

## **NOTICE**

**RFP #: 10-20**

**Date Issued: July 20, 2020**

**Submittal Date: August 14, 2020**

### **Request for Proposals (“RFP”) *for Sub-recipient to Manage Homeless Prevention Due to Loss of Income Directly Related to the COVID-19 Pandemic***

#### **Purpose of the Proposal**

The City of Newburgh, New York, seeks proposals from eligible not-for-profit organizations (hereafter “Proposers”) to establish and implement a program in the City of Newburgh to assist low-to-moderate income individuals and families facing eviction or housing-related hardship due to the Coronavirus (COVID-19) pandemic.

The Coronavirus Aid, Relief and Economic Security Act (“CARES” Act) signed into Public Law (116-136) on March 27, 2020 has made available the use of limited funding to the City of Newburgh to be used to assist City of Newburgh residents who are experiencing financial hardship as a result of the Coronavirus pandemic. The City of Newburgh received these special CARES Act funds through the U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant (“CDBG”) program, hereafter referred to as “CDBG-CV.”

The City of Newburgh seeks proposals from qualified not-for-profit organizations to establish and administer a program that includes temporary assistance to low-to-moderate income residents of the City of Newburgh who have a demonstrated financial hardship due to temporary or permanent loss of employment income related to the Coronavirus pandemic. This Request for Proposal (“RFP”) is intended to identify and secure a contract with a non-profit agency who demonstrates experience and capacity to administer an Emergency Income Payment (Rent) Assistance Program. The City of Newburgh will execute a contract based on City of Newburgh City Council approval with a tentative end date of August 31, 2021.

The organization must have the ability to identify and evaluate low-to-moderate income households with a goal of maintaining housing stability of qualified City of Newburgh residents. Current HUD CDBG guidance allows for up to three consecutive months of emergency income payment assistance for income-eligible recipient households, to be made directly to the provider of such services on behalf of an individual or family.

Proposals must be received by Todd Venning, City Comptroller, located at City Hall, 83 Broadway, fourth floor, Newburgh, New York 12550 by no later than 4 p.m. on August 14, 2020.

### **Project Timeline:**

The project is expected to be ready for administration prior to the expiration of Executive Order 202.28, which stayed eviction proceeding in New York State through August 20, 2020. All monies shall be expended by August 31, 2021.

### **Project Budget:**

The City has allocated **\$413,511** for this project. The budget may include a maximum of **15%** of the allocation for administrative overhead for the duration of the contract.

### **Eligibility and Minimum Qualifications:**

To qualify for a contract award, an applicant must have the following minimum qualifications:

- Public agency, or private not-for-profit organization.
- Demonstrated ability to manage federal funds.
- Demonstrated history in administering programs designed to assist low-to-moderate income individuals/families.
- Demonstrated history in administering programs designed to assist low-to-moderate income individuals/families for a minimum of three years.

### **Selection Criteria:**

Proposals that comply with the requirements specified in this RFP will be evaluated according to the established criteria designated below. Only the criteria listed below will be used to evaluate proposals:

- Quality of Proposal/Program Description
- Organizational Capacity
- Staffing Plan
- Data Reporting and Collection/Quality Assurance Requirements
- Cost/Budget
- Track Record of Success in Past, Similar Projects

Proposals must fully address the evaluation factors, contain complete technical submittals, references, and data to verify qualifications and experience. Proposals without sufficient submittal data to provide a complete evaluation will be considered non-responsive.

The City reserves the right to amend this RFP in writing at any time. The City reserves the right to cancel and/or reissue the RFP at any time. The City may seek clarification or additional information from applicants. The City reserves the right to reject any or all proposals and the right to waive minor irregularities in any proposals. Waiver of one irregularity does not constitute waiver of any other irregularities.

An award will be made to the proposal that offers the most advantageous proposal after consideration of the evaluation criteria set forth above. The City will not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City after all proposals have been evaluated.

**Scoring Criteria:**

Applications passing threshold requirements will be reviewed and scored by City of Newburgh personnel. Scoring criteria shall be as follows:

Maximum Total Score:	100 points
Quality of Proposal	25 points
Organizational Capacity	25 points
Staffing Plan	10 points
Data Reporting	10 points
Cost/Budget	20 points
Previous History	10 points

Quality of Proposal

- Demonstrated understanding of Federal CDBG and Federal CDBG – CV program rules.
- Ability to meet requirements for use of funds including but not limited to Federal Environmental Review Requirements, as well as Subrecipient monitoring.
- Understanding of City of Newburgh municipal procurement requirements.
- Description of how the proposed program will serve the target population, determine eligibility, program staffing, and estimated number of individuals to be served.

Organizational Capacity

- Applicants' prior experience with providing rental assistance and/or case management
- Availability of third-party sources of funding
- Overall financial condition and the applicant's ability to absorb potential cost overruns or other costs not anticipated in the project budget
- Experience using government funds

Staffing Plan

- Number of employees who will participate in program development and implementation.
- Description of the general role of each employee in the program

Data Reporting

- Prior examples of completion and compliance with government-mandated program reporting requirements

## Cost/Budget

- Budget of proposed staffing and services
- Organizational audit and/or financial statements
- Ability to comply with Office of Management and Budget (OMB) Cost Principles and budget requirements as listed in 2 CFR Part 200

## Previous History

- Examples of prior experience with providing rental assistance and case management

## **Proposal Requirements:**

1. Statement of Interest – Detail the background and mission of the organization and how it is qualified to administer a program of this nature.
2. Statement of Qualifications – Provide a brief history of the organization, including purpose, current programs and number of staff persons. Describe the experience and capacity of the applicant to coordinate, provide and/or act as a referral agent for community-based services that support the low-to-moderate income population. Detail relevant public sector experience and any similar services provided for other municipal agencies in the past.
3. Cost Proposal – include funding awards from other sources (if applicable) that could maximize or leverage the funding source in this RFP, including but not limited to any other type of COVID-19 response funding.
4. References -- provide contact information for at least two prior public clients that the applicant worked with on projects of this nature within the past three years.
5. Non-Collusion Affidavit – applicant must provide an affidavit that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

6. Acknowledgment Statements – statement acknowledging receipt and understanding of the following, all annexed to this RFP as **Attachment A**:
  - a. Program Specifications
  - b. Subrecipient Agreement
  - c. City Procurement Policies and Procedures
  - d. Duplication of Benefits Policies and Procedures

### **Deliverables**

The City shall provide a Notice of Award within 15 days after choosing the winning proposal. The successful proposer shall then enter into a contract (CDBG Subrecipient Agreement) with the City and submit the following:

- Copy of Certificate of Insurance which shows compliance with the attached requirements and naming the City of Newburgh as an additional insured;
- Completed IRS W-9 tax form;
- Proof of Registration on the System for Award Management (“SAM.gov”); and
- Acceptance documents contained in Attachment A.

### **Submittal Deadlines/Requirements**

1. Applicant shall comply with all requirements in the “Proposal Requirements” section of this RFP.
2. Applicant shall indicate a designated contact in its proposal package, along with that individual’s name, address, phone number(s) and e-mail address.
3. Failure to provide all required submittals in completed form and/or a clearly marked original with original signatures may result in a non-responsive proposal and given no consideration. Proposals must be neat, complete, and fully address cost, proposer qualifications and references.
4. Proposals shall be sent to Todd Venning, City Comptroller, City Hall, 83 Broadway, Newburgh, New York 12550 on or before August 14, 2020 with “Subject Line” filled as “**RFP: 10-20 – [Organization Name]**”.
5. Responses which do not meet this deadline may not be considered.

Award of the contract may be subject to approval by Newburgh City Council. The City of Newburgh may terminate the RFP process at any time for any reason. The City of Newburgh also reserves the right to reject any and/or all proposals.

The issuance of the RFP does not obligate the City of Newburgh to select a proposal and/or enter into any agreement. Any submission does not constitute business terms under any eventual agreement.

This RFP does not in any way commit the City of Newburgh to reimburse respondents for any costs associated with the preparation and submission this this proposal.

For any questions about the RFP, contact Alexandra Church at [achurch@cityofnewburgh-ny.gov](mailto:achurch@cityofnewburgh-ny.gov)

# Attachment A

# **TEMPORARY EMERGENCY INCOME PAYMENT PROGRAM SPECIFICATIONS**

## **Overview**

The purpose of the Temporary Emergency Income Payment Program (“Program”) is to mitigate and assist low- to moderate-income families and individuals who suffered, and may continue to suffer, from a temporary financial setback due to the COVID-19 public health pandemic and who need help with delinquent residential rent. Governor’s Cuomo’s Executive Order 202.28 continued a temporary eviction moratorium until August 2020 that began in March 2020. The Program may serve to assist renters who have been unable to pay rent during the moratorium period. Funding sources for the Program may be from Community Development Block Grant funds, including recently allocated federal CDBG stimulus funds (CDBG-CV) to support the Program’s purpose.

## **Type of Assistance**

Rental assistance for tenants experiencing an unforeseen financial crisis and inability to pay rent due to a loss of income related to the COVID-19 public health emergency. The form of assistance will be a grant payable directly to the landlord through an agreement between the landlord and the City.

## **Program Administration**

The Program Administrator will have expert understanding of the needs of low-to-moderate income households in the City of Newburgh who face eviction or housing-related financial hardship as a result of the COVID-19 pandemic. The Program Administrator’s role is to maintain housing stability of City of Newburgh residents by collecting and vetting Income Assistance Applications to evaluate financial need; and administering payment of funds to, or on behalf of, program eligible individuals.

## **Funding Process and Priorities**

- In an effort to ensure the preservation of housing stability, applications will be accepted on a first-come, first-serve basis.
- In an effort to prioritize those that are most in need, applicants with the lowest income levels will receive priority over other eligible applicants.
- There is no cap on the amount of rental assistance per household. A rent reasonableness assessment may be conducted by Program Administrator as a determination of the amount of the assistance provided.
- Rental assistance is available for up to 3 months of rent per household.

## **Applicant Eligibility and Requirements**

Households must demonstrate an inability to meet rent obligations through documenting a loss of income and lack of assets available to meet rent obligations. To qualify for assistance, applicants must meet the following criteria:

- Resident of the City of Newburgh
- Proof of monthly rental amount (written lease is not required) subject to rent reasonableness assessment conducted by Program Administrator
- Proof of being current on rent through February 2020
- Total household income does not exceed the Low-Income limits (80% of Area Median Income) established for Orange County, adjusted by household size. See table below for 2020 Maximum Income Limits, effective April 30, 2020:

Household Size	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
80% AMI	\$54,950	\$62,800	\$70,650	\$78,500	\$84,800	\$91,100	\$97,350	\$103,650

- Household must have a documented **Substantial Decrease in Household Income, defined as provided** related to COVID-19 impacts due to health, employment, out-of-pocket medical expenses or school/childcare closures as evidenced by the following:
  - Termination Notice
  - Payroll Check or Pay Stubs
  - Bank Statements
  - Medical Bills
  - Signed Letter from Employer explaining tenant'(s) changed financial circumstances
  - Unemployment Award Letter
- Self-Certification (by tenant) of inability to pay rent.

### Special Considerations

The following tenants may be eligible to participate in the Program if they meet certain requirements:

- Section 8 Tenants, whose rental rate is based on their household income may be eligible to participate in the program, up to the tenant's share of the rent
- Tenants of a City- or other regulated affordable housing development

### Ineligible Applicants

The following tenants/landlords are ineligible to participate in the Program:

- Tenants that received assistance in another **Rental Assistance Program** since March 16, 2020;
- Tenants that are immediate relatives, through blood or marriage (i.e. child, parent, sister, brother, grandparent, aunt, uncle) of the lessor;
- Single owner-occupied residence, when the owner-occupant rents or leases a majority the number of bedrooms or occupants of the residential unit.

## **Program Assistance**

- Rental relief assistance will be provided in an amount that is the tenant's actual rent, subject to rent reasonableness assessment conducted by Program Administrator
- Grant funds will be disbursed to the Program Administrator. Rents will be released directly to the tenant's landlord.
- Prior to the release of funds, the Program Administrator must receive the following documents:
  - From the Landlord
    - W-9 for the Landlord receiving rental payment
    - Signed affidavit affirming that the Landlord has not and will not receive payment for the same month(s) rent due for the same tenant from any other rental assistance or mortgage assistance program
    - Proof of a current Rental License issued by the City of Newburgh, or proof of a completed rental license application (including proof of fee payment) submitted to the City of Newburgh Department of Code Compliance
  - From the Tenant
    - Signed affidavit affirming that the tenant is not receiving rent from any other sources (rental assistance programs, sub-lessees, roommates, etc.)

## **Program Process**

The Rental Assistance Program Administrator will, at a minimum, manage the following process:

- Creation of Income Assistance Program Application, in English and Spanish;
- Assist tenants in the completion of Income Assistance Program Application form;
- Market/advertise information of the availability of the Income Assistance Program in English and Spanish;
- Verify contents of Income Assistance Program Tenant Applicants, including but not limited to:
  - Identification of the Income Assistance Program Applicant
  - Household Size and Income
  - Confirmation of most recent rental payment(s) made immediately preceding March 16, 2020
  - Documented loss of income related to COVID-19
  - Tenant affidavit/certification confirming that tenant is not receiving rental payment or rental assistance funds from other sources (e.g.: sub-lessees or other rental programs)
- Verify Rental Assistance Program grant payment requirements with Landlord
- Create summary document and provide summary with contents of Income Assistance Program Application to the City of Newburgh
- Create template letters to tenant applicants confirming or denying Rental Assistance Program grant payment to Landlord

## **Programmatic Evaluation**

In order to determine the effectiveness of the COVID-19 Emergency Rental Assistance Program, the Program Provider in conjunction with the City will track and evaluate the following:

- Summary of Applicants who were approved and received rental assistance:
  - Name and Address
  - Participant Eligibility -- number and percent of households at each income group (0-30%, 31-50%, and 51-80% AMI) and racial category (CDBG reporting requirement)
  - Reason(s) for financial loss
  - Total rental assistance payment approved including the amount paid and for what month/year
- Summary of Applicants who were denied rental assistance including the following
  - Name and Address
  - Reason for Rental Assistance Program denial
- Review of eviction filings for the 6 months following the end of the Eviction Moratorium and rate of evictions from Rental Assistance Program participants

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT  
BETWEEN THE CITY OF NEWBURGH AND  
[SUBRECIPIENT NAME]**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the \_\_\_\_\_, 2020, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and [SUBRECIPIENT NAME], a \_\_\_\_\_ non-profit corporation ("Subrecipient"), with an address of \_\_\_\_\_.

**RECITALS**

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is \_\_\_\_\_. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement \_\_\_\_\_. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is \_\_\_\_\_.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in Exhibit A (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

**SECTION 1 TERM OF AGREEMENT**

1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until August 31, 2021.

**SECTION 2 SUBRECIPIENT OBLIGATIONS**

1. Use of CDBG Funds. Subrecipient hereby agrees to use the CDBG funds provided to Subrecipient solely for the project pursuant to all of the terms and conditions of this Agreement. The project is more particularly set forth in **Exhibit A** attached hereto and incorporated herein by reference. The CDBG funds shall be used solely to reimburse the actual expenses incurred by Subrecipient for the project as set forth in the "Budget" attached hereto as **Exhibit B** and incorporated herein by reference. The City may approve minor changes to the budget that do not exceed the maximum amount in Section 3 of this Agreement.

2. Representation and Warranties. Subrecipient hereby represents and warrants to the City as follows:
  - a. Subrecipient has read and is familiar with all of the terms and provisions of the Act and the Regulations applicable to Subrecipient.
  - b. Subrecipient is a non-profit organization permitted to receive CDBG funds under the Act and the Regulations.
  - c. The use of the facility, the project, and the expenses to be reimbursed by the CDBG funds, as described in the budget, are permitted uses of CDBG funds under the Act and the Regulations.
3. Compliance with Law. Subrecipient shall perform the project and operate the facility in accordance with all ordinances, resolutions, statutes, rules, and Regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered, including, but not limited to the Act and the Regulations. Particularly, Subrecipient shall comply with the requirements and standards of the following:
  - a. OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions," as applicable;
  - b. All Federal laws and regulations described in 24 CFR Part 84 and Subpart K of 24 CFR Part 570, including all affirmative action requirements set forth therein, but excluding the City's environmental responsibilities under 24 CFR Section 570.604 and the City's responsibility for initiating the review process under 24 CFR Part 52; and
  - c. If Subrecipient is a religious organization, as defined by the Regulations, all conditions prescribed by HUD for the use of CDBG funds by religious organizations shall pertain.
4. Licenses, Permits, Fees and Assessments. Subrecipient shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the project and the operation of the facility.
5. Personnel and Participant Conditions.
  - a. Civil Rights
    - i. Compliance. Subrecipient agrees to comply with City and State civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

- ii. Nondiscrimination. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
  - iii. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
  - iv. Section 504. Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 721) that prohibits discrimination against the handicapped in any federally assisted program.
- b. Affirmative Action
- i. EO 11246. Subrecipient, if applicable, will comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction Agreements. As specified in Executive Order 11246 and the implementing regulations, contractors, and subcontractors on federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.
  - ii. Women- and Minority-Owned Businesses (W/MBE). Subrecipient will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans,

Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
  - iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
  - vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.
- c. Employment Restrictions
- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
  - ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.
- d. "Section 3" Clause
- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the Subrecipient and any sub-Subrecipients, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which

would prevent compliance with these requirements. The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement: The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.

- ii. Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.
- iii. Notifications. Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. Subcontracts. Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-Subrecipient is in violation of Regulations issued by the grantor agency. The Subrecipient will not subcontract with any sub-Subrecipient where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub- Subrecipient has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Environmental Requirements. Lead Based Paint. In accordance with 24 CFR Part 570.608, Subrecipient shall be prohibited from using lead-based paint in residential structures rehabilitated with Community Development Block Grant funds. Lead-based paint is any paint containing more than five- tenths of one percent (5/10 of 1%) lead by weight in the total non-volatile content of liquid paints or in the dried film of paint already applied.
- f. Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the obligations of the other.

### SECTION 3 DISBURSEMENT OF FUNDS

1. Maximum Amount of CDBG Funds. The maximum amount of CDBG funds to be provided to Subrecipient is **\$413,500.00** in the form of a grant. Subrecipient hereby acknowledges that the

City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.

2. Maximum Amount of General Funds. Not applicable.
3. Termination of Fund Obligation. The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. Method of Payment- CDBG Funds. Unless otherwise specified in **Exhibit A**, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (**Exhibit B**) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. Method of Payment - General Funds, if applicable. City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. Program Income. Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.
7. Separation of Funds. The Subrecipient shall certify that Subrecipient's financial system is in accordance with the standards specified in OMB Circular 110, or 24 CFR Part 84.
8. Indirect Costs. Not applicable.

## SECTION 4 PERFORMANCE SCHEDULE

1. Schedule of Performance. Subrecipient shall commence, prosecute and complete the project within the time periods established in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by this reference.
2. Reversion of Assets. Upon the expiration or sooner termination of this Agreement, Subrecipient shall (i) transfer to the City any and all CDBG funds and program income on hand (ii) any accounts receivable attributable to the use of CDBG funds or program income; and (iii) if any CDBG funds or program income was used by Subrecipient to improve or acquire real property and said CDBG funds or program income was in excess of Twenty-Five Thousand Dollars (\$25,000), Subrecipient shall either (a) use said real property to meet one of the national objectives specified in 24 CFR Section 570.208 for a period of five (5) years after the termination or sooner expiration of this Agreement or (b) dispose of the real property and reimburse the City in an amount (together with any amounts previously repaid to the City) that is equal to the fair market value of the real property times a fraction, the numerator of which is equal to the amount of CDBG funds and/or other program income used to acquire or improve the property and denominator of which is equal to the fair market value of the real property immediately after the real property was acquired or improved with said funds.

## SECTION 5 COORDINATION OF WORK

1. Representative of Subrecipient. The Executive Director is hereby designated as being the representative of Subrecipient authorized to act in its behalf with respect to this Agreement and make all decisions in connection therewith.
2. Contract Officer. Contract Officer shall be the City's CDBG Manager or such person as may be designated by the City Manager. It shall be Subrecipient's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Subrecipient shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.
3. Prohibition Against Subcontracting or Assignment. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Subrecipient, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Subrecipient or any surety of Subrecipient of any liability hereunder without the express consent of City.
4. Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Subrecipient, its agents or employees, perform the

services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Subrecipient's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Subrecipient shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with the role. Subrecipient shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Subrecipient in its business or otherwise of a joint venture or a member of any joint enterprise with Subrecipient.

5. Conflict of Interest. The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no persons having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, Subrecipient, officer, or elected official or appointed official of the City, or of any designated public agencies or subrecipients which are receiving funds under the CDBG Entitlement program.
6. The Subrecipient hereby certifies that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or co-operative agreement;
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contractor, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
  - c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
  - d. Lobbying Certification - Paragraph d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1353, title 31, U.S. Code. Any person who fails to file the required

certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## SECTION 6 INSURANCE REQUIREMENTS

1. Insurance. Before beginning any work under this Agreement, Subrecipient, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Subrecipient and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Subrecipient shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Subrecipient shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Subrecipient's bid. Subrecipient shall not allow any subcontractor to commence work on any subcontract until Subrecipient has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. **VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION.** Subrecipient shall maintain all required insurance listed herein for the duration of this Agreement.
2. Workers' Compensation. Subrecipient shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Subrecipient. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000) per accident. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Subrecipient, its employees, agendas, and subcontractors.
  - a. Submittal Requirements. To comply with Subsection 6.2, Subrecipient shall submit the following:
    - i. Certificate of Liability Insurance in the amounts specified in the section; and
    - ii. Waiver of Subrogation Endorsement as required by the section.
    - iii. Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
      - [A] The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
      - [B] City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of

the Subrecipient; or automobiles owned, leased, hired, or borrowed by the Subrecipient.

[C] Subrecipient hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Subrecipient agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

[D] For any claims related to this Agreement or the work hereunder, the Subrecipient's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Subrecipient's insurance and shall not contribute with it.

iv. Submittal Requirements. To comply with Subsection 6.2, Subrecipient shall submit the following:

[A] Certificate of Liability Insurance in the amounts specified in the section;

[B] Additional Insured Endorsement as required by the section;

[C] Waiver of Subrogation Endorsement as required by the section; and

[D] Primary Insurance Endorsement as required by the section.

b. Professional Liability Insurance.

i. General Requirements. Subrecipient, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than one million dollars (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

ii. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

[A] The retroactive date of the policy must be shown and must be before the date of the Agreement.

[B] Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

[C] If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement,

Subrecipient shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.

[D] A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

- iii. Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.
  - iv. Submittal Requirements. To comply with Subsection 6.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.
- c. All Policies Requirements.
- i. Verification of Coverage. Prior to beginning any work under this Agreement, Subrecipient shall furnish City with complete copies of all certificates of insurance delivered to Subrecipient by the insurer, including complete copies of all endorsements attached to the policies. All copies of certificates of insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Subrecipient beginning work, it shall not waive the Subrecipient's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
  - ii. Deductibles or Self-Insured Retentions. Subrecipient shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Subrecipient shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
  - iii. Wasting Policies. No policy required by this Section 6 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
  - iv. Endorsement Requirements. Each insurance policy required by Section 6 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
  - v. Subcontractors. Subrecipient shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

- vi. Remedies. In addition to any other remedies City may have if Subrecipient fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Subrecipient's breach:

[A] Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

[B] Order Subrecipient to stop work under this Agreement or withhold any payment that becomes due to Subrecipient hereunder, or both stop work and withhold any payment, until Subrecipient demonstrates compliance with the requirements hereof; and/or

[C] Terminate this Agreement.

## SECTION 7 ADMINISTRATIVE REQUIREMENTS

### 1. Financial Management.

- a. Accounting Standards. Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- b. Cost Principles. Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

### 2. Documentation and Record-Keeping

- a. Records to be Maintained. Subrecipient shall maintain all records required by the Federal regulations specific in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
  - i. Records providing a full description of each activity undertaken;
  - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program set forth in 24 CFR 570.208;
  - iii. Records required determining the eligibility of activities;
  - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
  - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
  - vi. Financial records as required by 24 CFR Part 570.502, and Part 84; and
  - vii. Other records necessary to document compliance with Subpart K of 24 CFR 570.

- b. **Retention.** Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four years after he/she has received final payment.
3. **Client Data.** Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
4. **Disclosure.** Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
5. **Property Records.** Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).
6. **National Objectives.** Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement meet one or more of the CDBG program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).
7. **Performance Monitoring.** The City will monitor the performance of Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.
8. **Close-Outs.** Subrecipient obligations to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including but not limited to the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.
9. **Audits and Inspections.** All Subrecipient records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after

receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits.

## SECTION 8 ENFORCEMENT OF CONTRACT

1. **Applicable Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of New York and the United States, as applicable. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Supreme Court of the County of Orange, State of York, or the United States District Court for the Southern District of New York. Subrecipient covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
2. **Disputes.** In the event of any dispute arising under this Agreement, the injured party shall notify the insuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, the City may suspend any further payment of CDBG funds until Subrecipient is in compliance with this Agreement. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the depute is not cured.
3. **Remedies Upon Default by Subrecipient.** In addition to any other rights or remedies available at law or in equity, if Subrecipient fails to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8:
  - a. Temporarily withhold payment of CDBG funds pending correction of the default by Subrecipient;
  - b. Refuse to advance all or any part of the CDBG funds for the project and reallocate said funds to another activity;
  - c. Wholly or partially suspend or terminate the award and this Agreement; and;
  - d. Withhold further awards for the project and/or the facility; and
  - e. Require Subrecipient to repay any CDBG funds that the City determines were not expended in compliance with the requirements of this Agreement, the Act or the Regulations.

4. Termination for Convenience. This Agreement may be terminated for convenience as provided in 24 CFR Section 85.44.
5. Waiver. No delay or omission in the exercise of any right or remedy by a non- defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.
6. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
7. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of the Agreement.
8. Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

## SECTION 9 CITY OFFICERS AND EMPLOYEES

1. Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to Subrecipient, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Subrecipient or to its successor, or for breach of any obligation of the terms of this Agreement.
2. Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his/her financial interest or the financial interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested, in violation of any State statute or regulation. Subrecipient warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

3. Indemnify and Hold Harmless. Subrecipient agrees to indemnify, defend, and hold harmless City and its officers, agents and employees, from any liabilities, claims, suits or actions, losses or expenses, including attorney fees, caused by, arising out of, or in connection with, either directly or indirectly, Subrecipient's performance under this Agreement. Nothing herein shall be construed to require Subrecipient to indemnify the City, its officers, agents and employees against any responsibility or liability.

## SECTION 10 MISCELLANEOUS PROVISIONS

1. Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail at his/her address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City: City of Newburgh  
attn.: City Clerk  
83 Broadway, 1<sup>st</sup> Floor  
Newburgh, New York 12550

copy to: City of Newburgh  
attn.: Office of the Corporation Counsel  
83 Broadway, 2<sup>nd</sup> Floor  
Newburgh, New York 12550

To Subrecipient: [NAME]  
[ADDRESS]  
[ADDRESS]

2. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
3. Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
4. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement that are hereby declared as severable and shall be interpreted to carry out the intent

of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

5. Corporate Authority. The persons executing this Agreement on behalf of the parties hereby warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and, (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

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## **EXHIBIT A – SCOPE OF WORK**

Applicants must be able to set up and administer a CDBG-CV compliant program for low-to-moderate income individuals or families of the City of Newburgh facing eviction or housing-related hardship due to the Coronavirus (COVID-19) pandemic.

The program must include the following components:

- Application development that incorporates required qualification criteria;
- Application screening and review;
- Assistance/support for individuals to complete the application process;
- Program delivery in English and Spanish language;
- General marketing/advertising of the program;
- Participation and facilitation of mediations, discussions, or general conferences between landlords and tenants, including possible Newburgh City Court-directed conferences.
- Data tracking that includes, but is not limited to:
  - Number of applications received
  - Number of applications granted based on program criteria
  - Number of applications denied based on program criteria
  - Actual amount of funds distributed
  - Number of cases that receive an award amount
- Quarterly summaries of data tracked and collected, to be provided to the City.

**EXHIBIT B -- BUDGET**

To be provided by RFP awardee.

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# Community Development Block Grant (CDBG) Procurement Policy City of Newburgh 2020

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This document provides the policies and procedures for the procurement of goods and services utilizing funding from the City of Newburgh Community Development Block Grant (“CDBG”). 24 CFR 85.36 requires grantees and sub-grantees to “use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.” This Statement of Procurement Policy complies with the Housing and Community Development Act of 1974, and the implementing regulations at 24 CFR 500, 24 CFR 85, and the procurement standards of 2 CFR 200, as well as the City of Newburgh Procurement Policy and Procedure.

## **I. General Provisions**

### **A. Purpose**

The purpose of this Statement of Procurement Policy is to:

- 1) provide for the fair and equitable treatment of all persons or firms involved in purchasing by the City of Newburgh;
- 2) assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the City of Newburgh;
- 3) promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and
- 4) assure that the City of Newburgh purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and City of Newburgh policies.

### **B. Application**

Per 2 CFR 200.318(a), the non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. Therefore, this Statement of Procurement Policy (“Statement”) applies to all contracts for the procurement of supplies, services, and construction entered into by the City of Newburgh after the effective date of this Statement. It shall apply to every expenditure of funds by the City of Newburgh for public purchasing, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the City of Newburgh from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.

When both HUD and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and the provisions of this Statement must be applied to the work financed by HUD; if it is not possible to separate the funds, the provisions of this Statement shall be applied to the total project.



## Community Development Block Grant (CDBG) Procurement Policy City of Newburgh 2020

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The term "procurement," as used in this Statement, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of materials, supplies and equipment.

### **C. Procurement Authority and Administration**

#### **Contracting Officer.**

All procurement transactions shall be administered by the Contracting Officer, who shall be the City Manager, or other individual he or she has delegated in writing, or such other individual specified by the City Council. The City Manager shall issue operational procedures to implement this Statement. The City Manager shall also establish a system of sanctions for violations of the ethical standards described in in this Statement.

#### **Contracting Officer Duties.**

The City Manager or his/her designee shall ensure that:

- a. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing. The annual plan should be completed by December 31 of each year;
- b. Procurements and modifications are in writing, clearly specifying the desired supplies, services, or construction activity, and are supported by sufficient documentation, regarding the history of the procurement, including as a minimum the rationale for the procurement method chosen, the contract type, the rationale for selecting or rejecting offers, and for procurements in excess of the Simplified Acquisition Threshold, a price or cost analysis supporting the basis for the contract price;
- c. For procurements other than small purchases, public notice is given of each upcoming procurement before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 30 days for main construction contracts and 30 days for other contracts is provided for preparation and submission of bids or proposals; and notice of contract award is made available to the public;
- d. Solicitation procedures are conducted in full compliance with Federal standards stated in 2 CFR 200.320 and 24 CFR 85;
- e. An independent cost estimate is prepared before formal solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;
- f. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted;
- g. A contract administration system is maintained to insure that contractors perform in accordance with their contracts, which provides for the proper inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.



## Community Development Block Grant (CDBG) Procurement Policy City of Newburgh 2020

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### **D. Cooperative Purchasing**

The City of Newburgh may enter into a New York State agreement to purchase or use common goods and services. The decision to use the New York State contract or conduct a direct procurement shall be based on fostering greater economy and efficiency. If used, the New York State agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The City of Newburgh is encouraged to use Federal or New York State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

### **E. Specifications and Scopes of Work**

#### **General**

All specifications and scopes of work shall be drafted to promote overall economy for the purposes intended and to encourage competition in satisfying the City of Newburgh's needs. Specifications and scopes of work shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see Section V below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

#### **Limitations**

The following specification and scope of work limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the City of Newburgh's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any New York State or City of Newburgh laws. Specifications and scopes of work shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the City of Newburgh computer needs and then allowing that consultant to compete for the subsequent contract for the computers).



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## F. Assistance to Small and Minority Businesses

### Required Effort

The City of Newburgh must make good faith efforts to ensure those small businesses and minority-owned businesses, women's business enterprises, and individuals or firms located within or owned in substantial part by persons residing in the City of Newburgh are used when possible. Such efforts shall include, but shall not be limited to:

- a) including such firms, when qualified, on solicitation mailing lists;
- b) encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- c) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- d) establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- e) using the services and assistance of the Small Business Administration;
- f) requiring prime contractors, when subcontracting is anticipated, to take the steps listed in "a" through "e" above.

## G. Contract Clauses

### Required Clauses

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 2 CFR 200.326 and Appendix II to Part 200, such as the following:

- Administrative, contractual and legal remedies when contractor violates or breaches contract (Contracts over small purchase threshold)
- Termination for Default and Termination for Convenience (Contracts over \$10,000)
- Equal Employment Opportunity
- Davis-Bacon Act and Copeland "Anti-Kickback" Act (or Locally-Determined Wage Rate requirements, if applicable)
- Contract Work Hours and Safety Standards Act
- Rights to Inventions Made Under a Contract or Agreement
- Clean Air Act and Federal Water Pollution Control Act
- Debarment and Suspension
- Byrd Anti-Lobbying Amendment



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- Procurement of recovered materials

## **Forms**

If all required clauses are not included on forms (e.g., Form HUD 5370), then the City of Newburgh shall attach any additional clauses to the forms used in contract documents and shall include the contract clauses and solicitation notices for Indian preference described above.

## **H. Contract Types and Options**

### **Contract Types**

Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of the City of Newburgh may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties and shall be in the HUD-approved form of contract. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the City of Newburgh needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1. A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

### **Options**

Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the City of Newburgh; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the 'Options may be exercised only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the City of Newburgh than conducting a new procurement.

## **II. Section 3 of the HUD Act of 1968**

Recipients shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent



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feasible. Section 3 provides job training, employment, and contracting opportunities for low-income individuals.

### Definitions

#### Section 3 Business Concern

- 1) A business concern that is 51% or more owned by Section 3 residents, or
- 2) Whose permanent, full time employees include persons, at least 30% of whom are current Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or
- 3) That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in 1 and 2 above.

#### Section 3 Resident

- 1) A public housing resident; or
- 2) An individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended, and who is low-income or very low-income as defined by the Housing Act of 1937.

The recipient threshold requirements for Section 3 apply only to those Section 3 covered projects or activities for which the amount of assistance exceeds \$200,000. Covered projects are housing rehabilitation, housing construction, and other public construction projects.

**All Section 3 covered contracts shall include the following clause (referred to as the Section 3 clause):**

- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.



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- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f. Examples of efforts to offer training and employment opportunities to Section 3 residents and procurement procedures that provide for preference for Section 3 business concerns may be found under 24 CFR Part 135, Appendix to Part 135.
- g. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

### **III. Procurement Methods**

#### **Selection of Method**

When satisfying its needs by procurement, the City of Newburgh shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement. The City of Newburgh shall provide a rationale in its supporting documentation as to why it selected that particular method.



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## Micro-Purchase Procedures

### **General**

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$200.67 Micro-purchase). Any procurement not exceeding \$2,000 (ICDBG Program) may be conducted in accordance with the micro-purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a micro-purchase under this section, except as may be reasonably necessary in instances where breaking out such procurements can be shown to result in more economical purchases.

### **Petty Cash Purchases**

Petty cash purchases should be kept to a minimum, since purchasing in limiting quantities does not provide for the best price and all administrative requirements under small purchases apply.

### **Obtaining Quotes**

To the extent practicable, the City of Newburgh must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable per 2 CFR 200.404.

## Small Purchase Procedures

### **General**

Any procurement from \$2,000.00 not exceeding \$100,000.00 may be conducted in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

### **Obtaining Quotes**

The City of Newburgh shall solicit price quotations by phone, letter, email or other informal procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, the City of Newburgh shall inform the sources solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The City of Newburgh shall obtain written quotations; however, the written quotation may be a confirmation of a previous oral quotation only if it is submitted by the due date for submitting all quotations. The names, addresses, telephone numbers, email addresses



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and any other contact information of the contractors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.

### **Competition**

The City of Newburgh shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer than three sources is acceptable if the City of Newburgh has attempted but has been unable to obtain a sufficient number of quotations. The sole quotation received may be accepted only in unusual circumstances (such as an emergency threatening public health and safety). But would also need to be consistent with the requirements of 2 CFR 200.320(b).

### **Award based on price**

For small purchases, award is generally based on price and fixed specifications taking into account the method of providing City of Newburgh Section 3 preferences.

### **Sealed Bidding**

#### **Conditions for Use**

Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For professional services contracts, sealed bidding should not be used.

#### **Solicitations and Receipt of Bids:**

Issuance and amendments. An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within seven days of the bid opening, the bid opening shall be postponed until at least seven days after the issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.



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### Bid Opening:

Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and made available for public inspection.

### Award:

Award shall be made to the lowest responsive and responsible bidders provided in the invitation for bids by written notice to the successful bidder, as follows: Unrestricted solicitations. If the solicitation is not restricted to a particular enterprise or organization, award shall be made to the qualified economic enterprise or organization with the lowest responsive bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited, and the bid is within the range specified in the Attachment to this Statement.

### Mistakes in Bids:

- a) Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is clear or the bidder submits convincing evidence that a mistake was made.
- b) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City of Newburgh or fair competition shall be permitted.

### **Competitive Proposals**

#### Conditions for Use:

Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the City of



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Newburgh allows competitive proposals and determines that conditions are not appropriate for the use of sealed bidding. At least three qualified sources shall be solicited.

### Solicitation:

- **General:** A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
- **Evaluation Factors:** The Request for Proposal (RFP) shall clearly identify the relative importance of price and other evaluation factors and sub factors, including the weight given to each technical factor and sub factor. The proposals shall be evaluated only on the criteria stated in the RFP.

### Negotiations:

In those situations where deemed necessary, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

### Award:

After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the City of Newburgh, provided that the price is within the maximum total contract price established for the specific project or activity.



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## Architect Engineer Services:

Architect Engineer services in excess of the small purchase limitation may be obtained by either the competitive proposals method or qualifications-based selection procedures, Sealed bidding shall not be used to obtain architect/engineering services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. These procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

## Noncompetitive Proposals

### Conditions for use:

Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:

- a) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the City of Newburgh, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency; or
- b) Only one source of supply is available, and the Contracting Officer so certifies in writing; or
- c) After solicitation of a number of sources, competition is determined inadequate; or
- d) HUD specifically authorizes the use.

### Justification:

Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the City of Newburgh Contracting Officer.



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Price reasonableness:

The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis.

### Cancellation of Solicitation

- 1) An invitation for bid, RFP, or other solicitation may be cancelled before offers are due if: the City of Newburgh no longer requires the supplies, services or construction; or, the City of Newburgh can no longer reasonably expect to fund the procurement; or, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.
- 2) A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; or, ambiguous or otherwise inadequate specifications were part of the solicitation; or, the solicitation did not provide for consideration of all factors of significance to the City of Newburgh; or, prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or, a condition for canceling a solicitation and resolicit, as specified above, is met; or, for good cause of a similar nature when it is in the best interest of the City of Newburgh.
- 3) The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited. A notice of cancellation shall be sent to all offerors solicited.



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## **IV. Cost and Price Analysis**

### A. General

A cost or price analysis shall be performed for all procurement actions in excess of the Simplified Acquisition Threshold, including contract modifications. The degree of analysis shall depend on the facts surrounding each procurement. The City of Newburgh shall perform an independent cost or price estimate prior to receiving bids or proposals. A cost or price analysis may also be required for smaller purchases at the discretion of the City of Newburgh.

### B. Price Analysis

A Price Analysis shall be conducted on any sealed bid prior to awarding a contract. The City of Newburgh shall perform a comparability of prices received in relation to the independent cost estimate, to ensure the price is reasonable and within funds budgeted.

### C. Cost Analysis

A Cost Analysis shall be conducted for all competitive proposals (e.g., when contracting for professional, consulting, or architect/engineer services), and for all noncompetitive proposals.

## **V. Contractor Qualifications and Duties**

### A. Contractor Responsibility

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the City of Newburgh shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor), and financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract. If a prospective contractor is found to be non-



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responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

### B. Bonding Requirements

- a. Minimum Requirements. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the City of Newburgh may implement bonding requirements different from the minimum federal requirements provided that HUD has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:
  - i. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
  - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.



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### C. Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies (e.g., Department of Labor, for violations of Secretary of Labor Regulations) when necessary to protect the City of Newburgh in its business dealings. The City of Newburgh may suspend or debar a contractor under State or local laws, as applicable. Refer to System for Award Management (<https://www.sam.gov>) for additional information.

### D. Qualified Bidder's Lists

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products, which are used in the procurement of supplies and services, shall be kept current and shall include enough qualified sources to ensure competition. Lists of pre-qualified organizations may be maintained by the City of Newburgh. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such qualified suppliers.

## **VI. Appeals and Remedies**

### **A. General**

It is the City of Newburgh's policy to resolve all procurement and contractual issues timely and informally at the City of Newburgh level without litigation.

### **B. Bid Protests**

1. An unsuccessful bidder or offeror may file a written complaint (or protest) with the Contracting Officer three days from the date of the City of Newburgh's notice to the unsuccessful bidder or offeror or from the date of the action (or omission) upon which the complaint is based. The complaint must be signed and shall detail the basis of the complaint. No untimely or oral complaint will be considered.
2. The City of Newburgh need not suspend contract performance or terminate the award of the contract unless the City of Newburgh determines, in its sole discretion, which it appears likely that the contract award will be invalidated and that a delay in receiving the supplies or services will not be prejudicial to the City of Newburgh's interests.



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3. Upon receipt of a complaint, the City of Newburgh shall promptly stamp the date and time of receipt on the complaint and acknowledge receipt of the complaint in three business days.
4. Within three business days of receipt of a complaint, the Contracting Officer shall meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The City of Newburgh Contracting Officer shall make a determination on the complaint within three business days of the City of Newburgh's receipt of the written complaint. The decision of the Contracting Officer shall constitute the final administrative action on the complaint.
5. A complainant must exhaust all administrative remedies with the City of Newburgh before pursuing a protest with HUD or other agency providing funds for the procurement.
6. Reviews of complaints by the Federal or other agency will be limited to:
  - a. Violations of Federal or relevant law or regulations and the standards of this section; and
  - b. Violations of the City of Newburgh's complaint procedures for failure to review a complaint or protests.

### **C. Contract Claims and Disputes**

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to a higher level in the City of Newburgh, such as the City Council.

## **VI. Ethics in Public Contracting**

### **A. General**

The City of Newburgh shall adhere to the following code of conduct governing the performance of their employees, officers or agents engaged in the award and administration of contracts consistent with applicable State or local law, and shall comply with the limitations imposed by 2 CFR 200.318(c).



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### **B. Conflict of Interest**

No employee, officer or agent of the City of Newburgh shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

- a) An employee, officer or agent involved in making the award;
- b) His/her immediate family member (as determined by the City of Newburgh in its operating policies);
- c) His/her partner, or,
- d) An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

Per 24 CFR 570.611(b), no person who participates in the decision-making process or who gains inside information with regard to CDBG assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of CDBG funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the City of Newburgh in its operating policies.

Employees, agents and grantees who may have acquired confidential and privileged information during their tenure with the City of Newburgh are prohibited from publicly disclosing that information and from using that information for personal purposes. Former Board Members and employees are prohibited from acquiring a contract or any other financial interest, direct or indirect, for any City of Newburgh project or activity that is affected by that confidential or privileged information.

### **C. Gratuities, Kickbacks, and Use of Confidential Information**

City of Newburgh officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain. It is determined that providing meals, entertainment or gifts by an individual company, including all related concerns and individuals, is determined to be of monetary value and is therefore prohibited.

### **D. Prohibition against Contingent Fees**

Contractors shall not retain a person to solicit or secure a City of Newburgh contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees.



## **City of Newburgh Duplication of Benefits Policies and Procedures**

### **BACKGROUND**

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) (Public Law 116-136) makes available \$5 billion in supplemental Community Development Block Grant (CDBG) funding for grants to prevent, prepare for, and respond to coronavirus (CDBG-CV). The City of Newburgh is in receipt of CARES Act funds from the Department of Housing and Urban Development (HUD). The City of Newburgh will use the CDBG-CV funds to “prevent, prepare for, and respond to coronavirus” (COVID-19). These activities are carried out in partnership with other agencies through the implementation of a number of CDBG-CV funded programs.

Sec. 312 of the Stafford Act (42 U.S.C. 5155) requires all Stafford Act funded programs to ensure that entities in receipt of federal disaster recovery dollars are not compensated for the same damages through multiple sources. HUD provided specific guidance for CDBG-CV funding through “Clarification of Duplication of Benefits Requirements under the Stafford Act,” 76 Federal Register 221 (16 November 2011), pp. 71060-71066.

*“ Requires CDBG-CV grantees to prevent the duplication of benefits, which means grant funds may not be used to pay costs if another source of financial assistance is available to pay that cost.”*

This policy and procedure document reinforces those requirements and establishes applicability and responsibility in the implementation of the City of Newburgh’s CDBG-CV grant.

### **SCOPE OF CITY OF NEWBURGH CDBG-CV POLICY**

This policy is applicable to all City of Newburgh Partner Agencies, Subgrantees and Subrecipients responsible for the implementation of programs and projects funded under the City of Newburgh’s CDBG-CV grant. This policy clarifies the policy for City of Newburgh CDBG-CV grant B-20-MW-36-0119.

### **POLICY**

All CDBG-CV funded programs and projects are required to ensure appropriate procedures are in place to prevent Duplication of Benefit (DOB). City of Newburgh Partner Agencies and Subgrantees must ensure that DOB prevention is specifically addressed in their policies and procedures, and all subrecipient agreements and/or contracts must pass that responsibility down to subrecipients. Subrecipients and Subgrantees providing direct benefits to beneficiaries must utilize procedures in accordance with a worksheet prepared for each awardee on file. Each awardee must sign a certification form regarding other assistance received. Both documents must be on file in accordance with 76 FR 71060. Programs have the liberty to design forms that

combine the calculation and the certification requirements. Third party verification of assistance is required, and every attempt to obtain verifications should be undertaken. When verifications are not obtainable and self-declaration can be used as a last resort, but should be the exception.

## **PROCEDURES**

The procedures provided below outline the City of Newburgh's procedures for ensuring no DOBs. In addition to the procedures below, all grant agreements must contain language indicating that any duplication of benefit received post-award will require repayment. Procedures are as follows:

1. Prior to assistance
  - a. Identify total need
    - i. Determine the specific purpose for the CDBG-CV request
    - ii. Total need will be determined by project type (e.g. Emergency Income Payments). The total need must be documented.
    - iii. All costs included in total need must be reasonable and necessary.
  - b. Identify all sources of funding received and reasonably anticipated
    - i. For families and individuals as well as entities, the application for assistance will require documentation for all sources of funding received or reasonably anticipated, and certification that all assistance is reported.
    - ii. 3<sup>rd</sup> party verify all sources of assistance when possible (Ex. FEMA, SBA, Private Insurance, etc.) When 3<sup>rd</sup> party verification is not available, document in the file the reason it was not available.
  - c. Recording the information in the DOB Calculation Worksheet, determine which funding sources to include in or exclude from the unmet need calculation (based upon guidance in Fed. Reg. 71,060 – 71,066 [November 16, 2011]) and deduct assistance determined to be duplicative
  - d. Apply program cap, if applicable
  - e. Arrive at maximum assistance award amount
  - f. Execute grant/loan agreement with recipient/beneficiary, including provision that all additional funds received will be reported to the subrecipient program administrator within 15 calendar days. If the additional funds are determined to be duplicative, the award will be reduced and/or the recipient/beneficiary will be required to repay any disbursed duplicative benefit.
2. Upon completion of activity for which funds were awarded:

Require recipient/beneficiary to report and certify whether additional funds were received for disaster-related expenses, the amount, and when funds were received. If additional funds were received that are determined to be duplicative, require repayment.

3. One year after completion of activity for which funds were awarded or upon project closeout if closeout occurs after March 27, 2026 (six years post event):

Require recipient/beneficiary to report and certify whether additional funds were received for disaster-related expenses, the amount, and when funds were received. If additional funds were received that are determined to be duplicative, require repayment.

## **DOCUMENTATION**

Each beneficiary or project file must contain the following:

- a) Duplication of Benefit calculation worksheet form to include:
  - i. Identification of unmet need
  - ii. Identification of all sources of assistance provided to applicant
  - iii. Identification of those sources that are duplicative (with comments as needed)
  - iv. Final award calculation
- b) Any required 3<sup>rd</sup> party verifications of assistance and/or certifications as follows:
  - i. FEMA programs: letter/s from FEMA and/or data provided by FEMA
  - ii. Insurance: letter from insurance company and/or data if available
  - iii. SBA: letter/s from SBA and/or data provided by SBA
  - iv. Other program documentation
- c) Certification that no additional benefits have been received. This can be a signed affidavit from the beneficiary or other form as created by the program.
- d) A signed subrogation agreement from the recipient Note: Items (c) and (d) can be on the same form.

Additionally, at the program level each implementing agency must have the following:

- a) A description/definition of Duplication of Benefit and likely sources within their program guidelines or in their application and
- b) Recapture policies and procedures

## **REQUIRED VERIFICATION BY PROGRAM AREA**

\*Includes charitable resources, local government programs donations of easements or land, other federal funds (CDBG/HOME), or State programs such as Impact grants or Disaster Emergency Fund, etc.

## **ADMINISTRATION AND RESPONSIBILITY**

The City of Newburgh Director of Community Development or his/her designee is responsible for ensuring that duplication policies and procedures are available for all CDBG-CV funded programs and that State Partner Agencies, Subgrantees and Subrecipients are monitored for compliance with this policy.

City of Newburgh Partner Agencies and Subgrantees are responsible for developing and implementing DOB policies and procedures for programs under their purview.

Subgrantees and Subrecipients directly serving beneficiaries are responsible for ensuring that DOB procedures are followed and DOB calculations and certifications are available on file for all beneficiaries. All subgrantees and subrecipients must have recapture procedures in place and in writing within all grant agreements in accordance with 31 U.S.C. Chapter 37 for the return of any identified Duplication of Benefit.

The City of Newburgh Director of Community Development is responsible for the administration, revision, interpretation, and application of this policy. This policy will be reviewed annually and revised as needed to address State and Federal requirements.