Agreement (07/2020)

financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

Municipality shall, and shall cause its subcontractors, Subrecipients and their subcontractors, if any, to, agree that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 C.F.R. §570.608, and 24 C.F.R. Part 35, Subpart B. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties that include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood level screening for children under six (6). The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

Municipality agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, (16 U.S.C. §470) and the procedures set forth in 36 C.F.R., Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Office for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

E. Survival

The provisions of this Section X shall survive expiration or earlier termination of this Agreement.

XI. FORCE MAJEURE

A. A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of Municipality or County in the performance of this Agreement where non-performance, by exercise of reasonable diligence, cannot be prevented.

B. The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and shall provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the parties shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives hereunder.

C. Neither County nor Municipality shall be liable to the other for any delay in or failure of performance under this Agreement due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of causes of such delay or failure shall extend the period for performance to such extent as determined by County and Municipality to be necessary to enable complete performance by County and Municipality if reasonable diligence is exercised after the cause of delay or failure has been removed.

E. Notwithstanding the above, at the discretion of County, where the delay or failure will significantly impair the value of this Agreement to County, County may terminate this Agreement or the portion thereof which is subject to delays in accordance with Section VI(G) of this Agreement.

XII. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by County, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or, if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division. The provisions of this Section XII shall survive expiration or earlier termination of this Agreement.

XIII. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York without giving effect to choice of law provisions. Municipality shall render all services under this Agreement in accordance with applicable provisions of all federal, New York State, County and Municipality laws, regulations and policies as are in effect at the time such services are rendered. The provisions of this Section XIII shall survive expiration or earlier termination of this Agreement.

XIV. SERVICE OF PROCESS

In addition to the methods of service allowed by the New York State Civil Practice Law & Rules, Municipality hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Municipality's actual receipt of process or upon County's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Municipality must promptly notify County, in writing, of each and every change of address to which service of process can be made. Service by County to the last known address shall be sufficient. Municipality will have thirty (30) calendar days after service hereunder is complete in which to respond. The provisions of this Section XIV shall survive expiration or earlier termination of this Agreement.

XV. CONFLICTING TERMS

In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof), New York State laws and regulations, and federal laws and regulations the strictest term or condition shall control, unless federal preemption requires otherwise. The provisions of this Section XV shall survive expiration or earlier termination of this Agreement.

XVI. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect. The provisions of this Section XVI shall survive expiration or earlier termination of this Agreement.

XVII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement. The provisions of this Section XVII shall survive expiration or earlier termination of this Agreement.

XVIII. EXHIBITS

A. As a condition of contract, Municipality shall provide and keep updated, in accordance with the terms of this Agreement, the information required for completion of the following Exhibits:

- Exhibit 1: OCD CDBG Request for Applications and Municipality's funding application as approved by OCD.
- Exhibit 2: Annual Beneficiary Report [Exhibit 2 is not used if not applicable]
- Exhibit 3: Project Implementation Schedule

Exhibit 4:	Municipal Voucher Submission Checklist
Exhibit 5:	Insurance Certificates and Bonds required by the Agreement
Exhibit 6:	Quarterly Project Progress Report
Exhibit 7:	Council/Board Resolution for Certification of Authority

B. The provisions of this Section XVIII shall survive expiration or earlier termination of this Agreement.

XIX. WAIVER

Either party's failure to act with respect to a breach by the other does not waive its right to act with respect to subsequent or similar breaches. The failure of either party to exercise or enforce any right or provision shall not constitute a waiver of such right or provision. The provisions of this Section XIX shall survive expiration or earlier termination of this Agreement.

XX. INCORPORATION BY REFERENCE

All County, New York State and federal laws, regulations, policies and other guidance noted in this Agreement are hereby incorporated by reference in full, all as may have been previously amended from their initial enactment until the date of this Agreement, and all as may be amended in the future. The provisions of this Section XX shall survive expiration or earlier termination of this Agreement.

XXI. BINDING EFFECT

This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

XXII. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between County and Municipality for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between County and Municipality with respect to this Agreement.

XXIII. AUTHORITY

Each party represents that the signatory has been duly authorized to bind the party by executing this Agreement. Proof of Municipality's authorization is in the attached **Exhibit 7**.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COUNTY

MUNICIPALITY

COUNTY OF ORANGE

VILLAGE OF WARWICK

By: _____

By: _____

Name: Stefan ("Steven") M. Neuhaus

Name: Michael Newhard

Title: County Executive

Title: Mayor

COUNTY ACKNOWLEDGMENT

STATE OF NEW YORK }
COUNTY OF } ss.:

On the day of in the year 20____, before me, the undersigned, personally appeared **Stefan (“Steven”) M. Neuhaus** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public

MUNICIPALITY ACKNOWLEDGMENT

STATE OF NEW YORK }
COUNTY OF } ss.:

On the day of in the year 20____, before me, the undersigned, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public

**ADDENDUM TO THE COUNTY OF ORANGE
COMMUNITY DEVELOPMENT BLOCK GRANT
PROGRAM MUNICIPAL AGREEMENT FOR FY 2020**

This Addendum dated the ___ day of ____, 2020, modifies a "County of Orange Community Development Block Grant Program Municipal Agreement for FY 2020" dated the ___ day of ____, 2020 (the "Agreement"), entered into by the County of Orange (the "County") and the **Village of Warwick (the Village)**, as follows:

WHEREAS, pursuant to the Agreement, the **Village** is to receive **\$50,000.00** in Community Development Block Grant ("CDBG") monies to perform work relating to a project entitled **Stanley Deming ADA Walkway Project** (the "Project"); and

WHEREAS, the Village has confirmed with the Village Engineer that the work comprising the Project does not constitute maintenance or repair work which would be an ineligible activity pursuant to applicable HUD regulations, including Title 24 of the Code of Federal Regulations; and

WHEREAS, the Village certifies that it is not seeking substitution of CDBG funds for recent support of public services by the Village using local or State funds; and

NOW THEREFORE, for good and valuable consideration, the existence and sufficiency of which is hereby acknowledged, the County and the Village agree as follows:

1. To the fullest extent permitted by law, the **Village** shall defend, indemnify and hold harmless the County, including its officials and employees, against all claims, losses, damages, liabilities, costs, fees, penalties, fines or expenses arising out of a finding and/or determination that any aspect of the Project funded (in whole or in part) by CDBG monies is not an eligible activity under Title 24 of the Code of Federal Regulations.
2. If a finding and/or determination is made that any aspect of the Project funded (in whole or in part) by CDBG monies is not an eligible activity under Title 24 of the Code of Federal Regulations, and the County is required to reimburse and/or expend funds as a result of such finding and/or determination, then the **Village** shall pay to the County an amount equal to the amount the County is required to reimburse and/or expend as a result of such finding and/or determination, plus reasonable attorneys' fees.
3. The **Village** shall make such payment to the County within sixty (60) days of receipt of written notice from the County that payment to the County pursuant to this Addendum is required.
4. Such payment shall be made to the County without deduction, defense, setoff or counterclaim.

5. The **Village's** obligations assumed pursuant to this Addendum shall survive the expiration or termination of this Agreement.

6. All other terms of the Agreement, except as specifically amended or modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first above written.

COUNTY OF ORANGE

VILLAGE OF WARWICK

By: _____
Stefan ("Steven") M. Neuhaus
County Executive

By: _____
Michael Newhard
Mayor



September 30, 2020

Mayor Michael Newhard
Village of Warwick
77 Main St
Warwick NY 10990

RE: WWWTP – UV Disinfection Project
 General Construction – Payment Application 2
 1334.007.002

Dear Mayor Newhard:

Enclosed please find Payment Application #2 for P.K. Songer in the amount of \$128,250.00. This payment application is for stored materials only for the UV disinfection equipment that was delivered to the project site in August 2020 as part of the WWTP UV Disinfection Improvements Project.

It is Barton & Loguidices' recommendation that this payment application be approved by the Village and processed for payment

Any questions please contact me at 518-218-1801.

Very Truly Yours

BARTON & LOGUIDICE, D.P.C.

Karen W Clark

Karen W. Clark, PE
Associate

APPLICATION AND CERTIFICATE FOR PAYMENT

PAGE ONE OF 2 PAGES

TO OWNER:
Village of Warwick
77 Main Street
Warwick, NY 10990
FROM CONTRACTOR:
PK Senger Plumbing
44 Walnut St
Montgomery, NY 12549

PROJECT:
Wastewater Treatment Plant UV Disinfection

VIA ARCHITECT:
Barton & Loguidice

APPLICATION # 2 Distribution to:
PERIOD TO: 4/1/2020-9/30/2020
PROJECT NOS: 1G
OWNER

CONTRACT DATE: 03/19/20

Const. Mgr
Architect
Contractor

CONTRACT FOR: UV Disinfection Improvements

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR:

By: *Rebecca Lynn Vance*

Date: 9/29/20

State of: New York
County of: Orange

Subscribed and sworn to before me this 29 day of Sept 2020

Notary Public:
My Commission expires: 5/27/2022

Rebecca Lynn Vance

NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN SULLIVAN COUNTY
MY COMMISSION EXPIRES MAY 27, 2022

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 128,250.00

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By:

[Signature]

Date: 9/29/2020

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

1. ORIGINAL CONTRACT SUM-----	\$	412,000.00
2. Net change by Change Orders-----	\$	
3. CONTRACT SUM TO DATE (Line 1 +/- 2)	\$	412,000.00
4. TOTAL COMPLETED & STORED TO DATE-\$ (Column G on Continuation Sheet)		163,500.00

5. RETAINAGE:	\$	1,425.00
a. 5.0% of Completed Work (Columns D+E on Continuation Sheet)		
b. 5.0% of Stored Material (Column F on Continuation Sheet)	\$	6,750.00

Total Retainage (Line 5a + 5b or Total in Column 1 of Continuation Sheet)-----	\$	8,175.00
6. TOTAL EARNED LESS RETAINAGE----- (Line 4 less Line 5 Total)	\$	155,325.00

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)-----	\$	27,075.00
8. CURRENT PAYMENT DUE-----	\$	128,250.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	256,675.00
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CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS		
NET CHANGES by Change Order		

CONTINUATION SHEET

ATTACHMENT TO PAY APPLICATION

PROJECT:

Wastewater Treatment Plant UV Disinfection

Page 2 of 2 Pages

APPLICATION NUMBER 2

APPLICATION DATE: 09/29/20

PERIOD TO

ARCHITECT'S PROJECT NO.

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G		H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period		Total Completed And Stored To Date (D + E + F)	% (G/C)		
1	Bonds and Insurance	20,000.00	20,000.00			20,000.00	100%		1,000.00
2	Mobilization	5,000.00	5,000.00			5,000.00	100%		250.00
3	Cleaning and filling treches with stone	35,000.00	3,500.00			3,500.00	10%	31,500.00	175.00
4	Installation of concrete walls and floors	70,000.00						70,000.00	
5	UV Lighting and Installation	170,000.00			135,000.00	135,000.00	79%	35,000.00	6,750.00
6	Concrete Pad for Control Unit	10,000.00						10,000.00	
7	Canopy Foundation	15,000.00						15,000.00	
8	Canopy Instation	30,000.00						30,000.00	
9	Hand rails and grating	25,000.00						25,000.00	
10	Clean up and punch list	5,000.00						5,000.00	
11	Demob	2,000.00						2,000.00	
12	Close out paper work	5,000.00						5,000.00	
13	Contingency	20,000.00						20,000.00	
SUBTOTALS PAGE 2		412,000.00	28,500.00		135,000.00	163,500.00	40%	248,500.00	8,175.00

SECTION 01 29 00

SUPPLEMENT
LIEN WAIVER AND RELEASE

WHEREAS PK Songer Plumbing, hereafter called the "Undersigned," having entered into a written contract or purchase order with the Village of Warwick, hereafter call the "Owner", for the supplying of materials and/or the furnishing of labor and materials, or the furnishing of labor only for the project known as the Warwick UV Design,

WHEREAS, Undersigned has requisitioned a PARTIAL/FINAL payment from the Owner pursuant to such contract or purchase order.

NOW, THEREFORE, for good and valuable consideration including the PARTIAL/FINAL payment of \$128,250- provided for herein, Undersigned agrees as follows:

- 1) Upon receiving payment from the Owner, the payment to which this instrument refers, Undersigned agrees not in any way to claim or file a mechanic's lien or other lien against said project, premises or any part thereof, or on the monies or other consideration due to become due for the Owner for any of the materials heretofore furnished or work or labor performed or furnished by the Undersigned. Further, the Undersigned hereby formally and irrevocably releases and waives in writing every and any lien, charges or claim of any nature whatsoever that it has, or as to which it may at any time have been entitled, up to and including the date hereof in connection with the said project, except for any unpaid retained monies unless the payment herein is payment of retainage, which lien waiver shall be for the benefit of the Owner of the Project.
- 2) The Undersigned further says that all monies due for this work which includes all labor, material, fuel, transportation and equipment, fringe benefits, pension funds, apprentice training programs, employee vacations, welfare funds, and similar funds and payments as well as all applicable sales and used taxes, royalties, commissions, permits, bonds, guarantees, insurances, licenses, or patent fees have been paid in full except as noted below. (If none write "NONE").

None

And that there are no persons in a position to have or file a lien against the above mentioned work and/or the premises on which the same is located on account of any labor or materials furnished to Undersigned or any of the Undersigned's subcontractors or suppliers.

- 3) Undersigned agrees that the lien waiver appearing in Paragraph "1" hereof shall be deemed to be in compliance with the Lien Law of the State of New York.

This Agreement shall run to the benefit of the Owner, its successors and assigns; signed and dated this 29 day of September, 2020

AMOUNT OF THIS
PARTIAL/FINAL PAYMENT:

\$ 128,250.⁰⁰

Deborah Alamo
Office/Authorized Signature

Deborah Alamo-Office Manager
Printed Name and Title

Sworn to before me this 29 day of Sept, 2020

Rebecca Lynn Vance
Notary Public

REBECCA LYNN VANCE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01VA6304263
QUALIFIED IN SULLIVAN COUNTY
MY COMMISSION EXPIRES MAY 27, 2022

77 Main Street
Post Office Box 369
Warwick, NY 10990
www.villageofwarwick.org



(845) 986-2031
FAX (845) 986-6884
mayor@villageofwarwick.org
clerk@villageofwarwick.org

VILLAGE OF WARWICK
INCORPORATED 1867

Budget Modification Request


For Board of Trustees Approval - Meeting on 10/5/2020

For approval to transfer available appropriations for the following Fiscal Year 2020-2021 budget account lines:

GENERAL FUND

FROM Account Code	Account Description	Budget Approp. Balance	Transfer Request	Reason	TO Account Code	Account Description	Budget Approp. Balance	Transfer Amount
A.5110.4930	Streets Road Paving	45,000.00	9,300.00	To cover Pond Hill paving under CHIPS per M.Moser	A.5112.4950	CHIPS Permanent Improvements	113,861.00	9,300.00
TOTAL			9,300.00		TOTAL			9,300.00

Respectfully submitted,


Cathy M. Richards
Village Treasurer

Report Date: 9/29/2020

New York State Archives - <http://www.archives.nysed.gov/>

Local Government Schedule: LGS-1

This ***Retention and Disposition Schedule for New York Local Government Records (LGS-1)*** is a single, comprehensive retention schedule covering records of all types of local governments. It consolidates and revises the *CO-2, ED-1, MI-1, and MU-1 Schedules*.

Effective Date:

This schedule is in effect as of August 1, 2020. Local governments must adopt LGS-1 prior to utilizing it, even if they adopted and have been using the *CO-2, MU-1, MI-1, or ED-1 Schedules*. Governing boards of local governments will have a five-month period – between August 1st, 2020 and January 1st, 2021 (when the four existing schedules expire) – to adopt the LGS-1 by resolution (a model resolution is available).

Intended Users:

All New York State local governments including cities, towns, villages, fire districts, counties, school districts, Boards of Cooperative Educational Services (BOCES), teacher resource and computer training centers, county vocational education and extension boards, and miscellaneous local governments.

Model Resolution:

Before any records listed on the *Retention and Disposition Schedule for New York Local Government Records* may be disposed of and even if the local government previously adopted *Schedules CO-2, MU-1, MI-1, and ED-1*, the governing body must formally adopt the Schedule by passing a resolution. It is not necessary to send a copy of the passed resolution to the State Archives. **The Schedule must be adopted no later than January 1, 2021. Upon adoption, this Schedule supersedes Schedules CO-2, MU-1, MI-1, and ED-1.**

This model resolution is provided for your convenience.

Issued by:

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
New York State Archives
2020

Date of Issuance: October 5, 2020

Effective Date: October 6, 2020

Owner: Village of Warwick

Owner's Contract No.:

Contractor: O'Connell Electric

Contractor's Project No.: 1E

Engineer: Barton & Loguidice D.P.C

Engineer's Project No.: 1334.007.002

Project: UV Disinfection

Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description:

Time Extension due to General Construction Delays

Attachments: None

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES [note changes in Milestones if applicable]
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: <u>September 30, 2020</u> Ready for Final Payment: <u>October 31, 2020</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: Substantial Completion: _____ Ready for Final Payment: <u>November 30, 2020</u> days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	Increase of this Change Order: Substantial Completion: <u>October 31, 2020</u> Ready for Final Payment: <u>November 30, 2020</u> days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: <u>October 31, 2020</u> Ready for Final Payment: <u>November 30, 2020</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>Karen W. Clark</u>	By: _____	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: <u>Associate</u>	Title: _____	Title: _____
Date: <u>Oct 5, 2020</u>	Date: _____	Date: _____

Approved by Funding Agency (if applicable)

By: _____
Title: _____

Date: _____