



# MUNICIPAL PARKS AND RECREATION SUBAWARD AGREEMENT: TOWN OF NEW PALTZ

## AMERICAN RESCUE PLAN ACT (“ARPA”) OF 2021 CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUND (THE “SLFRF”)

**THIS AGREEMENT** is entered into by and between the **COUNTY OF ULSTER**, a municipal corporation and a county of the State of New York with principal offices at 244 Fair Street, Kingston, New York 12401 (the “**County**”), and **TOWN OF NEW PALTZ** a municipal corporation with principal offices at 52 Clearwater Road, New Paltz New York 12561 (the “**Subrecipient**”), (each, a “**Party**,” together, the “**Parties**”).

### RECITALS

**WHEREAS**, the American Rescue Plan Act (the “ARPA”) of 2021 was signed into law on March 11, 2021 and established the Coronavirus State and Local Fiscal Recovery Fund (the “SLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of COVID-19 in their communities; and

**WHEREAS**, the County, as a SLFRF recipient, is authorized to issue subawards for the purpose of carrying out a portion of the administration of the SLFRF; and

**WHEREAS**, the County, as a SLFRF recipient, desires to utilize a portion of these funds, to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including by awarding funds to the Subrecipient for the purpose of the construction of a separated shared use path along Henry W. DuBois Drive for the general public; and

**WHEREAS**, the County, desires to issue a subaward to the Subrecipient to aid in developing neighborhood features that promote improved health and safety outcomes in public spaces; and

**WHEREAS**, the County has agreed to engage the Subrecipient, and the Subrecipient has agreed to contract with the County, to administer a subaward of the SLFRF for the purpose of construction of a separated shared use path along Henry W. DuBois Drive, in accordance with the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the promises and covenants set forth below, the Parties hereby agree as follows:

### ARTICLE 1 – WORK PLAN

The Subrecipient agrees to utilize the funds provided through this Agreement to meet the needs identified in Schedule A, the Work Plan (the “Work”), which is attached hereto and is hereby made a part of this Agreement. The Subrecipient agrees to perform the Work in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Subrecipient that the County will not compensate the Subrecipient for any work not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment, or Addendum to this Agreement, which is executed by the Ulster County Executive (the “Executive”) or the Ulster County Director of Purchasing (the “Purchasing Director”),

after consultation with the head of the County Department responsible for the oversight of this Agreement (the “Department Head”), and upon review by the County Attorney’s Office.

## **ARTICLE 2 - TERM OF AGREEMENT**

The Term of this Agreement shall begin as of February 27, 2023 and shall end on August 1, 2025.

## **ARTICLE 3 - COMPENSATION**

A **not-to-exceed** amount of **ONE HUNDRED THOUSAND and 00/100 (\$100,000.00) DOLLARS.** has been established for the Work to be undertaken by the Subrecipient. Costs in excess of the above amount may not be incurred without the prior written authorization of the Executive or the Purchasing Director, after consultation with the Department Head, and evidenced only by a written Change Order, Amendment, or Addendum to this Agreement. It is specifically agreed to by the Subrecipient that the County will not be responsible for any additional costs, or costs in excess of the above cost, if authorization by the Executive or the Purchasing Director is not given in writing prior to the performance of any work giving rise to such excess or additional costs. The County shall be invoiced and make payments as described in Schedule B, “Fees, Expenses, and Submissions for Payment.”

The Subrecipient agrees to provide, at minimum, a contribution to the Work that is equal to the value of the County’s disbursed Subaward at the time of the County’s acceptance of the Work Completion Certificate(s). The Subrecipient may utilize the value of In-Kind Services to provide a maximum of Twenty-Five Percent (25%) of its contribution. The Subrecipient shall utilize the current NYS prevailing wage rates to document the value of labor In-Kind Services. The Subrecipient shall utilize the current Federal Emergency Management Agency (FEMA) rates to document the value of equipment In-Kind Services. The 2023 FEMA rates are available at: <https://www.fema.gov/assistance/public/tools-resources/schedule-equipment-rates>. Any labor or equipment class that is not identified within these rate schedules shall be brought to the attention of the County and the parties shall mutually work to determine and document an appropriate rate. All remaining, required, subrecipient contribution shall be monetary funds for the Work.

In the event that the Subrecipient receives payments, from any source whatsoever, in consideration for the same Work under this Agreement, the monetary obligation of the County hereunder will be reduced by an equivalent amount, provided, however, that nothing contained herein will require such reimbursement where additional similar work provided and no duplicative payments are received.

## **ARTICLE 4 - EXECUTORY CLAUSE**

The County will have no liability under this Agreement to the Subrecipient or to anyone else beyond funds appropriated and available for this Agreement. The County may terminate this Agreement if funds are not appropriated, available, or are reduced for this Agreement.

The Subrecipient understands and agrees that the dollar amounts identified in this Agreement are based upon funding allocations from the State of New York and/or the Federal Government, which are the basis for any payments made by the County hereunder. In the event that the anticipated amount of funding changes, or is reduced or denied, in part or in full, the County, where appropriate, will not be liable to the Subrecipient for the difference. If the full state and/or federal funding to the County for any payment to be made or which has been made under this Agreement, by the County to the Subrecipient, is reduced for any reason whatsoever, then the County may (i) deduct and withhold from any future payment(s) an amount equal to the reduction in funding, or (ii) otherwise recover from the Subrecipient the amount of the reduction. It is understood that based upon changes in the state and/or federal funding process, the actual amounts in this Agreement may change throughout the Term. The amounts in this Agreement will be amended to reflect the actual amounts to be paid upon notification to the County by the state and/or Federal Government, as necessary.

## **ARTICLE 5 – DEFINITIONS**

The capitalized terms below, to the extent used in this Agreement and unless otherwise defined herein, have the meanings as follows:

“Agreement” means this Subaward Agreement, as it may be amended and supplemented in accordance with the terms hereof.

“Authorized Person” means the person so authorized to act on behalf of the Subrecipient in connection with the submittal of Subaward Disbursement Request Form in Exhibit B and the Work Completion Certificate in Exhibit C.

“Estimated Work Costs” means the estimated Work Costs (as defined below) that are as set forth in EXHIBIT A.

“In-Kind Services” means services and/or labor performed by capable and qualified employees of the Subrecipient and/or its equipment, that is directly related to, and in support of, the Work set forth in SCHEDULE A and is acceptable to the County.

“Material Adverse Effect” means (a) a material adverse change in, or material adverse effect in the condition (financial or otherwise) of Subrecipient, (b) a material impairment of the ability of Subrecipient to perform its obligations under this Agreement, or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against Subrecipient of this Agreement.

“Resolution” means the ordinances, resolutions or other appropriate documentation of the Subrecipient authorizing the undertaking of the Work, the execution and delivery of this Agreement, and the receipt of the Subaward.

“Subaward” means the financial assistance provided by the County to the Subrecipient under this Agreement and as further defined under the federal Uniform Guidance (2 CFR Part 200, section 200.1 “Definitions”).

“Subaward Disbursement Request Form” means a document, in substantially the form of EXHIBIT B, executed by an Authorized Person and submitted to the County in order to obtain a Subaward payment.

“Subrecipient” has the same meaning as defined under the federal Uniform Guidance (2 CFR Part 200, section 200.1 “Definitions”).

“Third-Party Funding” means any grant, loan or other non-Subaward proceeds which are intended to be used to pay any costs of the Work.

“Work Completion Certificates” means the certificates in the form attached hereto as EXHIBIT C and EXHIBIT D (or as may be updated by the County from time to time).

“Work Costs” means the incurred project costs of the Subrecipient which are eligible for Subaward from the County, which are reasonable, necessary and allocable by the Subrecipient to the Work under generally accepted governmental accounting standards.

## **ARTICLE 6 - CONFLICT OF INTEREST**

The Subrecipient represents and warrants that neither it, nor any of its directors, officers, members, partners, or employees, have any interest, nor will they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the Work to be performed pursuant to this Agreement. The Subrecipient further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest will be employed by it, and that no elected official or other officer or employee of the County, nor any person whose salary is payable, in whole or in part, by the County, or any corporation, partnership, or association in which such official, officer, or employee is directly or indirectly interested, will have any such interest, direct or indirect, in this Agreement, or in the proceeds thereof, unless such person (i) is required by the Ulster County Ethics and Disclosure Law, as amended from time to time, to submit a disclosure form to the County’s Board of Ethics, and amends such disclosure form to include their interest in this Agreement, or (ii) if not required to complete and submit such a disclosure form, either voluntarily completes and submits said disclosure form, disclosing their interest in this Agreement, or seeks a formal opinion from the County’s Board of Ethics, as to whether or not a conflict of interest exists. The law and disclosure form may be accessed electronically at <https://ulstercountyny.gov/board-of-ethics>. Alternatively, a hard copy of the law will be provided upon the Subrecipient’s request.

For a breach or violation of such representations or warranties, the County will have the right to annul this Agreement without liability, entitling the County to recover all monies paid hereunder, and the Subrecipient shall not make claim for, nor be entitled

to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the County for such breach or violation, nor will it constitute a waiver of 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.

## **ARTICLE 7 – REPRESENTATION AND WARRANTIES OF SUBRECIPIENT**

As of the Effective Date, the Subrecipient provides the representations and warranties set forth below. The Subrecipient shall notify the County of any material changes in the status of these representations and/or warranties during the Term of this Agreement. In addition, the Subrecipient acknowledges that it shall be required to provide such representations and warranties again at the time of submission of each request for disbursement.

### Section 7.01 Legal Authority/Capacity/Binding Obligation.

The Subrecipient is an entity duly organized and existing under the laws of New York State and has full legal right, power and authority to conduct its business and own its properties, and enter into this Agreement and comply with its terms. The Resolution has been duly adopted by the Subrecipient and remains in full force and effect; and any and all consents, authorizations and approvals of any third party required with respect thereto have been obtained. The Subrecipient certifies that it has the legal, institutional, managerial, contractual and financial capability to ensure adequate completion of the Work.

### Section 7.02 No Action.

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or known to be threatened against the Subrecipient, nor is there any basis therefor (i) affecting the creation, organization or existence of the Subrecipient or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution of this Agreement or (iii) in any way contesting or affecting the validity or enforceability of this Agreement or the Resolution, or the execution of this Agreement, or any agreement or instrument relating thereto, (iv) affecting the ability of the Subrecipient to fulfill the terms and conditions of this Agreement, (v) that would impair or delay the Work, or (vi) that would have a Material Adverse Effect.

### Section 7.03 No Default.

The Subrecipient is not in default under (i) any loan agreement, note, bond, mortgage, or other instrument evidencing or securing indebtedness; (ii) any agreement that would impair or delay the Work; or (iii) any agreement that would have a Material Adverse Effect. The Subrecipient is not, in any respect material to the transactions contemplated by this Agreement, in breach of or in default under any applicable law or federal or State regulation or any applicable judgment or decree or any other agreement or instrument to which the Subrecipient is a party or by which it or any of its properties are bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default. The execution and delivery of this Agreement and the adoption of the Resolution and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any applicable law or federal or State regulation or any applicable judgment or decree or any agreement or other instrument to which the Subrecipient is a party or by which it or any of its property is bound.

### Section 7.04 Work Approvals.

The Subrecipient shall obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Work and shall be in compliance with all federal, State and local laws, ordinances and regulations applicable thereto.

### Section 7.05 Funds Available.

Subrecipient has funds available or will have funds available upon the completion of the Work sufficient to pay all Work Costs.

### Section 7.06 Description of the Work.

The description of the Work as set forth in SCHEDULE A is an accurate description of the scope of activities to be funded in part pursuant to the terms of this Agreement.

Section 7.07 Estimate of Costs & Funding Breakdown.

The Estimated Work Costs as shown in EXHIBIT A represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Work.

Section 7.08 Intentionally Left Blank.

Section 7.09 Intentionally Left Blank.

Section 7.10 Third-Party Funding.

The Subrecipient is eligible to receive the full amount of the Third-Party Funding specified in EXHIBIT A, if any, and knows of no existing fact, condition or circumstance that might act to vitiate such eligibility.

Section 7.11 Procurement, Suspension and Debarment.

The Subrecipient has not been deemed ineligible to submit a bid or be awarded a public contract or subcontract pursuant to any applicable law or regulation, including but not limited to, Labor Law § 220-b, Executive Law § 316, 2 CFR Part 180, or 2 CFR Part 1532. Further, neither the Subrecipient nor any of its contractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under any applicable law or regulation, including but not limited to Labor Law § 220-b, Executive Law § 316, 2 CFR Part 180, or 2 CFR Part 1532.

Section 7.12 No Material Adverse Change.

Since the date of Subrecipient's application for Subaward, there has been no change in condition (financial or otherwise) of Subrecipient which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

Section 7.13 Full Disclosure.

The statements, documents, and information furnished to the County in connection with the application for this Subaward and the commitment by the County to provide the Subaward are accurate, not misleading, and do not contain any untrue statements of a material fact or omit a material fact necessary to make the statements, documents, and information not misleading. Subrecipient acknowledges and agrees that the County is executing this Subaward in reliance on such statements, documents, and information furnished to the County being accurate and not misleading.

Section 7.14 Solvency.

The Subrecipient is solvent, able to pay its debts as they become due, and has sufficient capital to carry on its operations and complete the Work.

## **ARTICLE 8 – COVENANTS**

Section 8.01 Compliance with Laws and this Subaward.

(a) *Work Compliance.* The Subrecipient agrees to ensure that the Work will effectively protect water quality, employ good management practices and fulfill all federal and State requirements, and all requirements of this Subaward. Upon request by the County, the Subrecipient shall promptly provide the County, with evidence of its, and its authorized representatives, contractors, subcontractors and consultants paid with funds provided pursuant to this Subaward, compliance with all applicable federal, State and local laws, statutes, regulations, ordinances, and rules, applicable to it and them.

(b) *Enforcement.* Regardless of acceptance by the County of a certification by the Subrecipient that a Work requirement has been met, the Subrecipient shall permit the County to take any actions necessary to confirm the accuracy of such certification. The making of Subaward payments by the County does not constitute an acknowledgment or agreement by the County that the Subrecipient is in compliance with the terms and conditions of this Agreement.

(c) *Special Work Conditions.* The Subrecipient shall comply with any and all special Work conditions set forth in Article 9.

(d) *Work Approvals.* The Subrecipient shall obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Work and comply with all federal, State and local laws, ordinances and regulations applicable to the Work.

(e) *Environmental Review.* The Subrecipient certifies that it shall continue to notify the County of all actions proposed for complying with the environmental review requirements imposed by SEQRA. The Subrecipient agrees to provide copies of all environmental documents as may be required by the County.

(f) *Maintenance of Legal Status.* Subrecipient shall notify the County of the Subrecipient's intent to change its form of legal existence or dissolve at least 120 days before such change or dissolution. Subrecipient shall preserve and keep in force and effect all licenses, permits, and approvals related to the Work.

(g) *Liens.* Subrecipient shall not create, incur or permit to exist any mortgage, lien, security interest, pledge, charge, mechanics' or supplier's lien, or encumbrance of any kind on any Work property.

(h) *No Consequential Damages.* To the fullest extent permitted by applicable law, the Subrecipient shall not assert, and hereby waives, any claim against the County, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Subaward, any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, or the use of the proceeds hereof or thereof. The County shall not be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Subaward or the transactions contemplated hereby.

(i) *No Advisory or Fiduciary Responsibility.* Subrecipient acknowledges and agrees that in connection with all aspects of each transaction contemplated hereby: (i) no fiduciary, advisory, or agency relationship between the Subrecipient and the County is intended to be or has been created, (ii) Subrecipient has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate, and (iii) the County has not been, is not, and will not be acting as an advisor, agent or fiduciary for Subrecipient. To the fullest extent permitted by law, Subrecipient hereby waives and releases any claims that it may have against the County with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

#### Section 8.02 Work Implementation.

(a) *Design and Construction.* The Subrecipient shall cause the Work to be designed and constructed in accordance with plans and specifications delivered to, and accepted by, the County and consistent with SCHEDULE A. The Subrecipient shall proceed with the acquisition and expeditious construction of the Work in conformity with law, with this Agreement, and with all applicable requirements of governmental authorities having jurisdiction with respect thereto.

(b) *Performance Standards.* The Subrecipient agrees to take any corrective action necessary to bring the Work into compliance with the Work performance standards contained in any approved plans and specifications for this Work.

#### Section 8.03 Performance.

(a) *Contracts and Security Bonds.* The County has the right, but no obligation, to review all contracts for services and construction funded pursuant to this Agreement in order to determine eligibility for funding hereunder and to determine compliance with all relevant plans and terms of this Agreement. Subrecipient agrees to provide the County with all executed prime contracts funded pursuant to this Agreement. Whenever a security bond is posted by a successful bidder for the faithful performance of a contract funded pursuant hereto, the name and address of the bonding company or person issuing the security bond, the number of such bond, and such other information as may be required by the County shall be transmitted to the County for review prior to award of such contract. The original of such bond shall remain in the office of the Subrecipient.

(b) *Inspection.* The Subrecipient shall provide competent and adequate inspection of all Work designed by a professional engineer or architect licensed in the State, and to notify the County in advance of the date of such inspection in order to provide the County with the opportunity to participate in the walkthrough and inspection. The Subrecipient shall direct

such engineer or architect to inspect work items necessary for the construction of the Work and to determine whether the construction of the Work conforms to the approved plans and specifications. At the completion of construction, the engineer or architect shall be required to certify to the Subrecipient and the County that the construction of the Work is in accordance with the approved plans and specifications or approved amendments thereto in the form provided in EXHIBIT D. The Subrecipient shall cause any work not completed in accordance with approved plans and specifications to be remedied, unless such noncompliance is waived in writing by the County.

(c) *Change Orders.* The Subrecipient agrees to submit all change orders to the County within thirty (30) days following the date they are accepted by Subrecipient. The Subrecipient agrees that change orders which will materially alter the Work will not be accepted without prior written approval by the County.

(d) *Required Approvals and Permits.* Upon completion of the Work, the Subrecipient shall obtain from appropriate authorities all permits and authorizations, if any, required for operation and use of the Work as contemplated by this Agreement.

(e) *Operation and Maintenance.* The Subrecipient shall ensure proper and efficient operation and maintenance of the Work. After completion of the Work, the Subrecipient shall at all times operate the Work, or otherwise cause the Work to be operated, properly and in a sound and economical manner and shall maintain, preserve and keep the Work, or cause the Work to be maintained, preserved and kept, in good repair, working order and condition and shall make, or cause to be made, all necessary and proper repairs, replacements and renewals from time to time, so that at all times, the Work is operated properly in a manner consistent with standards contained in any licensed plans and specifications or facilities plan for the Work.

(f) *Title.* The Subrecipient shall obtain and maintain such title, estate or interest in the Work site, including easements and rights-of-way, as may be necessary to ensure undisturbed use and possession for the purposes of constructing, operating and maintaining the Work during the Term of this Agreement.

#### Section 8.04 Accounting and Records.

(a) *Establishment of Work Accounts.* The Subrecipient shall maintain Work accounts in accordance with generally accepted government accounting standards and any instructions issued by the County.

(b) *Access to Records.* The Subrecipient shall: (i) permit the County, or their authorized representative to review or audit all records relative to the Work; (ii) produce or cause to be produced all records relating to any work performed under the terms of this Agreement for examination at such times as may be designated by the County or its authorized representative; (iii) permit extracts and copies of Work records to be made by the County or its authorized representative; and (iv) promptly fulfill information requests by the County or its authorized representative.

(c) *Access to Work.* The Subrecipient shall permit the County or its agents, consultants or representatives to have access to the Work and its components at all reasonable times. All contracts of the Subrecipient related to any portion of the Work must contain provisions that permit such access to the Work and require the contractor to provide proper facilities for such access and inspection and shall permit extracts and copies of Work records to be made by the foregoing agents, consultants and representatives.

(d) *Record Retention.* The Subrecipient shall retain all files and records relating to the Work for at least six (6) years after the Term of this Agreement. The Subrecipient shall make available to agents, consultants and representatives of the County any files or records necessary to determine compliance with applicable laws.

#### Section 8.05 Application of Subaward Proceeds.

The Subrecipient shall apply the proceeds of the Subaward solely for Work Costs in accordance with this Agreement and shall reimburse the County in the event that it fails to apply such proceeds.

#### Section 8.06 Payment of Additional Work Costs.

The Subrecipient shall complete the Work and pay such portion of the Work Costs in excess of the Subaward, and the Subrecipient shall not be entitled to any reimbursement or funding therefore from the County.

Section 8.07 Further Assurances.

The Subrecipient, at the request of the County, shall execute and deliver such documents and do such acts and things as necessary or desirable, in the sole discretion of the County, for better assuring, assigning, and confirming the rights, representations and agreements granted in this Agreement. The Subrecipient shall also furnish the County with such additional information concerning the planning of the Work as the County may request from time to time.

Section 8.08 Intermunicipal and Other Agreements.

Except as disclosed to the County in writing in connection with the Subrecipient's application for the Subaward, the Subrecipient has not entered into any intermunicipal agreements or any other contract in connection with the Work and does not intend to enter into any other intermunicipal agreements in connection with the Work. If Subrecipient has entered into one or more intermunicipal agreements or other contracts relating to the Work, Subrecipient shall not renew, extend or amend such intermunicipal agreement or other contract, and shall not enter into any new contract relating to the Work, without notifying the County in writing and receiving written consent from the County.

Section 8.09 Third-Party Funding.

(a) The Subrecipient shall take, in a timely fashion, all actions required or necessary to enable it to obtain the full anticipated proceeds of any Third-Party Funding.

(b) The Subrecipient shall comply with all stated conditions to any Third-Party Funding commitment, as the same may be amended and supplemented, and all applicable present and future eligibility requirements of such Third-Party Funding commitment.

(c) The Subrecipient shall promptly, and in any event within five (5) days after having notice or knowledge thereof, inform the County in writing of any anticipated failure on its part to (i) meet all eligibility requirements of any Third-Party Funding, (ii) be qualified to receive any Third-Party Funding proceeds in an amount at least equal to such Third-Party Funding commitment, or (iii) receive the proceeds of such Third-Party Funding.

Section 8.10 Work Requirements.

(a) *Timely Completion.* The Subrecipient shall complete the Work within the Term of this Agreement unless the Subrecipient requests an extension in writing and the County approves in writing such extension. Failure of Subrecipient to complete the Work within the time prescribed herein may result in Subrecipient's forfeiture of any undisbursed Subaward.

(b) *Work Completion Certificates.* Within thirty (30) days of completion of the Work, the Subrecipient shall file certificates, in the form provided in EXHIBIT C, or as may be updated by the County from time to time, certifying the final Work Costs and that the Work has been completed in accordance with this Agreement. Within thirty (30) days of completion of the Work, the Subrecipient shall also file the certificate in the form provided in EXHIBIT D, if a licensed engineer or architect designs any portion of the Work.

Section 8.11 Recoupment of Subaward Proceeds.

The County at any time may seek to recoup Subaward proceeds from the Subrecipient if the County determines that the Subrecipient was overpaid Subaward proceeds. The Subrecipient's Subaward was determined based on the Subrecipient's Estimated Work Costs as set forth in EXHIBIT A. If, at the time of Work completion, the actual Work Costs are less than the Estimated Work Costs or the Subrecipient has received additional Third-Party Funding not disclosed in EXHIBIT A, the amount of the Subaward available to the Subrecipient pursuant to this Agreement shall be adjusted downward as determined by the County.

## **ARTICLE 9 – SPECIAL WORK CONDITIONS**

Section 9.01 SEQRA Approvals

The County and Subrecipient acknowledge that the Subrecipient has not, as of the date hereof,



provided documentation that verifies a determination by the appropriate lead agency that the requirements of the New York State Environmental Quality Review Act (“SEQRA”) have been satisfied for the Work.

Notwithstanding anything herein to the contrary, proceeds will not be disbursed to the Subrecipient for costs of construction of the Work, other than planning and design, unless and until a SEQRA determination is provided and the County has had a chance to verify the adequacy of the determination.

#### Section 9.02 Plans and Specifications

The County and the Subrecipient acknowledge that the Subrecipient has not, as of the date hereof, received County approval or acceptance of certain plans and specifications, relating to certain element(s) of the Work.

Notwithstanding anything herein to the contrary, proceeds will not be disbursed to the Subrecipient for costs of construction of the Work, other than planning and design, unless and until the plans and specifications have been approved or accepted by the County and the Subrecipient has submitted to the County all items requested in such approval and complied with any other conditions of such approval. The Subrecipient shall certify, in each requisition submitted, that the disbursement requested does not include any costs of construction (other than costs of planning and design) associated with plans and specifications which have not been approved and accepted by the County.

### **ARTICLE 10 – CORPORATE COMPLIANCE**

The Subrecipient agrees to comply with all federal, state, and local laws, rules, and regulations governing the provision of goods and/or Work under this Agreement. In particular, the Subrecipient agrees to comply with the laws, rules and regulations of Ulster County, as well as with its Compliance Plan (the “Plan”). The Plan can be viewed at <https://ulstercountyny.gov/ulster-county-compliance-plan>. Alternatively, a hard copy of the Plan will be provided upon the Subrecipient’s request. The Plan relates to the County’s compliance with relevant federal and state fraud and abuse laws. The Subrecipient represents and warrants that it has read and understands the Plan and agrees to abide by its terms when performing the Work under this Agreement. The County may terminate this Agreement, in whole or in part, at any time for the Subrecipient’s failure to comply with the County’s Compliance Plan. The Subrecipient shall ensure that each individual who perform such Work under this Agreement is provided with a copy of the Plan or given access to the Plan. The County strongly encourages all healthcare providers contracting with the County to implement their own compliance programs that address each of the elements of compliance recommended by the Office of the Inspector General, as well as the elements as recommended and/or mandated by the New York State Office of the Medicaid Inspector General.

The County will conduct appropriate screening of providers, independent contractors, vendors, and agents to ensure and verify that they have not been sanctioned and/or excluded by any federal or state law enforcement, regulatory, or licensing authority. The County will also verify that entities and businesses that provide and/or perform the Work have not been the subject of adverse governmental actions and/or excluded from the federal healthcare programs.

The Subrecipient understands that the County has established and implemented a Corporate Compliance Program and has developed “Standards of Conduct for Ulster County Vendors and Contractors” (the “Standards”). The Standards can be accessed electronically at any time by going to <https://ulstercountyny.gov/ulster-county-compliance-plan>. Alternatively, a hard copy of the Plan will be provided upon the Subrecipient’s request. The Subrecipient represents that it has read, understands and agrees to comply with the Standards with respect to its performance pursuant to this Agreement. The hotline for reporting violations of the Standards is (877) 569-8777.

### **ARTICLE 11 - INDEPENDENT CONTRACTOR**

In performing the Work and incurring expenses under this Agreement, the Subrecipient shall operate as and have the status of an independent contractor and shall not act as agent for or on behalf of the County, nor will the Subrecipient represent the County, or bind the County in any manner. As an independent contractor, the Subrecipient shall be solely responsible for determining the means and methods of performing the Work and shall have complete charge and responsibility for the Subrecipient’s personnel engaged in the performance of the same.

In accordance with such status as independent contractor, the Subrecipient covenants and agrees that neither it, nor its employees or agents, will proclaim themselves to be officers or employees of the County, or of any department, agency, or

unit thereof, by reason hereof, and that the Subrecipient's employees or agents will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the County including, but not limited to, Workers' Compensation coverage, health insurance coverage, Unemployment Insurance benefits, Social Security benefits, or employee retirement membership or credit.

Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership, or joint venture, or any other fiduciary relationship.

## **ARTICLE 12 - ASSIGNMENT**

The Subrecipient shall not assign any of its rights, interests, or obligations under this Agreement, or assign any of the Work to be performed by it under this Agreement, without the prior express written consent of the Executive or the Purchasing Director, upon review by the Ulster County Attorney's Office. Any such assignment, transfer, conveyance, or other disposition without such prior consent will be void, and any Work provided thereunder will not be compensated. Any assignment properly consented to by the Executive or the Purchasing Director will be subject to all of the terms and conditions of this Agreement.

Failure of the Subrecipient to obtain any required consent to any assignment will be grounds for termination for cause at the option of the County, and if this Agreement be so terminated, the County will thereupon be relieved and discharged from any further liability and obligation to the Subrecipient, its assignees, or transferees; and all monies that may become due under this Agreement shall be forfeited to the County, except so much thereof as may be necessary to pay the Subrecipient's employees for past Work.

The provisions of this clause shall not hinder, prevent, or affect any assignment by the Subrecipient for the benefit of its creditors made pursuant to Article 2 of Chapter 12 of the New York Debtor and Creditor Law, except where the Federal Supremacy Clause requires otherwise.

This Agreement may be assigned by the County to any corporation, agency, municipality, or instrumentality having authority to accept such assignment.

## **ARTICLE 13 – SUBCONTRACTING**

The Subrecipient agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the County and the Subrecipient, including, but not limited to, the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement will impair the rights of the County; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the County and the Subrecipient, will create any contractual relation in law or equity, between the subcontractor and the County; and
- D. That the subcontractor specifically agrees to be bound by the confidentiality provision as set forth in Article 15 of this Agreement between the County and the Subrecipient.
- E. That any subcontracting agreement that utilizes the County's SLFRF will include the, "Required contract provisions for non-federal entity contracts under federal awards", as included in Schedule D of this contract, as well as the requirement of 2 CFR Part 200, section 200.321, entitled, "contracting with small and minority businesses, women's business enterprises, and labor surplus area firms".

Upon signing this Agreement, the Subrecipient shall provide the Department Head with the names and scope of work of any and all subcontractors to be used in the performance of the Subrecipient's obligations pursuant to this Agreement. Furthermore, upon the County's request, the Subrecipient shall provide copies of any and all subcontract agreements for Services to be performed pursuant to this Agreement.

The Subrecipient agrees that it is fully responsible to the County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them to the same extent as it is for the acts and omissions of persons employed by the Subrecipient. The Subrecipient will not in any way be relieved of any responsibility under this Agreement by any subcontract.

## **ARTICLE 14 – MWBE**

Pursuant to the Federal Uniform Guidance (2 CFR Part 200, section 200.321), the Subrecipient must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (i) placing qualified small and minority businesses and women’s business enterprises on solicitation lists; (ii) assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises; (iv) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; (v) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (vi) requiring the same affirmative steps as described above of all subcontracts under the Work.

## **ARTICLE 15 - CONFIDENTIALITY**

For purposes of this Article:

- A. The term “Confidential Information” as used herein, means all material and information, whether written or oral, received by the Subrecipient from or through the County or any other person connected with the County, or developed, produced, or obtained by the Subrecipient in connection with its performance of the Work under this Agreement. Confidential Information will include, but not be limited to: samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any investigation, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations, and/or comments relating thereto.
- B. The term “Subrecipient” as used herein includes all officers, directors, employees, agents, subcontractors, assignees, or representatives of the Subrecipient.

The Subrecipient shall keep all Confidential Information in a secure location within the Subrecipient’s offices. The County will have the right, but not the obligation, to enter the Subrecipient’s offices in order to inspect the arrangements of the Subrecipient for keeping Confidential Information secure. The County’s inspection, or its failure to inspect, will not relieve the Subrecipient of its responsibilities pursuant to this Article 15.

The Subrecipient shall hold Confidential Information in trust and confidence, and must not disclose Confidential Information, or any portion thereof, to anyone other than the County without the prior written consent of the Executive or the Purchasing Director, and must not use Confidential Information, or any portion thereof, for any purpose whatsoever except in connection with its performance of the Work under this Agreement.

The Subrecipient shall notify the County immediately upon its receipt of any request by anyone other than the County for, or any inquiry related to, Confidential Information. The Subrecipient is not prohibited from disclosing portions of Confidential Information if and to the extent that: (i) such portions have become generally available to the public other than by an act or omission of the Subrecipient, or (ii) disclosure of such portions is required by subpoena, warrant, or court order; provided, however, that in the event anyone other than the County requests all or a portion of Confidential Information, the Subrecipient shall oppose such request and cooperate with the County in obtaining a protective order or other appropriate remedy, unless and until the Executive or the Purchasing Director, upon consultation with the Ulster County Attorney, in writing, waives compliance with the provisions of this Article 15, or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the County waives compliance with this Article 15, or determines that such disclosure is legally required, the Subrecipient shall disclose only such portions of Confidential Information that, in the opinion of the County, the Subrecipient is legally required to disclose, and the Subrecipient shall use its best efforts to obtain from the party to whom Confidential Information is disclosed, written assurance that confidential treatment will be given to any such Confidential Information disclosed, to the extent permitted by law.

Prior to the performance of any Work in connection with this Agreement, the Subrecipient shall obtain from each of its subcontractors, a confidentiality agreement running to the benefit of the County that is substantively identical to this Article 15. Further, at any time, if requested by the County, the Subrecipient shall obtain such an agreement from the officers, directors, agents, representatives, or employees of the Subrecipient and/or any of its subcontractors.

## **ARTICLE 16 – OWNERSHIP OF CONFIDENTIAL INFORMATION**

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 15, including all copies thereof, is the exclusive property of the County regardless of whether or not it is delivered to the County. The Subrecipient shall deliver Confidential Information and all copies thereof to the County upon request.
- B. To the extent that copies of Confidential Information are authorized by the County to be retained by the Subrecipient, such information shall be retained in a secure location in the Subrecipient's office for a period of six (6) years after completion of the Work, or termination of this Agreement, whichever occurs later, and thereafter disposed of at the County's direction.

## **ARTICLE 17 – PUBLICITY**

The prior written approval of the County is required before the Subrecipient or any of its employees, representatives, servants, agents, assignees, or subcontractors may, at any time either during or after completion or termination of this Agreement, make any statement to the media or issue any material for publication bearing on the Services performed or data collected in connection with this Agreement.

If the Subrecipient, or any of its employees, representatives, servants, agents, assignees, or subcontractors desires to publish a work dealing with any aspect of this Agreement, or of the results or accomplishments attained by its performance, they must first obtain the prior written permission of the Executive or the Purchasing Director which, unless otherwise agreed to in said written permission, will entitle the County to a royalty fee and a non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, such publication.

## **ARTICLE 18 - RETENTION OF RECORDS**

The Subrecipient agrees to maintain separate and accurate books, records, documents, and other evidence, and to employ accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

The Subrecipient agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever occurs later. The County, any New York State and/or federal auditors, and any other persons duly authorized by the County, will have full access and the right to examine any of said materials during said period.

## **ARTICLE 19 – AUDITING AND REPORTS**

All forms or invoices presented for payment to be made hereunder, and the books, records, and accounts upon which said forms or invoices are based, are subject to audit by the County. The Subrecipient shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the County so that it may evaluate the reasonableness of the charges, and the Subrecipient shall make its records available to the County upon request. All books, forms, records, reports, cancelled checks, and any and all similar material may be subject to periodic inspection, review, and audit by the County, the State of New York, the Federal Government and/or other persons duly authorized by the County. Such audits may include examination and review of the source and application of all funds, whether from the County, the State of New York, the Federal Government, private sources, or otherwise. The Subrecipient will not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

## **ARTICLE 20 – NO DISCRIMINATION**

As required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, including the Civil Rights Act, the Subrecipient must not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition, carrier status, military status, domestic violence victim status, or marital status.

If this Agreement provides for a total expenditure in excess of \$25,000.00, the Subrecipient shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on County contracts, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action will mean recruitment, employment, job assignment, promotion, upgrade, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation.

Furthermore, in accordance with New York State Labor Law Section 220-e, if this is an Agreement for the construction or alteration of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement will be performed within the State of New York, the Subrecipient agrees that neither it, nor its subcontractors, will, by reason of race, creed, color, disability, sex, or national origin: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the Work, or (ii) discriminate against or intimidate any employee hired for the performance of the Work under this Agreement. If this is a building service agreement as defined in the New York State Labor Law Section 230, then in accordance with New York State Labor Law Section 239, the Subrecipient agrees that neither it, nor its subcontractors, will by reason of race, creed, color, national origin, age, sex or disability: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the Work, or (ii) discriminate against or intimidate any employee hired for the performance of the Work under this Agreement. The Subrecipient is subject to (i) a fine of Fifty and 00/100 (\$50.00) Dollars per person, per day, for any violation of the New York State Labor Law Sections 220-e or 239, and/or (ii) possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

The Subrecipient understands that the County has established a Sexual Harassment Prevention Policy and Discriminatory Harassment Prevention Policy which applies to all contractors and non-employees conducting business with the County. These policies may be accessed electronically at <https://ulstercountyny.gov/ulster-county-compliance-plan>. Alternatively, a hard copy of the Plan will be provided upon the Subrecipient's request.

## **ARTICLE 21 – PREVAILING WAGE**

In accordance with New York State Labor Law Section 220-d, if this is an Agreement for the construction, reconstruction, maintenance and/or repair of any public work, the Subrecipient agrees that all laborers, workers, or mechanics employed by the Subrecipient and/or its subcontractors in contemplation of the performance of this Agreement shall be paid not less than such hourly minimum rate of wage and shall be provided supplements not less than the prevailing supplements as designated by the New York State Commissioner of Labor.

## **ARTICLE 22 - INSURANCE**

For provision of the Work set forth herein and as may be hereinafter amended, the Subrecipient shall maintain or cause to be maintained in full force and effect during the term of this Agreement, at its expense, insurance with stated minimum coverage as set forth in Schedule C, which is attached hereto and is hereby made a part of this Agreement. Such policies are to be in the broadest form available on usual commercial terms and must be written by insurers who have been fully informed as to the nature of Work to be performed by the Subrecipient pursuant to this Agreement. Such insurers shall be of recognized financial standing, satisfactory to the County. The County shall be named as an additional insured on all commercial general liability policies with the understanding that any obligations imposed upon the insured (including, without limitation, the obligation to pay premiums) will be the sole obligation of the Subrecipient and not those of the County. Notwithstanding anything to the contrary in this Agreement, the Subrecipient irrevocably waives all claims against the County for all losses, damages, claims, or expenses resulting from risks commercially insurable under the insurance described in Schedule C and this Article 22. The provision of insurance by the Subrecipient will not in any way limit the Subrecipient's liability under this Agreement.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary, without right of contribution of any other insurance carried by or on behalf of the County, with respect to its interests, (ii) it shall not be cancelled or materially amended without thirty (30) days prior written notice to the County, except in the case of cancellation for non-payment of premium which requires ten (10) days prior written notice, directed to the County's Insurance Department and the Department Head, and (iii) the County will have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Subrecipient.

To the extent it is commercially available, each policy of insurance must be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis it must be provided on a "claims made" basis, and all such "claims made" policies must provide that:

- A. Policy retroactive dates coincide with or precede the Subrecipient's start of the performance of the Work (including subsequent policies purchased as renewals or replacements); and
- B. If the insurance is terminated for any reason, the Subrecipient agrees to purchase for the County an unlimited, extended reporting provision to report claims arising from the Work performed under this Agreement; and
- C. The Subrecipient must give immediate notice to the County, through the Department Head, the Ulster County Attorney's Office, and the County's Insurance Department, of circumstances or incidents that might give rise to future claims with respect to the Work performed under this Agreement.

The Subrecipient agrees that it will require each Work consultant, Work contractor and Work subcontractor to secure and deliver to the Subrecipient appropriate policies of insurance issued by an insurance company licensed to do business in the State of New York. The policies must name both the Subrecipient and the County as additional insured/loss payee parties and shall cover the contractor's public liability and property damage insurance, contractor's contingent liability insurance, "all risk" insurance and worker's compensation for the Work. The Subrecipient shall require that copies of the applicable insurance policies be made available to the County for review upon request. In addition, the Subrecipient shall secure at its own expense, property insurance in such amounts as required by the County provided by the insurance companies licensed in the State of New York covering the equipment and facilities funded with Subaward proceeds.

## **ARTICLE 23 - INDEMNIFICATION**

The Subrecipient agrees to defend, indemnify, and hold harmless the County, including its officials, employees, and agents, against all claims, losses, damages, liabilities, costs, or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Work performed by the Subrecipient, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the County, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Subrecipient, its employees, representatives, subcontractors, assignees, or agents. The Subrecipient agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or suits at its sole expense, and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false, or fraudulent.

In the event that any claim is made or any action is brought against the County arising out of the negligence, fault, act, or omission of the Subrecipient or an employee, representative, subcontractor, assignee, or agent of the Subrecipient, either within or without the scope of the respective employment, representation, subcontract, assignment, or agency, or arising out of the Subrecipient's negligence, fault, act, or omission, then the County will have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover said claim or action. The rights and remedies of the County provided for in this clause will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

## **ARTICLE 24 - TERMINATION**

The County may, by written notice to the Subrecipient, effective upon mailing, terminate this Agreement in whole or in part at any time (i) upon the failure of the Subrecipient to comply with any of the terms or conditions of this Agreement, or (ii) upon the Subrecipient becoming insolvent or bankrupt.

Upon termination of this Agreement, the Subrecipient shall comply with any and all County closeout procedures, including but not limited to:

- A. Accounting for and refunding to the County within ten (10) days, any unearned and/or unexpended funds that have been paid to the Subrecipient pursuant to this Agreement; and
- B. Furnishing to the County within ten (10) days, an inventory of all equipment, appurtenances, and property purchased by the Subrecipient through, or provided under this Agreement, and carrying out any County directive concerning the disposition thereof.

Notwithstanding any other provisions of this Agreement, the Subrecipient will not be relieved of liability to the County for damages sustained by the County by virtue of the Subrecipient's breach of this Agreement, or failure to perform in accordance with applicable standards. The County may withhold payments due to the Subrecipient for the purposes of set-off until such time as the exact amount of damages due to the County from the Subrecipient is determined.

The rights and remedies of the County provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

## **ARTICLE 25 - 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 to in writing by the Executive or the Purchasing Director, after consultation with the Ulster County Attorney, but must instead only be heard in the Supreme Court of the State of New York, with venue in Ulster County, or if appropriate, in the Federal District Court, with venue in the Northern District of New York, Albany Division.

## **ARTICLE 26 – DISPUTES**

In the event of a dispute arising from this Agreement, the Subrecipient shall be liable to the County for reasonable attorney's fees, costs, expenses and disbursements incurred by the County in enforcing its legal and/or equitable rights pursuant to this Agreement by reason of the failure of the Subrecipient to comply with any of the terms, conditions or warranties of this Agreement, express or implied, and/or the exercise of County's remedies with respect thereto, and/or any error, omission and/or professional negligence of the Subrecipient or its subcontractors, including but not limited to all attorney's fees, costs, expenses and disbursements incurred by the County in prosecuting a lawsuit against the Subrecipient, seeking Indemnification pursuant to Article 23, and Termination pursuant to Article 24. The Subrecipient shall further be liable to the County for all prejudgment interest on any award of attorney's fees, costs, expenses and disbursements so awarded. This provision shall survive completion of the Work and/or the expiration or termination of this Agreement.

## **ARTICLE 27 - GOVERNING LAW**

This Agreement is governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

## **ARTICLE 28 - WAIVER AND SEVERABILITY**

The failure of either Party to enforce at any time, any provision of this Agreement, does not constitute a waiver of such provision in any way or waive the right of either Party at any time to avail itself of such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement will be considered waived by the County unless such waiver is explicitly given in writing by the Executive or the Purchasing Director. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the terms or conditions of this Agreement, unless expressly stipulated in such waiver as executed by the Executive or the Purchasing Director.

The invalidity or invalid application of any provision of this Agreement will not affect the validity of any other provision, or the application of any other provision of this Agreement.

**ARTICLE 29 - GENERAL RELEASE**

Acceptance by the Subrecipient or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction, administrative, or other means, will constitute and operate as a general release to the County from any and all claims of the Subrecipient arising out of the performance of this Agreement.

**ARTICLE 30 - ENTIRE AGREEMENT**

The rights and obligations of the Parties and their respective agents, successors and assignees will be subject to and governed by this Agreement, including Schedules A, B, C, D, and E, and Exhibits A, B, C, and D, which supersedes any other understandings or writings between or among the Parties to this Agreement.

**ARTICLE 31 - SURVIVING OBLIGATIONS**

The Subrecipient’s obligations and those of the Subrecipient’s employees, representatives, agents, subcontractors, successors, and assignees, assumed pursuant to Article 7 (Representations by the Subrecipient), Article 10 (Corporate Compliance), Article 15 (Confidentiality), Article 16 (Ownership of Confidential Information), Article 17 (Publicity), Article 18 (Retention of Records), and Article 23 (Indemnification), will survive completion of the Work and/or the expiration or termination of this Agreement.

**ARTICLE 32 - NOTICES**

Except as expressly provided otherwise in this Agreement, all notices given to any of the Parties pursuant to or in connection with this Agreement will be in writing, will be delivered by hand, by certified or registered mail, return receipt requested, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Except where otherwise specifically defined within this Agreement, notices will be effective when received. Notice addresses are as follows:

<u>Subrecipient:</u> Town of New Paltz Attention: Supervisor 52 Clearwater Road New Paltz, New York 12561	<u>County:</u> Ulster County Department of Finance Attention: Commissioner 244 Fair St. Kingston, New York 12401
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Any communication or notice regarding indemnification, termination, litigation, or proposed changes to the terms and conditions of this Agreement will be deemed to have been duly made upon receipt by both the County’s Department of Finance and the Ulster County Attorney’s Office at the addresses set forth herein, or such other addresses as may have been specified in writing by the County:

<u>Mailing Address:</u> County of Ulster Attention: County Attorney Post Office Box 1800 Kingston, New York 12402	<u>Physical Address:</u> County of Ulster Attention: County Attorney 244 Fair Street, 5 <sup>th</sup> Floor Kingston, New York 12401
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Either Party may, by written notice to the other Party given in accordance with the foregoing, change its address for notices.

**ARTICLE 33 - MODIFICATION**

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement, and no payment will be due in connection therewith, unless prior to the performance of any such Work, the Executive or the Purchasing Director, after consultation with the Department Head and the County Attorney, executes an Addendum, Amendment, or Change Order to this Agreement. The aforesaid Addendum, Amendment, or Change Order must specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement will apply with full force and effect to the terms and conditions contained in such Addendum, Amendment, or Change Order.



## **ARTICLE 34 – FORCE MAJEURE**

Neither Party hereto will be considered in default in the performance of its obligations hereunder, to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, beyond the control of such Party, and which by that Party's exercise of due diligence and foresight could not reasonably have been avoided ("Impacted Party") including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics or pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not); (d) national or regional emergencies; and (e) other similar events beyond the reasonable control of the Impacted Party.

The Impacted Party shall give written notice within thirty (30) days of the Force Majeure Event to the other Party and the Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

Upon removal of such cause, the Impacted Party affected shall resume its performance as soon as reasonably possible. The Subrecipient's financial inability to perform will not be deemed to be a Force Majeure Event regardless of the source causing such financial inability. If the Subrecipient is so delayed in the timely performance of the Work, the Subrecipient's sole and exclusive remedy is to request that a Change Order, Amendment, or Addendum to this Agreement be issued by the County and signed by the Executive or the Purchasing Director, permitting an extension of time to perform the Work in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim, delivered to the Department Head promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Work may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the Executive or the Purchasing Director. In no event will the County be liable to the Subrecipient or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

## **ARTICLE 35 - HEADINGS AND DEFINED TERMS**

The Article headings used in this Agreement are for reference and convenience only, and will not in any way limit or amplify the terms, conditions, and/or provisions hereof. All capitalized terms, acronyms, and/or abbreviations will have the meanings ascribed to them by this Agreement.

## **ARTICLE 36 – COUNTERPARTS**

The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Article 2 above.

**COUNTY OF ULSTER**

**TOWN OF NEW PALTZ**

By: \_\_\_\_\_

By: \_\_\_\_\_

Peter Criswell  
Chair, Ulster County Legislature

Neil Bettez  
Supervisor, Town of New Paltz

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**\*Note: Please attach copies of authorizing Resolutions for both municipalities to the end of this Agreement.**

**SCHEDULE A**  
**WORK PLAN**

1. The Subrecipient, through its subaward of Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) from the American Rescue Plan Act (“ARPA”) of 2021 shall perform delivery and administration for the construction of a separated shared use path along Henry W. DuBois Drive, as further described in this Schedule A (the “Work”).
2. The Subrecipient agrees to comply with 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, and those additional 2 CFR policy requirements or exemptions listed in the Assistance Listing 21.027, “Coronavirus State and Local Fiscal Recovery Funds” available at [www.sam.gov](http://www.sam.gov).
3. The Work shall take place at and improve a 1.2 mile stretch of Henry W. DuBois Drive; a roadway owned by the Subrecipient.
4. The Subrecipient shall:
  - a. Provide day-to-day oversight and overall program delivery for the Work, including maintenance of Work files in accordance with applicable Federal requirements.
  - b. Ensure all permitting, design, and other pre-development work to provide a shovel ready project.
  - c. Handle all public bidding and hiring of project construction contractors.
  - d. Provide Work oversight and management of construction of a separated shared use path along Henry W. DuBois Drive in substantial conformance with plans provide by the project manager to the Subrecipient and approved by the County.
  - e. Ensure the construction of a 10-foot-wide shared use path, separated from the roadway with guardrails and or raised curb along the south side of Henry W. DuBois Drive from N Chestnut street to N Putt Corners Road.
  - f. Ensure the completed Work is open and available to the public.
  - g. Once expenditures commence on the Work the subrecipient shall continue the Work until final completion.
  - h. Provide the County with copies of budgetary and other supporting documentation related to funds, including all In-Kind Services such as labor, equipment, or other.
  - i. Ensure Work compliance with SLFRF regulations.
5. Prior to contract signing the Subrecipient has provided the County with the following:

A town resolution dated July 30, 2020, declaring the Subrecipient as Lead Agency for SEQRA and identifying the Work as an unlisted action.

**SCHEDULE B**  
**FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT**

**Agreement to Provide Subaward for Work Costs.**

(a) Subject to the conditions and in accordance with this Agreement, the County will provide a Subaward to the Subrecipient during the Term of this Agreement by making payments of American Rescue Plan Act – State and Local Fiscal Recovery Funds (SLFRF) in an aggregate amount of **ONE HUNDRED THOUSAND and 00/100 (\$100,000.00) Dollars**. The County shall have no obligation to make payments more frequently than once every month. The County will retain custody and control over Subaward funds which will only be made available to the Subrecipient upon submission to the County of documentation of incurred Work Costs and approval thereof by the County. Subject to the Subrecipient's compliance with the terms and provisions of this Agreement, the County will make payment to the Subrecipient within forty-five (45) days of the County's receipt of a properly completed Subaward Disbursement Request Form in the form of EXHIBIT B.

(b) The County will retain the last Fifteen percent (15%) of the Subaward until the Subrecipient has submitted the Work Completion Certificate, in the form of EXHIBIT C, satisfactory to the County. The Subrecipient shall be required to submit the additional Work Completion Certificate, in the form of EXHIBIT D, from the project engineer or architect, if an engineer or architect designs any portion of the Work. The County shall disburse to the Subrecipient the retained proceeds within forty-five (45) days after the County accepts the Work Completion Certificates.

**Requests for Disbursement of Subaward Proceeds.**

(a) Subrecipient shall request payment of Subaward proceeds by submitting to the County a Subaward Disbursement Request Form in the form set forth in EXHIBIT B.

(b) With each request, the Subrecipient must submit documentation to the County in support of such request in a form and manner acceptable to the County. The documentation shall demonstrate that the costs for which a disbursement is requested are for the Work, and that the goods and services for which the costs were incurred have been provided. Satisfactory documentation may include, but is not limited to, signed copies of payment vouchers or invoices, cancelled checks, details of current indirect cost and fringe benefits rates, copies of all sub-agreements, executed change orders, and payroll records tabulations of allowable costs incurred to date.

**Disapproval or Adjustment of Payment Request.**

The County may take any action permitted hereunder or under applicable law, including, but not limited to, rejecting, correcting, or withholding any or all payments to the Subrecipient, if the County, in its sole discretion: (i) determines that the incurred costs requested for reimbursement are not eligible Work Costs, (ii) the Subrecipient has not properly documented the costs, or (iii) the Subrecipient has not complied with any term or condition of this Subaward,

**Proof of Payment.**

The Subrecipient shall provide the County with proof of payment of costs within forty-five (45) days of each payment of Subaward proceeds to the Subrecipient. Proof of payment submitted by the Subrecipient shall be sufficient to allow the County to document that bills and invoices were paid, such as cancelled checks, payroll and machinery use records certified by the Subrecipient, and such other forms of cost documentation as may reasonably be requested by the County. If the County determines that the Subrecipient has provided inadequate documentation or has used prior Subaward payments for ineligible costs, the County may take any action permitted hereunder or under applicable law, including making adjustments by deducting an appropriate amount from subsequent Subaward payments to the Subrecipient.

**Changes to Work**

Subaward payments will not be made for costs related to any changes in the Work unless and until such change has been reviewed, approved, and accepted by the County. The Subrecipient shall certify, in each Subaward Disbursement Request Form submitted, that the disbursement requested does not include payment for any costs for changes to the Work which have not been so reviewed, approved, and accepted.

**PLEASE BRING THESE INSURANCE REQUIREMENTS TO YOUR INSURANCE AGENT TO ENSURE PROPER COVERAGE AND LIMITS ARE IN PLACE. FAILURE TO PROVIDE CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIREMENTS BELOW, SHALL DELAY CONTRACT EXECUTION.**

**SCHEDULE C**  
**COUNTY OF ULSTER CONTRACT INSURANCE REQUIREMENTS**

**I. CONDITIONS OF INSURANCE**

Unless otherwise authorized by the Ulster County Insurance Officer, strict adherence to this schedule is required. Any deviation without prior authorization from the County's Insurance Department will result in a delay in the finalization of this Agreement.

The Subrecipient shall submit copies of any or all required insurance documents as and when requested by the County. Upon policy renewal, the Subrecipient shall submit updated insurance policy information.

**II. CERTIFICATES OF INSURANCE**

The Subrecipient shall file with the County's Insurance Department, prior to commencing work under this Agreement, all proper Certificates of Insurance.

The Certificates of Insurance shall include:

- a. Name and address of Insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on the certificate
- g. Limits of liability for all policies included on the certificate
- h. **"Certificate Holder" for all certificates shall be the County of Ulster, P.O. Box 1800, Kingston, New York 12402-1800.**

If the Subrecipient's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the County shall be provided with a new certificate indicating the replacement policy information as requested above. The County requires thirty (30) days prior written notice of cancellation [ten (10) days for non-payment of premium] from the Insurer, its agents or representatives.

**The Subrecipient agrees to indemnify the County of Ulster for any applicable deductibles and self-insured retentions.**

**III. WORKERS' COMPENSATION AND DISABILITY INSURANCE**

The Subrecipient shall take out and maintain during the life of this Agreement, Workers' Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the County's Insurance Department.

If the Subrecipient is not required to carry such insurance, the Subrecipient must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees.

The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. "ACORD" forms are not acceptable proof of WC and/or DB Insurance.

**IV. WORKERS' COMPENSATION REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Subrecipient) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal

entity with which it is entering into a contract. The Subrecipient should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – “Certificate of NYS Workers’ Compensation Insurance” **or**
- Form U-26.3 – “Certificate of Workers’ Compensation Insurance” issued by the New York State Insurance Fund **or**
- Form SI-12 – “Affidavit Certifying that Compensation has Been Secured” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Subrecipient is self-insured **or**
- Form GSI-105.2 – “Certificate of Participation in Workers’ Compensation Group Self-Insurance” issued by the Self-Insurance administrator of the group **or**
- Form GSI-12 – “Certificate of Group Workers’ Compensation Group Self-Insurance” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Subrecipient is self-insured.

If the Subrecipient is not required to carry WC coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

#### **V. DISABILITY BENEFITS REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Subrecipient) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity with which it is entering into a contract. The Subrecipient should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” **or**
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Subrecipient is self-insured.

If the Subrecipient is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

#### **VI. COMMERCIAL GENERAL LIABILITY INSURANCE**

The Subrecipient shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the County from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Subrecipient, by any subcontractor, or by anyone directly or indirectly employed by either of them.

It shall be the responsibility of the Subrecipient to maintain such insurance in amounts sufficient to fully protect itself and the County, but in no instance shall amounts be less than the minimum acceptable levels of coverage set forth below:

- Bodily Injury Liability and Property Damage Liability Insurance in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence, and in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

#### **Other Conditions of Commercial General Liability Insurance:**

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
  1. Contractual Liability
  2. Independent Contractors
  3. Products and Completed Operations
- c. “Additional Insured” status shall be granted to “County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800”, shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

## **VII. UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE**

Umbrella Liability or Excess Liability Insurance shall be provided by the Firm in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS.**

**NOTE: As long as all minimum underlying limits have been met, insurance limits may be a total combined limit of the Umbrella/Excess Liability limits and the underlying liability insurance limits.**

**The Umbrella/Excess Liability coverage MUST be written on a follow-form (drop down) basis to the underlying insurance coverage with no additional exclusions.**

“Additional Insured” status shall be granted to “County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800”, shown on the Umbrella policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

## **VIII. AUTOMOBILE LIABILITY INSURANCE**

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Firm, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS.**

Coverage shall include:

- a. All owned vehicles
- b. Any hired automobile
- c. Any non-owned automobile
- d. “Additional Insured” status shall be granted to “County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800”, shown on the Auto Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.



**SCHEDULE D**  
**Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient 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 recipient or subrecipient 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.

(G) Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR 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 ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) 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 CFR 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.

(K) Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(L) Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**SCHEDULE E**  
**FEDERAL AWARD IDENTIFICATION**

- Subrecipient Name: **TOWN OF NEW PALTZ**
- Subrecipient's Unique Entity Identifier (UEI): **HYJ4E6FBHGQ6**
- Federal Award Date: **May 26, 2021**
- Amount of Federal Funds Obligated to Subrecipient: **\$100,000.00**
- Total Amount of Federal Funds Obligated to Subrecipient by Ulster County including Current Financial Obligation: \$600,000.00 (Breakdown below)
  - **ARPA – Sewer and Water - \$500,000.00**
  - **ARPA – Parks - \$100,000.00**
- Name of Federal Awarding Agency: **United States Department of the Treasury**
- Name of pass-through entity: **County of Ulster**
- Contact information for awarding official of Ulster County:

**Ulster County, Commissioner of Finance**  
**244 Fair Street**  
**Kingston, NY 12401**  
[rdaw@co.ulster.ny.us](mailto:rdaw@co.ulster.ny.us)  
**(845)-340-3460**
- Assistance Listings Number: **21.027**
- Title of Assistance Listing: **Coronavirus State and Local Fiscal Recovery Funds**
- This award is not for Research and Development (R & D).
- Indirect Cost Rate for the Federal Award (Including if the de minimis rate is charged): 0%

**EXHIBIT A**  
**ESTIMATED WORK COSTS**

Subrecipient: TOWN OF NEW PALTZ  
County: Ulster County

**Ulster County Municipal Parks and Recreation Grant**

Complete both the Project Budget and Project Cost tables below.

<b>PROJECT BUDGET</b>			
Fund Source	Secured	Seeking	Amount
UC Municipal Parks and Recreation Grant		X	\$100,000
<b>Matching Funds</b>			<b>\$1,503,571</b>
Local Funds*	X		\$560,000
In-kind (labor)*^	X		\$0
In-kind (equipment)*			
In-kind (other)*~			
TAP Grant*			\$2,193,600
<b>TOTAL MPRG FUNDING REQUEST</b>			<b>\$100,000</b>
<b>TOTAL MATCHING FUNDS**</b>			<b>\$2,753,600</b>
<b>TOTAL PROJECT BUDGET</b>			<b>\$4,357,171</b>

\* Update these examples to reflect project specific items.

^ A minimum of prevailing wage is required

~ Add in additional rows to list any "Other" in-kind services

<b>PROJECT COSTS*</b>			
Expense			Amount
Planning/Engineering/Environmental Review			\$583,888
Land/Easement Acquisition			\$11,351
Construction Inspection			\$315,149
Demolition and Removal			
Construction			\$3,446,783
Equipment Use			
Signage			
<b>TOTAL EXPENSES</b>			<b>\$4,357,171</b>

<b>In-kind Calculator</b>		
Total MPRG Funding Request	\$	100,000
Maximum in-kind match allowable	\$	25,000

**EXHIBIT B**  
**SUBAWARD DISBURSEMENT REQUEST FORM**  
**Ulster County Parks Grant**

**TOWN OF NEW PALTZ**

REQUEST NO.: \_\_\_\_\_

**Dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20**

I, the undersigned and Authorized Person of the TOWN OF NEW PALTZ (the “Subrecipient”), hereby certify and agree as follows:

1. All representations and warranties of the Subrecipient as set forth in the Subaward Agreement (the “Agreement”) dated as of [date of last signature on the Agreement] between the County of Ulster (the “County”) and the Subrecipient are still valid and effective as of today’s date.
2. This request is being delivered pursuant to the Agreement. All capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.
3. The County is hereby requested to make a disbursement under the Agreement in the amount [WRITTEN AMOUNT 00/100 DOLLARS (\$Numeric Amount)] for Work Costs.
4. The above Work Costs have not been paid with the proceeds of any Third-Party Funding, except as specifically described here:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The Subrecipient has determined that such Work Costs are reasonable, necessary, and allocable to the Work under generally accepted governmental accounting standards. Monies requested for disbursement herein reflect actual costs for materials and services that are to be used for the sole purpose of completing the approved Work stated above and none of these monies are to be expended, in part or in full, for any other purpose.
6. This disbursement if made, together with the prior disbursements made under the Agreement, will not exceed ONE HUNDRED THOUSAND AND 00/100 (\$100,000.00) DOLLARS.
7. All amounts requested hereunder are for eligible Work Costs which have not been included in any previous disbursement of Subaward proceeds.
8. A description of any and all In-Kind Services to be used in connection with this request for disbursement of funds for the Work is attached hereto.
9. **(If requesting payment for costs of construction):**
  - (a) As of the date hereof, the Subrecipient holds, and will retain, a legal and valid fee simple title or other estate or interest in the site(s) of the Work, including all necessary easements and/or rights-of-way, as or will be necessary for the Subrecipient’s continued undisturbed use and possession of the site(s) of the Work during the construction, operation and maintenance of the Work.
  - (b) The Subrecipient has obtained all licenses, permits or other approvals required as of the date hereof to

undertake the Work.

- (c) The payment requested does not include any costs of construction (other than costs of planning and design) associated with plans and specifications which have not been accepted by the County.
- 10. **(If requesting payment for costs associated with professional services agreement):** The payment requested does not include any costs incurred pursuant to any professional services agreements which have not been furnished to the County.
- 11. **(If requesting payment for costs for engineering services associated with inspection and services during construction):** The payment requested does not include any costs incurred pursuant to any professional services agreement pertaining to inspection and engineering services during construction of the Work which has not been reviewed and so accepted by the County.

TOWN OF NEW PALTZ

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

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

**EXHIBIT C**  
**WORK COMPLETION CERTIFICATE**  
(municipality)

TOWN OF NEW PALTZ

I, the undersigned and Authorized Person of the TOWN OF NEW PALTZ (the “Subrecipient”), hereby certify as follows:

1. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Agreement between the County and the Subrecipient dated as of [date of last signature on the Agreement].
2. The Subrecipient did not receive any Third-Party Funding that was not already disclosed to the County and included in the Exhibit A attached to the Agreement.
3. The Subrecipient did not receive any funds from another source for the same costs for which it submitted a Subaward Disbursement Request Form to the County.
4. All equipment and facilities paid for in whole or in part with Subaward proceeds were and are being used solely for Work purposes.
5. The Work has been fully completed in accordance with the requirements set forth in the Agreement dated as of [date of last signature on the Agreement] between Subrecipient and the County.
6. The final Work Costs are \$\_\_\_\_\_.

I hereby affirm under penalty of perjury that I am an Authorized Person of TOWN OF NEW PALTZ authorized to make the above certifications and that information provided on this Work Completion Certificate and all attachments, if any is true to the best of my knowledge and belief.

TOWN OF NEW PALTZ

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

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



**EXHIBIT D**  
**WORK COMPLETION CERTIFICATE**  
(Work Engineer/Architect)

Subrecipient: \_\_\_\_\_

Location: \_\_\_\_\_

Name of Work: \_\_\_\_\_

Work Description: \_\_\_\_\_

Construction of the above Work must be under the supervision of a person or firm licensed to practice professional engineering/architect in the State of New York, as required under the Education Law. The person or firm supervising the above Work must file this Work Completion Certificate within 30 days after completion of construction with the Ulster County Department of Finance, located at 244 Fair Street, Kingston, New York 12401.

Construction Contract Title: \_\_\_\_\_

Construction Start Date: \_\_\_\_\_

Construction Substantial Completion Date: \_\_\_\_\_

Construction Final Completion Date: \_\_\_\_\_

I certify that the construction of the above Work including environmental mitigating measures, if any, was completed in accordance with the approved plans and specifications or approved amendments thereto and was under the supervision of a professional engineer/architect licensed in New York State.

Engineer/Architect Stamp

Name:	_____
Title:	_____
Firm:	_____
Address:	_____
Signature	Date

--

**Authorizing The Chair Of The Ulster County Legislature To Execute An Intermunicipal Agreement With The Town Of New Paltz, As An ARPA-SLFRF Subrecipient, To Improve 1.2 Miles Of Henry W. DuBois Drive – Department Of Finance, Division Of Recovery And Resilience**

Referred to: The American Rescue Plan Act Special Committee (Chairman Criswell and Legislators Corcoran, Levine, Lopez, and Sperry), The Public Works, Capital Projects and Transportation Committee (Chairwoman Petit and Legislators Erner, Fabiano, Litts, and Nolan), and The Ways and Means Committee (Chairman Gavaris and Legislators Cahill, Criswell, Roberts, and Ronk)

Chairman of the ARPA Special Committee, Peter J. Criswell, Deputy Chair Thomas Corcoran, Jr., and Legislators Nolan, Petit, Sperry, and Stewart offer the following:

WHEREAS, this resolution has been submitted at the request of the County Executive on behalf of the Department of Finance, Division of Recovery and Resilience; and

WHEREAS, the Ulster County Legislature passed Resolution No. 289 amending and funding Capital Project Number 635 in the amount of two million dollars (\$2,000,000) to create a program to partner with Ulster County municipalities and match up to 50% of park and recreation projects with a maximum contribution of \$100,000 per municipality; and

WHEREAS, the County and the Town of New Paltz (the “Town”) desire to enter into an Intermunicipal Agreement (IMA) where the Town will be a subrecipient of One Hundred Thousand Dollars (\$100,000.00) of American Rescue Plan Act – Coronavirus State and Local Fiscal Recovery Funds (SLFRF); and

WHEREAS the Town will be responsible under the IMA for administering a program to improve 1.2 miles of Henry W. DuBois Drive including the construction of a separated shared use path; now, therefore, be it

RESOLVED, the Chair of the Ulster County Legislature is hereby authorized to execute the Inter Municipal Agreement with the Town of New Paltz to partially fund improvements to 1.2 miles of Henry W. DuBois Drive in the form as filed with the Clerk of the Legislature or as modified with the approval of the County Attorney,

and move its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: 22                      NOES: 0  
(Absent: Legislator Stewart)

**Resolution No. 686      December 18, 2023**

**Authorizing The Chair Of The Ulster County Legislature To Execute An Intermunicipal Agreement With The Town Of New Paltz, As An ARPA-SLFRF Subrecipient, To Improve 1.2 Miles Of Henry W. DuBois Drive – Department Of Finance, Division Of Recovery And Resilience**

Passed by Committee: American Rescue Plan Act on November 29, 2023

Passed by Committee: Public Works, Capital Projects and Transportation December 11, 2023

Passed by Committee: Ways and Means on December 12, 2023

**FINANCIAL IMPACT:**

**\$100,000.00 – PREVIOUSLY APPROVED COUNTY CAPITAL FUND - ARPA APPROPRIATIONS**

STATE OF NEW YORK

ss:

COUNTY OF ULSTER

I, the undersigned Clerk of the Legislature of the County of Ulster, hereby certify that the foregoing resolution is the original resolution adopted by the Ulster County Legislature on the 18<sup>th</sup> Day of December in the year Two Thousand Twenty-Three, and said resolution shall remain on file in the office of said clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 22<sup>nd</sup> Day of December in the year Two Thousand Twenty-Three.

[s] Victoria A. Fabella  
Victoria A. Fabella, Clerk  
Ulster County Legislature

Submitted to the County Executive this  
22<sup>nd</sup> Day of December 2023.

Approved by the County Executive this  
26<sup>th</sup> Day of December 2023.

[s] Victoria A. Fabella  
Victoria A. Fabella, Clerk  
Ulster County Legislature

[s] Jen Metzger  
Jen Metzger, County Executive