

CONTRACT  
BY AND BETWEEN  
CUMBERLAND COUNTY  
AND THE TOWN OF WINDHAM

PART I

THIS CONTRACT entered into this \_\_\_\_ day of \_\_\_\_\_ 2017 by and between the CUMBERLAND COUNTY, State of Maine, hereinafter referred to as the "COUNTY" and the TOWN OF WINDHAM, Maine, hereinafter referred to as "GRANTEE".

WITNESSETH THAT:

WHEREAS, the COUNTY has entered into a grant agreement with the UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) under Title I of the Housing and Community Development Act of 1974, as amended; and

WHEREAS, a project entitled Feasibility Study for the Reuse of Andrews School and Former Fire Station in South Windham, (hereinafter referred to as "Project") has been approved for funding from said grant; and

WHEREAS, the COUNTY desires to enter into a Contract with GRANTEE to undertake and complete said project;

NOW, THEREFORE, intending to be legally bound, the parties do mutually agree as follows:

I. SCOPE OF SERVICES

COUNTY and GRANTEE shall perform the following necessary services provided under this Contract in connection with the Project as described in the Fiscal Year 2017 Project Application submitted by GRANTEE, which is hereby incorporated into this Contract, and as detailed in paragraph "A" below:

A. GRANTEE will be completing a Feasibility Study for the Reuse of Andrews School and Former Fire Station in South Windham.

B. GRANTEE agrees that all costs associated with all legal fees and administrative costs incurred are the sole responsibility of the GRANTEE, and that Community Development Block Grant (CDBG) Funds shall not be used to pay for any such legal fees and administrative costs.

C. GRANTEE shall include in all bid documents and contracts for the Project,

any and all terms and conditions required by HUD under the Housing and Community Development Act of 1974, as amended and as stipulated in Part II Terms and Conditions of this Contract.

- A. GRANTEE shall not award any contract or services without prior written approval from COUNTY. GRANTEE further agrees that all contracts for services will be between the GRANTEE and the vendor of said services.
- B. GRANTEE shall submit signed originals of all contract agreements and contract change-orders to COUNTY for use in audit reviews. GRANTEE shall retain any financial records relating to the Project, including invoices for at least three (3) years from the date of completion.
- C. GRANTEE shall assure that any contractor, engineer, or architect working on the Project shall follow all requirements of the Housing and Community Development Act of 1974, as amended, and the regulations issued by HUD in 24 CFR Part 570, effective October 6, 1988, as amended.
- D. GRANTEE agrees to recognize the support of the Project, including financial support by the Cumberland County Commissioners through the County's Community Development Block Grant Program when GRANTEE makes references to its support base in the media, publications, brochures, reports, and/or articles.

## II. APPLICABILITY OF UNIFORM ADMINISTRATIVE REQUIREMENTS

- A. GRANTEE (if a governmental entity or a public agency) shall comply with the requirements and standards of OMB Circular A-87 "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments," OMB Circular A-128 "Audits of State and Local Governments," and the applicable sections of 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. If the GRANTEE is a non-profit or educational institution it shall comply with OMB Circulars A-110 & A-122.

## III. SPECIAL ASSESSMENTS

- A. Definition of special assessment. The term "special assessment" means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of gaining access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges,

even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

B. Special assessments to recover capital costs. Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may only be imposed as follows:

1. Special assessments to recover the CDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income and are governed by regulations of 24 CFR Part 570 related to uses and administration of program income.

2. Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments on behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

C. Public improvements not initially assisted with CDBG funds. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments, exclusively, provided:

1. The installation of the public improvements is carried out in compliance with requirements applicable to activities assisted under this part including environmental, citizen participation and Davis-Bacon requirements;

2. The installation of the public improvements meets a criterion for national objectives in 24 CFR Part 570.208 (a) (1), (b), or (c); and

3. The requirements of 24 CFR Part 570.200 (c) (2) (ii) are met.

D. If during Project inspections or monitoring, or any time after completion of the Project, it is determined that special assessments were improperly levied, the GRANTEE shall issue a refund equal to the assessment levied against the identified property owner or owners from non-CDBG funds. Failure to make such refunds shall be cause to terminate this Contract and require repayment of the total CDBG grant provided herein.

#### IV. RELEASE OF GRANT FUNDS

- A. The Project and the use of CDBG funds appropriated to carry out the Project are fully conditioned on the COUNTY'S determinations made in compliance with the National Environmental Policy Act (NEPA), as amended, Executive Order 11988, Executive Order 11990, Section 106 of the National Historic Preservation Act, and other determinations made in compliance with 24 CFR Part 58, and Executive Order 12372 and its ability to secure a release of funds from HUD. GRANTEE shall not accept any bids, issue purchase orders, or execute any contract or subcontract for which reimbursement will be requested under this Contract until after receiving written notice from the COUNTY removing this condition.

#### V. INDEMNIFICATION

- A. The GRANTEE, its successors and assigns, agree to defend, indemnify and hold harmless the COUNTY and its elected officials, officers, employees, representatives and agents from any and all liability, loss or damage that the COUNTY may suffer as a result of claims, demands, costs or judgments against it caused by, in connection with or arising out of any activities performed or failed to be performed by the GRANTEE pursuant to this contract.
- B. The COUNTY, its successors and assigns, agrees to defend, indemnify and hold harmless the GRANTEE and its elected officials, officers, employees, representatives and agents from and against any and all liability, loss or damage that the GRANTEE may suffer as a result of claims, demands, costs or judgments against it caused by, in connection with or arising out of any activities performed or failed to be performed by the COUNTY pursuant to this contract.

#### VI. TIME OF PERFORMANCE

- A. All services enumerated under this Contract shall commence on July 1, 2017 and shall be completed in accordance with Exhibit "A" of this Contract, "PROJECT WORKPLAN", dated \_\_\_\_\_, 2017.
- B. The services to be performed by the GRANTEE and the COUNTY pursuant to the terms of this Contract shall be completed no later than December 31, 2018, unless terminated earlier by the COUNTY in its sole and absolute discretion or by HUD.
- C. In the event the GRANTEE is unable to complete the Project described in paragraph I.A. in accordance with Exhibit A "PROJECT WORKPLAN" of the Contract, and prior to December 31, 2018, the COUNTY may extend the applicable Terms and Conditions of this Contract by informing GRANTEE in

writing of COUNTY'S intent to extend said completion date.

- D. GRANTEE shall, upon request from COUNTY, submit a written request for a modification to Exhibit "A" "PROJECT WORKPLAN" or for an extension of the time to perform the Contract which shall include a complete explanation and justification for the requested time extension.

#### VII. CONTRACT SUSPENSION AND TERMINATION

- A. GRANTEE may not assign any part of their interest in this Contract without the prior written consent of the COUNTY. Any such assignment of interest without consent of COUNTY shall result in a forfeiture of all compensation, or any part thereof, as determined by COUNTY.
- A. Pursuant to 24 CFR 85.43, suspension or termination of this Contract may occur if the GRANTEE materially fails to comply with any term of the Contract. This Contract may also be terminated for convenience in accordance with 24 CFR 85.44.

#### VIII. REVERSION OF ASSETS

- A. In accordance with 24 CFR Part 570, any real property under the control of GRANTEE that has been acquired or improved in whole or in part with CDBG funds in excess of \$25,000.00 shall:
  - 1. Meet one of the national objectives in 24 CFR Part 570.208 until five years after expiration of this Contract, or such longer period of time as determined appropriate by COUNTY; or
  - 2. Be disposed of in a manner which results in the COUNTY being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such reimbursement is not required after the period of time specified in accordance with VIII.A.1. above.
- B. Upon expiration or termination of this Contract the GRANTEE shall transfer to the COUNTY any CDBG funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG funds.

#### IX. METHOD OF PAYMENT

- A. The CDBG funds provided under this Contract will not exceed a maximum amount of TWELVE THOUSAND AND 00/100 DOLLARS **(\$12,000)**.
- B. The CDBG funds provided under this Contract will be used solely for planning

activities related to the Project.

- C. GRANTEE shall provide matching funds equal to **\$3,000**.
- D. COUNTY will not issue payment against any invoice that has not been verified and approved by GRANTEE.
- E. GRANTEE agrees that COUNTY shall withhold the amount of FIVE-HUNDRED AND 00/100 (\$500.00) DOLLARS until such time as GRANTEE executes the Certificate of Acceptance provided by COUNTY. Upon receipt of said Certificate of Acceptance, COUNTY shall issue payment in accordance with the Contract. COUNTY in its sole and absolute discretion may reduce the aforementioned amount if field conditions warrant it.
- F. Any costs incurred in excess of the amounts specified in Paragraphs IX.A. above shall be the sole responsibility of GRANTEE.

X. TERMS AND CONDITIONS

- A. COUNTY and GRANTEE agree to abide by all federal rules and regulations concerning the Community Development Block Grant Program of HUD as outlined in the ADMINISTRATIVE REGULATIONS for the COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, effective October 6, 1988, as amended and contained in various other documents, as well as any other regulations or guidelines that HUD has or will issue.
- B. GRANTEE certifies that, if applicable, they have adopted and are enforcing:
  - 1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
  - 2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is subject to such non-violent civil rights demonstrations within its jurisdiction.
- C. GRANTEE certifies that to the best of their knowledge and belief:
  - 1. 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 cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person 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 Contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of Paragraph C 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 sub-recipients shall certify and disclose accordingly;

D. The COUNTY and the GRANTEE agree to abide by the TERMS and CONDITIONS in Part II of this Contract which is hereby incorporated into this Contract in its entirety.

ATTEST:

CUMBERLAND COUNTY

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
James Gailey, County Manager

ATTEST:

TOWN OF WINDHAM

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Anthony Plante, Town Manager