

**INTER-MUNICIPAL AGREEMENT  
FOR  
MORTGAGE AND TAX PAYOFF FOR  
100 MAIN STREET, HEMPSTEAD, NEW YORK 11550**

**THIS AGREEMENT**, made as of the \_\_\_\_ day of \_\_\_\_\_, 2015, by and among **THE COUNTY OF NASSAU**, a municipal corporation of the State of New York, having its principal office in the Executive Building, One West Street, Mineola, New York 11501, on behalf of itself and all agencies, bureaus and departments of the County of Nassau (hereinafter collectively referred to as "County"), **THE INCORPORATED VILLAGE OF HEMPSTEAD**, a municipal corporation of the State of New York, having its principal office at 99 Nichols Court, Hempstead, New York 11550 on behalf of itself and all agencies, bureaus and departments of The Incorporated Village of Hempstead, (hereinafter collectively referred to as "Village") and the **VILLAGE OF HEMPSTEAD COMMUNITY DEVELOPMENT AGENCY**, a \_\_\_\_\_ (hereinafter referred to as the "CDA"),

**WITNESSETH:**

**WHEREAS**, the parties hereto are mutually interested in resolving all delinquent tax issues and mortgage debt issues pertaining to the property located at 100 Main Street, Hempstead, New York 11550 and known on the Nassau County Land and Tax Map as Section 34, Block 333-3, Lot 2 (hereinafter referred to as "Property").

**WHEREAS**, the parties acknowledge that the CDA and the County, as Guarantor are justly indebted to the United States Department of Housing and Urban Development ("HUD") for the repayment of a loan in the original principal amount of Ten Million (\$10,000,000.00) Dollars made under the HUD Section 108 Loan Guaranty Program together with the Mortgage and Security Agreement and the other loan documents evidencing and securing such loan (collectively the "Section 108 Loan"); and

**WHEREAS**, the parties hereto are mutually interested in and concerned with satisfaction of the Section 108 Loan, the payment of all delinquent real estate taxes, the satisfaction and discharge of the real estate tax liens affecting the Property, and the reinstatement of the Property to the tax rolls; and

**WHEREAS**, the parties hereto are authorized to enter into this Agreement, which provides for the satisfaction of the Section 108 Loan, collection of the delinquent real estate taxes and disposition of property acquired via tax deed pursuant to Real Property Tax Law Section 1439 and Nassau County Administrative Code Section 5-68.1; and

**WHEREAS**, the parties hereto wish to enter into this Agreement to facilitate the satisfaction of the Section 108 Loan, the payment of collection of delinquent real estate taxes, the extinguishment of real estate tax liens, and disposition of the

Property; and

**WHEREAS**, the parties agree that the County, by virtue of the Tax Lien Certificates that it held, acquired title to the Property by a Tax Deed dated December 29, 2014 and recorded in the Office of the Nassau County clerk on December 29, 2014 in Liber of Deeds 13162, Page 308, pursuant to and in accordance with the Nassau County Administrative Code; and

**WHEREAS**, the parties agree that the County will make a good faith effort, subject to applicable laws, rules, codes and regulations, to effect a sale of the Property at a price that satisfies the entire Section 108 loan upon such terms and conditions as the County, in its sole and absolute discretion, determines ; and

**WHEREAS**, the County agrees to use the “Net Proceeds” (defined below) derived from such sale of the Property to (i) satisfy so much of the outstanding Section 108 Loan as can be paid and discharged by the funds derived from the sale of the Property, and (ii) if following the payment of all sums due under the Section 108 Loan there shall be any Net Proceeds remaining, then such Net Proceeds shall be used to pay the “County Costs” (defined below) and to satisfy, on a pro-rated basis more fully described herein, all delinquent real estate taxes owed solely to the County and the Village in the priority identified below, and

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto covenant and agree with each other as follows:

1. The County heretofore issued a Request for Proposal (“RFP”) seeking proposals for the disposition of the Property, and has elected not to accept any of the proposals in response to the RFP. The County subsequently issued a second Request for Proposal (“RFP-2”) seeking proposals for the disposition of the Property. The County may in the County’s sole discretion, and without any obligation to the Village to do so, elect to sell the Property to a buyer selected through RFP-2, or to submit the Property to one or more additional rounds of requests for proposals until the Property is sold a buyer satisfactory to the County, in its sole discretion. Notwithstanding anything to the contrary, the County shall not be required to spend any County funds, or to incur any obligation on behalf of the County, to cause a sale or other disposition of the Property or the satisfaction of the Section 108 Loan except as specifically set forth in this Agreement.

2. If the Net Proceeds of the Property are insufficient (a “Shortfall”) to fully pay and discharge the sum of:

(a) the interest, principal, defeasance costs and fees now or hereafter payable under the Section 108 Loan, plus

(b) the County Costs,

then the County shall advance up to \$ 150,000.00 (the “Shortfall Advance”) to cover

the Shortfall, subject to and in accordance with the terms of this Agreement. The County shall not be required to make a Shortfall Advance unless the amount of such Shortfall Advance shall be sufficient to fully discharge the Shortfall.

If the County makes a Shortfall Advance, the County may offset the amount of the Shortfall Advance against up to fifty four percent (54%) of all Community Development Block Grants (each a "CDBG") payable to the CDA from time-to time until the Shortfall Advance is repaid in full to the County. For the avoidance of doubt, the following is an example of the offset described in the preceding sentence. If the shortfall advance made by the County is \$600,000, and the CDA will thereafter receive a \$1,000,000, the County may offset \$540,000 against the \$1,000,000 CDBG payment and the remaining sum of \$60,000 may be offset by the County against any future CDBG payment to the CDA.

3. Net Proceeds shall be paid in the following order and priority:
  - (a) First, to the payment of interest, principal, defeasance costs and fees payable under the Section 108 Loan through the Closing, then
  - (b) Second, to the payment of County Costs, then
  - (c) Third, to the County and the Village, in the ratio of fifty-seven percent (57%) to the County and forty-three percent (43%) to the Village to pay off real estate taxes due and owing. If the real estate taxes due and owing on the Property through the sale date are not satisfied in full, the County and the Village agree to waive the payment of the unsatisfied amount of said taxes.

4. (a) As used in this Agreement, the term "Net Proceeds" means the gross sales price of the Property plus all "Operating Income" (defined below), less customary and necessary charges incurred or paid by the County in connection with the transfer of the Property, including, without limitation, brokerage fees, filing and recording charges, transfer taxes, title insurance search fees and premiums, deposits for utility charges, and amounts paid to clear title objections and exceptions, amounts to discharge liens and encumbrances (other than the Section 108 Loan balance, prepayment charges defeasance costs and real estate taxes), allowances to the buyer, settlement costs with any claimant having or alleging an interest in the Property or in the proceeds of sale of the Property, and reasonable reserves in connection with any of the foregoing that may be incurred by the County.

(b) As used in this Agreement, the term "Operating Income" means all sums derived from the operation of the Property, less Receiver's commissions, managing agent fees and operating costs and expense of the Property. The

amount of Operating Income presently held by John Ryan, Esq. as Receiver, is approximately \$330,000 net of the Receiver's commissions. This sum, together with all additional Operating Income of the Property shall be turned over to the County and shall be held and used by the County to fund future "Operating Expenses" (defined below) of the Property, and to fund a portion of the Net Proceeds of the Property as set forth above.

(c) As used in this Agreement, the term "Operating Expenses" means costs and expenses, including attorneys' fees, incurred by the County or the County's appointed managing agent to manage, operate, maintain, repair, insure, protect, lease and administer the Property, and to establish such reserves for future expenses as the County shall deem to be reasonable and necessary.

(d) As used in this Agreement, the term "County Costs" means the sum of legal fees and disbursements paid to outside Counsel engaged by the County in connection with the acquisition and disposition of the Property, and the bar claim and quiet title action commenced by the County. The parties agree that (i) the amount of County Costs shall not be increased or reduced by the sum of real estate taxes applied to the acquisition of the Property through the Tax Deed conveyance process, and (b) any real estate taxes owing to the County and the Village in excess of the amounts satisfied through the distribution of Net Proceeds as of the date of Closing shall be deemed cancelled, discharged and paid in full without the payment of any additional sum.

(e) In the event of a dispute among the County, the Village and the CDA concerning the calculation of Net Proceeds, Operating Income, Operating Expenses or County Costs, such dispute shall be resolved solely by the Nassau County Attorney upon consultation with the Village Attorney. Any determination agreed by the County Attorney following such consultation with the Village Attorney shall be final, binding and non-appealable, unless within five (5) days after giving the Village attorney notice of such determination, the Village Attorney delivers a written notice of objection (the "Notice of Objection") to the County Attorney setting forth the Village's objection to such determination and the basis therefor. If a Notice of Objection is timely given to the County Attorney, the dispute shall be resolved by an independent third party mediator agreed to by the County and the Village. In such case, all third-party mediation costs and expenses shall be paid by the Village irrespective of the outcome of such mediation.

5. The Village and CDA agree that until the Section 108 Loan is paid in full, (a) all interest and other fees due and owing under the Section 108 Loan shall be paid on a current basis by the County and may be offset by the County against any Community Development Block Grants payable to the CDA, in the same manner as the Section 108 Loan is currently being paid, and (b) all principal due and owing under the Section 108 Loan shall be paid on a current basis by the Village or CDA and may be offset by the County against any Community Development Block Grants payable to the CDA.

## **GENERAL PROVISIONS**

6. The Village is a municipal corporation, duly organized, validly existing, and in good standing under the laws of the State of New York.

7. The CDA is a \_\_\_\_\_, duly organized, validly existing, and in good standing under the laws of the State of New York.

8. The County, the Village and the CDA each represents that it is authorized, pursuant to Article 9, § 1 of the New York State Constitution and Article 5-G of the General Municipal Law to enter into intergovernmental agreements to undertake the project, as described herein.

9. The Village's execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of the Village and do not conflict with, result in a violation of, or constitute a default under (a) any provision of the (i) the Village's charter, organizational documents or Code, or (ii) any agreement or other instrument binding upon the Village or (b) any law, governmental regulation, court decree, or order applicable to the Village.

10. The CDA's execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of the CDA and do not conflict with, result in a violation of, or constitute a default under (a) any provision of the (i) the CDA's organizational and governance documents, or (ii) any agreement or other instrument binding upon the CDA or (b) any law, governmental regulation, court decree, or order applicable to the CDA.

11. Subject to Section 26 of this Agreement, the County's execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of the County and do not conflict with, result in a violation of, or constitute a default under (a) any provision of the (i) the County's charter, organizational documents or Code, or (ii) any agreement or other instrument binding upon the County or (b) any law, governmental regulation, court decree, or order applicable to the Village.

12. The County, the Village and the CDA shall comply with any and all federal, state and local Laws, including those relating to conflicts of interest, discrimination, and confidentiality, in connection with their performance under this Agreement. In furtherance of the foregoing, the Village is bound by and shall comply with the terms of Appendix EE attached hereto. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

13. The Village and CDA shall maintain and retain, for a period of six (6) years following the termination of this Agreement, complete and accurate records,

documents, accounts and other evidence, whether maintained electronically or manually (“Records”), pertinent to its individual performance under this Agreement. Such Records shall at all times be available for audit and inspection by the County Comptroller, or any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefor, and any of their duly designated representatives. The provisions of this Section shall survive termination of this Agreement.

14. Nothing contained herein shall be construed to create an employment or principal-agent relationship, or a partnership or joint venture, between the County and any officer, employee, servant, agent or independent contractor of the Village or CDA, or between the Village and CDA and any officer, employee, servant, agent or independent contractor of the County, and neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever.

15. Except as specifically set forth in this Agreement, the County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any person beyond funds appropriated or otherwise lawfully available for this Agreement,

Except as specifically set forth in this Agreement, the Village and CDA shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any person beyond funds appropriated or otherwise lawfully available for this Agreement,

16. Except as otherwise set forth in this Agreement, Real estate taxes shall continue to be levied against the Property. Nothing contained herein shall be deemed to constitute a waiver of such taxes by the Village or the County, or an agreement by the Village or County to forbear from future tax collection efforts, including tax lien auctions, with respect to any real estate taxes, which are levied against and become liens on the Property. Neither the County nor the Village shall collect any unpaid real estate taxes affecting the Property from and after the date hereof.

17. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and permitted assigns.

18. This Agreement shall continue indefinitely until the obligations hereunder have been fully performed.

19. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

20. The caption headings in this Agreement are for the convenience of the parties only, and are not intended to be a part of this Agreement and shall not be construed to modify, explain, or alter any of the terms, covenants or conditions

contained herein.

21. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

22. This Agreement shall not be altered, amended, changed, waived, terminated, or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the Party to be charged.

23. This Agreement may be executed in one or more counterparts, and all of such executed counterparts shall constitute one binding agreement between the parties hereto. Signatures on copies of this Agreement transmitted by facsimile or pdf shall be deemed original signatures for all purposes.

24. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

25. All understandings and agreements heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, neither party relying upon any statement or representation, not embodied in this Agreement, made by or on behalf of the other.

26. The County shall have no liability under this Agreement (including any extension or other amendments of this Agreement) to any person or entity unless (a) all County and other necessary governmental approvals have been obtained, including without limitation, approval by the County Legislature, and (b) this Agreement has been executed by the County Executive or his or her designee. The execution of this Agreement by the County Executive shall be *prima facie* evidence that all such approvals have been obtained.

27. The Village shall have no liability under this Agreement (including any extension or other amendments of this Agreement) to any person or entity unless (a) all Village and other necessary governmental approvals have been obtained, and (b) this Agreement has been executed by the Mayor of the Village or his designee. The execution of this Agreement by the Mayor shall be *prima facie* evidence that all such approvals have been obtained.

28. The CDA shall have no liability under this Agreement (including any extension or other amendments of this Agreement) to any person or entity unless (a) all CDA and other necessary governmental approvals have been obtained, and (b) this Agreement has been executed by the Executive Director of the CDA or his/her designee. The execution of this Agreement by the Executive Director shall be *prima facie* evidence that all such approvals have been obtained.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed by their duly authorized representatives as of the year and date first above written.

[SIGNATURE PAGES FOLLOW]

**SIGNATURE PAGE FOR  
INTER-MUNICIPAL AGREEMENT  
FOR  
MORTGAGE AND TAX PAYOFF FOR  
100 MAIN STREET, HEMPSTEAD, NEW YORK 11550**

**COUNTY OF NASSAU**

BY: \_\_\_\_\_  
Name:  
Title:

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**SIGNATURE PAGE FOR  
INTER-MUNICIPAL AGREEMENT  
FOR  
MORTGAGE AND TAX PAYOFF FOR  
100 MAIN STREET, HEMPSTEAD, NEW YORK 11550**

**INCORPORATED VILLAGE OF HEMPSTEAD**

BY: \_\_\_\_\_  
Name:  
Title:

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**SIGNATURE PAGE FOR  
INTER-MUNICIPAL AGREEMENT  
FOR  
MORTGAGE AND TAX PAYOFF FOR  
100 MAIN STREET, HEMPSTEAD, NEW YORK 11550**

**INCORPORATED VILLAGE OF HEMPSTEAD  
COMMUNITY DEVELOPMENT AGENCY**

BY: \_\_\_\_\_  
Name:  
Title:

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

## **Appendix EE**

### **Equal Employment Opportunities for Minorities and Women**

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

(a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(b) At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The Contractor shall make best efforts to solicit active participation by certified minority or women-owned business enterprises ("Certified M/WBEs") as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.

(e) The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.

(f) Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts

Checklist.

- (g) Contractors for projects under the supervision of the County's Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes to the list of subcontractors under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.
- (h) At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.
- (i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.
- (j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor's Subcontracts and Contractor's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.
- (k) A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.
- (l) The Contractor shall be bound by the provisions of Section 109 of Local

Law No. 14-2002 providing for enforcement of violations as follows:

- a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
- b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
- c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrators award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules ("CPLR").

(m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Contractors or Subcontractors in the performance of work or the provision of services or any other activity

that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Contractor shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Subcontractor as to work in connection with the County Contract.

As used in this Appendix EE the term “Best Efforts Checklist” shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Appendix EE.

As used in this Appendix EE the term “County Contract” shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term “County Contract” does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term “County Contractor” means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Appendix EE the term “County Contractor” shall mean a person or firm who will manage and be responsible for an entire contracted project.

As used in this Appendix EE “Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises” shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County

Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor's affidavit with a notary's signature and stamp shall be required as part of the documentation.

- b. Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation
- c. Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation
- d. Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blue prints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.
- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.
- f. Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation
- g. If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation
- i. County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Appendix EE the term "Executive Director" shall mean the Executive

Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term “Subcontract” shall mean an agreement consisting of part or parts of the contracted work of the County Contractor.

As used in this Appendix EE, the term “Subcontractor” shall mean a person or firm who performs part or parts of the contracted work of a prime contractor providing services, including construction services, to the County pursuant to a county contract. Subcontractor shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime contractor that are necessary for the prime contractor to fulfill its obligations to provide services to the County pursuant to a county contract. Subcontractor shall not include a supplier of materials to a contractor who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a contractor, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

Provisions requiring contractors to retain or submit documentation of best efforts to utilize certified subcontractors and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.