

AGREEMENT
BETWEEN THE COUNTY OF ALBANY
AND THE ALBANY COUNTY LAND BANK CORPORATION
FOR RESIDENTIAL BUILDING REHABILITATION

Resolution No. 490 of 2021

THIS AGREEMENT is made by and between the County of Albany, a municipal corporation organized under the laws of the State of New York, acting by and through its County Executive, with a principal office at the Albany County Office Building, 112 State Street, Albany, New York 12207 (hereinafter, the "County"), and the Albany County Land Bank Corporation, with a principal address located at 69 State Street, Albany, New York 12207 (hereinafter, the "Contractor," the County and the Contractor may be referred to individually as a "[P]arty" and together as the "[P]arties").

WITNESSETH:

WHEREAS, by Resolution No. 266 of 2021, the Albany County Legislature held a public hearing on two applications for funding under the Community Development Block Grant Program (CDBG) regarding programs for Albany County; and

WHEREAS, by Resolution No. 489 of 2021, the Albany County Legislature accepted an award for the Community Development Block Grant Program, of which \$1,000,000 has been made available for the Albany County Land Bank Corporation to aid in rehabilitation efforts in Albany County; and

WHEREAS, the Contractor has experience and willingness to assist the County in administering said Grant; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into this Agreement with the Contractor regarding the aforesaid services by Resolution No. 490 of 2021, adopted December 6, 2021; and

WHEREAS, in furtherance thereof, the parties hereto desire to formalize their understanding and agreement regarding the provision of the aforementioned services, and to execute a fully-integrated agreement with respect thereto;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

- 1.1 The Contract Documents consist of the following: this Agreement; and the NYS Community Development Block Grant Agreement, which is incorporated herein and made a part hereof in its entirety by reference (collectively called “the Agreement” hereinafter).
- 1.2 In the event of any discrepancy, disagreement, or ambiguity among the documents which comprise this Agreement, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement, or ambiguity: 1) this Agreement, 2) the NYS Community Development Block Grant Agreement.

ARTICLE 2. SCOPE OF SERVICES TO BE PERFORMED BY CONTRACTOR

- 2.1 The Contractor shall serve as administrator of the Office of Community Renewal Community Development Block Grant and shall administer said Grant in a manner consistent with the County application as approved by the Office of Community Renewal which is incorporated herein, as if fully set forth as part of this agreement.
- 2.2 The Contractor shall rehabilitate three (3), two-unit residential buildings into affordable homeownership opportunities for members of underserved and vulnerable populations that have been disproportionately impacted by COVID-19. All three properties will be sold to low to moderate-income, first-time homebuyers who are at or below 80% Area Median Income.
- 2.3 The County shall monitor the Contractors performance during the grant. These activities are particularized in the Subrecipient Monitoring, attached hereto and made a part hereof as Exhibit A.

ARTICLE 3. COMPENSATION

In consideration of the terms and obligations of this Agreement, the County agrees to pay and the Contractor agrees to accept an amount not to exceed ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (US currency) as full compensation for all goods furnished under this Agreement.

ARTICLE 4. PAYMENT

Payment shall be made to the Contractor upon the Contractor’s submission of a properly executed Albany County Claim Form, plus all supporting documentation, to the County, and acceptance by the County of the Claim Form.

ARTICLE 5. TERM OF THE AGREEMENT

The term of this Agreement shall commence upon execution and continue in effect through November 10, 2022.

ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

6.1 This Agreement may be terminated by the County or the Contractor as follows:

6.1.1 The County may terminate this Agreement if the Contractor refuses or fails to supply enough properly skilled workers or proper materials to meet any of its requirements, if the Contractor fails to make payment to County-approved subcontractors for materials or labor, or disregards laws, ordinances or rules and regulations or orders of a public entity having jurisdiction over the work, or if the Contractor is substantially in breach of any of its provisions. Additionally, the County may, without cause, order the Contractor in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the County may determine.

6.1.2 The Contractor may terminate this Agreement if the County is substantially in breach of it.

6.2 In the event of a breach by the Contractor, the Contractor shall pay to the County all direct damages caused by such breach, including, but not limited to, all sums expended by the County to procure a substitute Contractor to complete the work, together with the County's own additional costs incurred in procuring a substitute Contractor.

ARTICLE 7. ASSIGNMENT

7.1 Pursuant to §109 of the General Municipal Law, the Contractor is prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of its right, title or interest therein, to any other person or entity without the prior written consent of the County.

7.2 The Contractor shall not subcontract for any portion of the services required under this Agreement without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

ARTICLE 8. AVAILABLE DATA

All technical or other data relative to this Agreement in the possession of the County or in the possession of the Contractor shall be made available to the other party to this Agreement without expense to the other party.

ARTICLE 9. COOPERATION

Contractor shall cooperate with the agents, representatives and employees of the County and the County shall cooperate with the agents, representatives and employees of the Contractor to ensure that the work delineated herein proceeds and concludes as expeditiously as possible.

ARTICLE 10. NON-DISCRIMINATION

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

ARTICLE 11. EXTRA WORK

If the Contractor is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Contractor shall promptly notify the County of that opinion. The County shall reasonably determine whether or not such work is in fact beyond the scope of this Agreement and whether or not it constitutes extra work. In the event the County determines such work does constitute extra work, it shall provide extra compensation to the Contractor on a negotiated basis.

ARTICLE 12. COMPLIANCE WITH MACBRIDE PRINCIPLES

Contractor hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993, in that Contractor either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of its compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under § 4 of the said Local Law No. 3 for 1993 including, but not limited to, imposing sanctions, enforcing compliance, recovering damages, declaring the Contractor in default, and/or seeking debarment or suspension of the Contractor.

ARTICLE 13. IRANIAN ENERGY SECTOR DIVESTMENT

Contractor hereby represents that Contractor is in compliance with New York State General Municipal Law Section 103-g entitled "Iranian Energy Sector Divestment," in that Contractor has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

ARTICLE 14. RELATIONSHIP OF THE PARTIES

Contractor is, and will function as, an independent Contractor under the terms of this Agreement, and shall not be considered an agent or employee of the County for any purpose. The agents, representatives and employees of the Contractor shall not in any manner be, or be held out to be, the agents, representatives or employees of the County.

ARTICLE 15. INDEMNIFICATION

- 15.1 Contractor shall defend, indemnify and save harmless the County, and its employees, from and against any and all claims, damages, losses and expenses (including, but not limited to, reasonable attorney's fees) arising out of or in consequence of any third party claim to the extent caused by the negligent or intentionally wrongful act or omission of the Contractor, its agents or employees, to the extent of its or their responsibility for such claims, damages, losses or expenses.
- 15.2 All Parties agree to indemnify, defend and hold harmless the Housing Trust Fund Corporation, its agents and employees, from and against any and all claims, actions, damages, losses, expenses and costs of every nature.

ARTICLE 16. INSURANCE COVERAGE

- 16.1 Contractor shall procure and maintain for the entire term of this Agreement, without additional expense to the County, insurance policies of the kinds and in the amounts provided in the Schedule A attached hereto and made a part hereof. The insurance policies shall name the County as an additional insured. Such policies may only be changed upon thirty (30) days prior written approval by the County.
- 16.2 Contractor shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have been met. The Contractor shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate(s). No work shall be commenced under this Agreement until the Contractor has delivered the Certificates of Insurance to the County. Upon failure of the Contractor to furnish, deliver and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued or terminated.
- 16.3 As required by Section 108 of the N.Y. General Municipal Law, this Agreement shall be of no force and effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. Workers' Compensation Law. The Contractor shall require any subcontractor authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. Workers' Compensation Law and of Schedule A of this Agreement.

ARTICLE 17. NON-COLLUSIVE BIDDING

By execution of this Agreement, Contractor warrants, under penalty of perjury, that to the best of knowledge and belief the prices communicated to the County in establishing the costs of goods and services covered in this Agreement have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition. Contractor warrants that it is in compliance with NYS General Municipal Law Sec. 103-d with regard to the prices of goods and services covered in this Agreement.

ARTICLE 18. NO WAIVER OF PERFORMANCE

Failure of either party to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of said party's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the other party.

ARTICLE 19. ACCOUNTING RECORDS

- 19.1 Contractor shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this Agreement. Such records shall be subject to periodic and final audit by the County upon request.
- 19.2 Contractor shall provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software or any other information relevant to performance under this Agreement, immediately upon request.
- 19.3 Contractor shall retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County and authorized State and/or Federal personnel during such period.

ARTICLE 20. NON-APPROPRIATIONS

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

ARTICLE 21. CHANGE IN LEGAL STATUS OR DISSOLUTION

During the term of this Agreement, the Contractor agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Contractor shall give the County thirty (30) days written notice in advance of such event.

ARTICLE 22. LICENSES

The Contractor shall at all times obtain and maintain all licenses required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

ARTICLE 23. PARTIAL INVALIDITY

If any term, part, provision, section, subdivision or paragraph of this Agreement shall be held to be unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions or paragraphs.

ARTICLE 24. HEADINGS – CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of the Agreement or in any way to modify, amend or affect the provisions hereof.

ARTICLE 25. NOTICES

All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

ARTICLE 26. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that the designated venue is Albany County, New York. All Parties shall be bound by and comply with all applicable Federal, State, and local laws and regulations including, but not limited to 24 CFR Part 570 and 2 CFR Part 200.

ARTICLE 27. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and no representations or promises have been made except as expressly set forth herein.

ARTICLE 28. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

ARTICLE 29. EXECUTION OF DOCUMENTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) hereunder set forth.

COUNTY OF ALBANY

DATED: _____

BY: _____

Daniel P. McCoy
Albany County Executive

or

Daniel C. Lynch
Deputy County Executive

THE ALBANY COUNTY LAND BANK
CORPORATION

DATED: 2/18/2022

BY: _____


Executive Director

STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

On the _____ day of _____, 2021, before me, the undersigned, personally appeared Daniel P. McCoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public


STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the _____ day of _____, 2021, before me, the undersigned, personally appeared Daniel C. Lynch, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the 18th day of FEBRUARY, 2021, before me, the undersigned, personally appeared ADAM R ZARANKO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JOSEPH THOMAS MURPHY
Notary Public, State of New York
Qualified in Albany County
Reg. No. 01MU6406728
My Commission Expires 4/6/2024

SCHEDULE A

INSURANCE COVERAGE

Workers' Compensation and Employers' Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.

Automobile Liability Insurance: A policy or policies with the limits of not less than \$500,000 combined for each accident because of bodily injury, sickness, or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobile.

General Liability Insurance: A policy or policies of comprehensive all-risk insurance, including coverage for demolition of structures, with limits of not less than:

| Liability For: | Combined Single Limit |
|-----------------|-----------------------|
| Property Damage | \$1,000,000.00 |
| Bodily Injury | \$1,000,000.00 |
| Personal Injury | \$1,000,000.00 |

EXHIBIT A

Subrecipient Monitoring

It is very common for communities to involve and utilize other organizations to accomplish mutually shared goals and objectives. This is most common in the delivery of social services, housing and economic development. It can be extremely advantageous for Recipients of NYS CDBG funds to accomplish their program objectives through the utilization of subrecipients. If a Recipient chooses to contract with a subrecipient, the most important responsibility the Recipient has in the effective management of its project is in monitoring the subrecipient's performance. It is not only good management practice to monitor, but it is required.

Subrecipients must be monitored to ensure compliance with all of the requirements outlined in their agreement with the Recipient. A well thought out and clear agreement is essential in avoiding problems. Most agreements are project-specific, with many of the general requirements only referenced. Monitoring is, in effect, a method of determining if the subrecipient is either in default of the agreement or will be in default, if things are allowed to continue.

Monitoring should not be a one-time event. To be an effective tool for avoiding problems and improving performance, monitoring must be an on-going process. The most successful strategy is one of establishing a monitoring plan at the beginning of the project. The frequency and coverage of monitoring is highly dependent on the risk associated with a particular project, as measured by:

- The experience of the subrecipient with the NYS CDBG program. Obviously, an organization which has never been exposed to NYS CDBG requirements needs a lot more training and "hand-holding" than one which has years of experience (unless, of course, that experience has been consistently negative);
- The stability of the subrecipient's organization, particularly as measured by staff turnover;
- Previous experience with the execution of government-funded programs, particularly if there were previous compliance or performance problems; and
- The complexity of the project and/or activities. HUD views certain activities as "risky" by definition, especially housing rehabilitation and economic development. Complexity is an issue primarily to the extent that a project involves third and fourth parties (businesses, homeowners, financial institutions, etc.) in project execution.

Recipients should develop a monitoring plan that specifies the areas to be examined during the course of any given monitoring visit. It should be clear to the subrecipient what documents, processes, reports and files will be examined during any given visit.

After the monitoring visit, the Recipient should supply the subrecipient with a report of the monitoring visit informing the subrecipient of the results of the monitoring.