



## **SEWER & WATER INFRASTRUCTURE SUBAWARD AGREEMENT: TOWN OF MARBLETOWN**

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

**THIS AGREEMENT** is entered into by and between the **COUNTY OF ULSTER**, a municipal corporation, and a county of the State of New York with principal offices at 244 Fair Street, Kingston, New York 12401 (the “**County**”), and **TOWN OF MARBLETOWN** a municipal corporation with principal offices at 1925 Lucas Avenue, Cottekill, NY 12419 (the “**Subrecipient**”), (each, a “**Party**,” together, the “**Parties**”).

#### **RECITALS**

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

**WHEREAS**, the County, as a SLFRF recipient, desires to utilize a portion of these funds, to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including extending existing water supply system into the Hamlet of Stone Ridge (the “Property,” as further defined hereinafter); and

**WHEREAS**, the County, desires to issue a subaward to the Subrecipient to assist municipalities with the cost to maintain, upgrade, and replace municipal water and sewer systems as these systems have a significant impact to the public at large; and

**WHEREAS**, the County has agreed to engage the Subrecipient, and the Subrecipient has agreed to contract with the County, to administer a subaward of the SLFRF for the purpose of expanding an existing water supply system in accordance with the terms and conditions set forth in this Agreement.

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

**Article I.**  
**DEFINITIONS**

Section 1.01 Definitions

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

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

“Authorized Person” means the person so authorized to act on behalf of the Subrecipient in connection with the submittal of Subaward Disbursement Request Forms and/or the Project Completion Certificates.

“Effective Date” means the 1st day of June, 2023.

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

“Event of Default” means an event described in Article V.

“In-Kind Services” means technical or administrative services performed by capable and qualified employees of the Subrecipient that are directly related to, and in support of, the Project, that are set forth in EXHIBIT A and deemed reasonable by the County.

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

“Project” means the project described in SCHEDULE A.

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

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

“Property” means such parcels of land impacted by the “Proposed PHASE 1 Waterline Extension” and “Proposed Water Booster Station” on a schematic plan dated March 2022, completed by Brinnier & Larios, P.C. Engineers and Land Surveyor, and attached to this contract as Schedule E, or other stamped Project plans provided by the project engineer to the Subrecipient and approved by the County.

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

“State” means the State of New York.

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

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

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

“Term of this Agreement” shall mean the period commencing on the Effective Date and ending on the 1st day of December 2024, unless sooner terminated in accordance with Article V of this Agreement

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

## **Article II.**

### **AGREEMENT TO PROVIDE FINANCIAL ASSISTANCE**

#### **Section 2.01 Agreement to Provide Subaward for Project Costs.**

*Subaward.* Subject to the conditions and in accordance with this Agreement, the County will provide a Subaward to the Subrecipient during the Term of this Agreement by making payments of American Rescue Plan Act – State and Local Fiscal Recovery Funds (SLFRF) in an aggregate amount of FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00). The County shall have no obligation to make payments more frequently than once every month. The County will retain custody and control over Subaward funds which will only be made available to the Subrecipient upon submission to the County of documentation of incurred Project Costs and approval thereof by the County. Subject to the Subrecipient’s compliance with the terms and provisions of this Agreement, the County will make payment to the Subrecipient within forty-five (45) days of the County’s receipt of a properly completed Subaward Disbursement Request Form in the form of EXHIBIT B.

*Retainage of Subaward.* The County will retain the last Fifteen percent (15%) of the Subaward until the Subrecipient and project engineer has submitted the Project Completion Certificates satisfactory to the County. The County shall disburse to the Subrecipient the retained proceeds within forty-five (45) days after the County accepts the Project Completion Certificates.

#### **Section 2.02 Requests for Disbursement of Subaward Proceeds.**

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

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

tabulations of allowable costs incurred to date.

Section 2.03 Disapproval or Adjustment of Payment Request.

In addition to the remedies set forth in Section 5.02, the County may take any action permitted hereunder or under applicable law, including, but not limited to, rejecting, correcting, or withholding any or all payments to the Subrecipient, if the County, in its sole discretion: (i) determines that the incurred costs requested for reimbursement are not eligible Project Costs, (ii) the Subrecipient has not properly documented the costs, or (iii) the Subrecipient has not complied with any term or condition of this Subaward,

Section 2.04 Proof of Payment.

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

Section 2.05 Changes to Project.

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

**Article III.**

**REPRESENTATIONS AND WARRANTIES OF SUBRECIPIENT**

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

Section 3.01 Legal Authority/Capacity/Binding Obligation.

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

Section 3.02 No Action.

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or known to be threatened against the Subrecipient, nor is there any basis therefor (i) affecting the creation, organization or existence of the Subrecipient or the title of its officers to

their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution of this Agreement or (iii) in any way contesting or affecting the validity or enforceability of this Agreement or the Resolution, or the execution of this Agreement, or any agreement or instrument relating thereto, (iv) affecting the ability of the Subrecipient to fulfill the terms and conditions of this Agreement, (v) that would impair or delay the Project, or (vi) that would have a Material Adverse Effect.

Section 3.03 No Default.

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

Section 3.04 Project Approvals.

Prior to construction the Subrecipient will have obtained all necessary approvals from any and all governmental agencies requisite to the completion of the Project and is in compliance with all federal, State and local laws, ordinances and regulations applicable thereto, and Subrecipient has obtained approval of engineering or facilities plans or reports with respect to the Project from the County.

Section 3.05 Funds Available.

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

Section 3.06 Description of the Project.

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

Section 3.07 Estimate of Costs & Funding Breakdown.

The Estimated Project Costs as shown in EXHIBIT A represent a reasonable estimate of the costs actually incurred or expected to be incurred for the Project. The funding breakdown shown in EXHIBIT A represents the complete funding sources available to the Project including all Third-Party Funding.

Section 3.08 Intentionally Left Blank

Section 3.09 Intermunicipal and Other Agreements.

Except as disclosed to the County in writing in connection with the Subrecipient's application for the Subaward, the Subrecipient has not entered into any intermunicipal agreements or any other contract in connection with the Project and does not intend to enter into any other intermunicipal agreements in connection with the Project. If the Subrecipient has entered into a permitted intermunicipal agreement or

any other contract in connection with the Subaward, the term length of such agreement shall be at least as long as the term length of this Agreement.

Section 3.10 Third-Party Funding.

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

Section 3.11 Procurement, Suspension and Debarment.

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

Section 3.12 No Material Adverse Change.

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

Section 3.13 Full Disclosure.

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

Section 3.14 Solvency.

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

**Article IV.  
COVENANTS**

Section 4.01 Compliance with Laws and this Subaward.

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

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

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

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

(e) *Special Project Conditions.* The Subrecipient shall comply with any and all special Project conditions set forth in Article VI.

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

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

(h) *Subrecipient Contribution.* The Subrecipient agrees to provide matching contributions to the Project as identified in the Estimated Costs of Exhibit A. In no event shall the Subrecipient's contribution be less than One Million Fifteen Thousand One Hundred and Fifty-Two Dollars (\$1,015,152) toward the Project.

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

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

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

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

#### Section 4.02 Project Implementation.

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

(b) *Performance Standards.* The Subrecipient agrees to take any corrective action necessary to bring the Project into compliance with the Project performance standards contained in the approved engineering report or facilities plan for this Project.

#### Section 4.03 Performance.

(a) *Contracts and Security Bonds.* The County has the right to review all contracts for services and construction funded pursuant to this Agreement in order to determine eligibility for funding hereunder and to determine compliance with all relevant plans and terms of this Agreement. Subrecipient agrees to provide the County with all executed prime contracts funded pursuant to this Agreement. Whenever a security bond is posted by a successful bidder for the faithful performance of a contract funded pursuant hereto, the name and address of the bonding company or person issuing the security bond, the number of such bond, and such other information as may be required by the County shall be transmitted to the County for review prior to award of such contract. The original of such bond shall remain in the office of the Subrecipient.

(b) *Inspection.* The Subrecipient shall provide competent and adequate inspection of all Project construction by a professional engineer licensed in the State, and to notify the County in advance of the date of such inspection in order to provide the County with the opportunity to participate in the walkthrough and inspection. The Subrecipient shall direct such engineer to inspect work necessary for the construction of this Project and to determine whether the construction of the Project conforms to the approved plans and specifications. At the completion of construction, the engineer shall be required to certify to the Subrecipient and the County that the construction of the Project is in accordance with the approved plans and specifications or approved amendments thereto in the form provided in EXHIBIT D.

The Subrecipient shall cause any work not completed in accordance with approved plans and specifications to be remedied, unless such noncompliance is waived in writing by the County.

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

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

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

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

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

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

The Subrecipient agrees that it will require each Project consultant, Project contractor and Project

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

(f) *Operation and Maintenance.* The Subrecipient shall ensure proper and efficient operation and maintenance of this Project satisfactory to the County and shall retain a sufficient number of qualified staff to perform required tests and comply with all other requirements. After completion of the Project, the Subrecipient shall at all times operate the Project, or otherwise cause the Project to be operated, properly and in a sound and economical manner and shall maintain, preserve and keep the Project, or cause the Project to be maintained, preserved and kept, in good repair, working order and condition and shall make, or cause to be made, all necessary and proper repairs, replacements and renewals from time to time, so that at all times, the Project is operated properly in a manner consistent with the project performance standards contained in the engineering report or facilities plan for the Project.

(g) *Continued Ownership and Operation.* Unless authorized by the County to cease operations or dispose of the Project, the Subrecipient shall own, operate and maintain the Project during the Term of this Agreement. Without the approval of the County, the Subrecipient shall not discontinue operation of, or sell or otherwise dispose of, the Project, except for portions of the Project sold, or otherwise disposed of, in the course of ordinary repair and replacement of obsolete or worn out parts. Except as authorized in writing by the County there shall be no alterations to the Project which would materially affect the Project in any manner. In addition, no improvements, structures or appurtenances shall be placed, constructed or developed on the site of the Project (the "Project Site") in such a way as to interfere with the express purpose of the Project.

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

#### Section 4.04 Accounting and Records.

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

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

(c) *Access to Project and Work.* The Subrecipient shall permit the County or its agents, consultants or representatives to have access to the Project and its components at all reasonable times. All contracts of the Subrecipient related to any portion of the Project must contain provisions that permit such

access to the Project, and require the contractor to provide proper facilities for such access and inspection and shall permit extracts and copies of Project records to be made by the foregoing agents, consultants and representatives.

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

Section 4.05 Application of Subaward Proceeds.

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

Section 4.06 Payment of Additional Project Costs.

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

Section 4.07 Further Assurances.

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

Section 4.08 Intermunicipal and Other Agreements.

If Subrecipient has entered into one or more intermunicipal agreements or other contracts relating to the Project, Subrecipient shall not renew, extend or amend such intermunicipal agreement or other contract, and shall not enter into any new contract relating to the Project, without notifying the County in writing and receiving written consent from the County.

Section 4.09 Third-Party Funding.

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

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

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

Section 4.10 Indemnification.

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

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

Section 4.11 Project Requirements.

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

(b) *Project Completion Certificates.* Within thirty (30) days of completion of the Project, the Subrecipient shall file certificates, in the forms provided in EXHIBIT C and EXHIBIT D or as may be updated by the County from time to time, certifying the final Project Costs and that the Project has been completed in accordance with this Agreement.

Section 4.12 Recoupment of Subaward Proceeds.

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

**Article V.**

**EVENTS OF DEFAULT; REMEDIES; TERMINATION; FORCE MAJEURE**

Section 5.0 Events of Default.

The occurrence of any of the following shall be considered an Event of Default:

(a) default in the observance or performance of any covenant set forth in Article IV or of any provision of this Agreement dealing with the use, disposition or remittance of the proceeds of the Subaward;

(b) default in the observance or performance of any other provision of this Agreement or of any other document contemplated hereby which is not remedied within five (5) business days after the earlier of (i) the date on which such failure shall first become known to Subrecipient or (ii) written notice thereof is given to the Subrecipient by the County;

(c) any representation or warranty made herein or in any other document contemplated hereby or in any certificate furnished to the County pursuant hereto or thereto or in connection with any transaction contemplated hereby or thereby proves untrue in any material respect as of the date of the issuance or making or deemed making thereof;

(d) default shall occur under any indebtedness issued, assumed or guaranteed by the Subrecipient, or under any indenture, agreement or other instrument under which the same may be issued, and such default shall continue for a period of time sufficient to permit the acceleration of the maturity of any such indebtedness (whether or not such maturity is in fact accelerated), or any such indebtedness shall not be paid when due (whether by demand, lapse of time, acceleration or otherwise);

(e) a default or breach shall occur under any agreement or contract related to the design, construction, or operation and maintenance of the Project by any party thereto;

(f) the Subrecipient shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property or the Project, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (vi) take any action in furtherance of any matter described in parts (i) through (v) above;

(g) this Agreement or any document contemplated hereby ceases to be in full force and effect at any time or for any reason;

(h) prior to the completion of the Project, work on the Project is abandoned or work thereon ceases for a period of more than three (3) months for any reason; and

(i) the Project is not constructed in accordance with the plans and specifications that have been approved or accepted by the County or on behalf of the County.

#### Section 5.02 Remedies

Upon the occurrence of an Event of Default, the County may take whatever action at law or in equity may appear necessary or desirable to remedy such default, in addition to the remedies below. Failure by the County to exercise, or delay in exercising, any right or remedy under this Article V shall not operate as a waiver of such right or remedy.

(a) *Reimbursement.* Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default, the County may at its election, upon written notice to the Subrecipient, require the Subrecipient to immediately repay to the County all Subaward proceeds paid to the Subrecipient. Upon such notification, notwithstanding anything in this Agreement to the contrary, such Subaward proceeds shall become immediately due and repayable.

(b) *Rejection or Adjustment of Subaward Payments.* The County is under no obligation to make any payment of Subaward proceeds upon the occurrence and during the continuance of an Event of Default and the County may adjust, reject, or withhold disbursements to the Subrecipient.

(c) *Nonexclusive Remedy.* If the County determines that the Subrecipient or any authorized representative is not complying with federal or State laws, regulations or requirements or instructions of the County or terms of this Agreement, the County may, in addition to exercising any or all of the remedies described herein, exercise any or all the remedies otherwise provided by federal or State Law or regulations executed subsequent hereto, at law or in equity, including but not limited to rights to seek injunctive relief or specific performance with respect to the obligations hereunder.

(d) *Right to Remedial Action.* Nothing in this Agreement affects the right of the County to take remedial action including but not limited to administrative enforcement action and actions for breach of contract if the Subrecipient fails to carry out its obligations under this Agreement.

(e) *Costs of Default.* The Subrecipient agrees to pay to the County, as such expenses are incurred, the amount of any expenses (including but not limited to the reasonable fees and expenses of the County and attorneys representing the County) incurred as a result of the Subrecipient's failure to comply with the terms of this Agreement.

#### Section 5.03 Termination.

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

In the event that this Agreement is terminated for the convenience of the County, the Subrecipient will be paid for all work on the Project rendered through the date of termination.

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

A. Accounting for and refunding to the County within ten (10) days, any unearned and/or unexpended funds that have been paid to the Subrecipient pursuant to this Agreement; and

B. Furnishing to the County within ten (10) days, an inventory of all equipment, appurtenances, and property purchased by the Subrecipient through, or provided under this Agreement, and carrying out any County directive concerning the disposition thereof.

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

damages due to the County from the Subrecipient is determined.

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

Section 5.04 Force Majeure.

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

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

Upon removal of such cause, the Impacted Party affected shall resume its performance as soon as reasonably possible. The Subrecipient's financial inability to perform will not be deemed to be a Force Majeure Event regardless of the source causing such financial inability.

**Article VI**  
**SPECIAL PROJECT CONDITIONS**

This Agreement shall include the following special conditions:

Section 6.01 Special Condition Regarding the Subrecipient's Acquisition of Title to Project Site.

The County and the Subrecipient acknowledge that as of the date hereof the Subrecipient has not provided the required certification as to title certifying that it has acquired a legal and valid fee simple title or such other estate or interest in the site(s) of the Project, including all the necessary easements and rights-of-way, as is necessary to the Subrecipient's undisturbed use and possession for the construction, operation and maintenance of the Project.

Notwithstanding anything herein to the contrary, proceeds will not be disbursed to Subrecipient for any cost of construction, other than planning and design, unless and until (1) the Subrecipient has acquired such title, estate or interest in the Project site(s); and (2) the Subrecipient has executed and delivered to the County a "Certificate as to Title to Project Site" in a form acceptable to the County. In each requisition submitted for any cost of construction, other than planning and design, the Subrecipient shall certify that, as of the date thereof, the Subrecipient holds, and will retain, a legal and valid fee simple title or such other estate or interest in the site(s) of the Project, including all necessary easements and/or rights-of-way, as is or will be necessary for the Subrecipient's continued undisturbed use and possession of the site(s) of the Project during the construction, operation and maintenance of the Project.

Section 6.02 Special Condition Regarding Construction Contract Expenses. (Final Plans)

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

the Project.

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

Section 6.03 Special Condition Regarding Release of Construction Funding. (SEQRA)

The County and Subrecipient acknowledge that the Subrecipient has not, as of the date hereof, provided documentation that verifies a determination by the appropriate lead agency that the requirements of the New York State Environmental Quality Review Act (“SEQRA”) have been satisfied for the Project.

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

**Article VII.**  
**GENERAL PROVISIONS**

Section 7.01 Contract Provisions for Non-Federal Entity Contracts

In accordance with 2 C.F.R. Part 200, Appendix II, the contract provisions set forth in the attached SCHEDULE C are hereby incorporated into this Agreement.

Section 7.02 Federal Award Identification

Federal subaward identification information, as required by the federal Uniform Guidance (2 C.F.R. Part 200) is included in the attached SCHEDULE D and incorporated into this Agreement.

Section 7.03 Conflict of Interest

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

electronically at <https://ulstercountyny.gov/board-of-ethics>.

For a breach or violation of such representations or warranties, the County will have the right to annul this Agreement without liability, entitling the County to recover all monies paid hereunder, and the Subrecipient must not make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the County for such breach or violation, nor will it constitute a waiver of the County's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

Section 7.04 No Warranty Regarding Condition, Suitability or Cost of Project.

The County does not make any warranty, express or implied, as to the Project or its condition or that it will be suitable for the Subrecipient's purposes or needs, or that the Subaward will be sufficient to pay the costs of the Project. Review or approval of engineering reports, facilities plans, design drawings and specifications or other documents, or any inspection of the Project by the County does not relieve the Subrecipient of its responsibility to plan, design, and build the Project properly, and to operate and maintain the Project effectively, as required by laws, regulations, permits and good management practices. The Subrecipient acknowledges and agrees that the County or their agents or representatives are not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other Project documents. Nothing in this section prohibits a Subrecipient from requiring assurances, guarantees, indemnity, or other contractual requirements from any party performing work on the Project.

Section 7.05 Executory Clause

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

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

Section 7.06 No Discrimination

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

If this Agreement provides for a total expenditure in excess of \$25,000.00, the Subrecipient shall

make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on County contracts, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action will mean recruitment, employment, job assignment, promotion, upgrade, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation.

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

The Subrecipient understands that the County has established a Sexual Harassment Prevention Policy and Discriminatory Harassment Prevention Policy which applies to all contractors and non-employees conducting business with the County. These policies may be accessed electronically at <https://ulstercountyny.gov/ulster-county-compliance-plan>.

#### Section 7.07 Publicity

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

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

#### Section 7.08 Notices.

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

Subrecipient:

Town of Marbletown  
Attention: Town Supervisor  
1925 Lucas Ave.  
Cottkill, New York 12419

County:

Ulster County Department of Finance  
Attention: Commissioner  
244 Fair St.  
Kingston, New York 12401

Any communication or notice regarding indemnification, termination, litigation, or proposed changes to the terms and conditions of this Agreement will be deemed to have been duly made upon receipt by both the County's Department of Finance and the Ulster County Attorney's Office at the addresses set forth herein, or such other addresses as may have been specified in writing by the County:

Mailing Address:

County of Ulster  
Attention: County Attorney  
Post Office Box 1800  
Kingston, New York 12402

Physical Address:

County of Ulster  
Attention: County Attorney  
244 Fair Street, 5<sup>th</sup> Floor  
Kingston, New York 12401

Either Party may, by written notice to the other Party given in accordance with the foregoing, change its address for notices.

Section 7.09 Waiver and Severability.

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

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

Section 7.10 Subcontracting

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

A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the County and the Subrecipient, including, but not limited to, the insurance requirements set forth in SCHEDULE B; and

B. That nothing contained in the subcontractor agreement will impair the rights of the County; and

C. That nothing contained in the subcontractor agreement, or under this Agreement between the County and the Subrecipient, will create any contractual relation in law or equity, between the subcontractor and the County.

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

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

Section 7.11 Assignment.

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

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

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

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

Section 7.12 Intentionally Left Blank.

Section 7.13 Modification

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement.

Section 7.14 Approvals and Consents.

All approvals, consents, determinations and acceptances required to be given or made by any person or Party hereunder shall be at the sole discretion of the person or Party whose approval, consent, determination or acceptance is required.

Section 7.15 Interpretation.

The captions, headings and table of contents are solely for convenience of reference and shall not constitute part of this Agreement. They do not affect its meaning, construction, or effect. The Parties

acknowledge and agree that this Agreement shall not be construed more favorably in favor of any Party hereto based upon which Party drafted the same.

Section 7.16 Schedules and Exhibits Incorporated.

All Schedules and Exhibits attached to this Agreement, including any amendments and supplements hereto, are hereby incorporated in and made a part of this Agreement.

Section 7.17 Governing Law

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

Section 7.18 No Arbitration

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed to in writing by the Executive or the Purchasing Director, after consultation with the Ulster County Attorney, but must instead only be heard in the Supreme Court of the State of New York, with venue in Ulster County, or if appropriate, in the Federal District Court, with venue in the Northern District of New York, Albany Division.

Section 7.19 Execution in Counterparts.

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

Section 7.20 Agreement Supersedes Prior Agreements.

This Agreement supersedes any other prior or contemporaneous agreements or understandings, written or oral, between the Parties relating to the funding of the Project.

[Space Intentionally Left Blank/Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

**COUNTY OF ULSTER**

**TOWN OF MARBLETOWN**

By: \_\_\_\_\_  
Tracey A. Bartels  
Chairwoman, Ulster County Legislature  
DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Richard Parete  
Supervisor, Town of Marbletown  
DATE: \_\_\_\_\_

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

DRAFT

**SCHEDULE A  
PROJECT DESCRIPTION AND TIMELINE**

1. The Subrecipient, through its subaward of Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) from the American Rescue Plan Act (“ARPA”) of 2021 shall perform delivery and administration for the extension of an existing water supply system as further described in this Schedule A (the “Project”).
2. The Subrecipient agrees to comply with 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, and those additional 2 CFR policy requirements or exemptions listed in the Assistance Listing 21.027, “Coronavirus State and Local Fiscal Recovery Funds” available at [www.sam.gov](http://www.sam.gov).
3. The Subrecipient shall:
  - A. Provide day-to-day oversight and overall program delivery for the Project, including maintenance of Project files in accordance with applicable Federal requirements.
  - B. Ensure all permitting, design, and other pre-development work to provide a shovel ready Project.
  - C. Handle all public bidding and hiring of Project construction contractors.
  - D. Provide Project oversight and management of extending an existing water supply system in substantial conformance with the Schematic plan attached to this contract as Schedule E, or other stamped plans provided by the project engineer to the Subrecipient and approved by the County.
  - E. Ensure that the Project provides municipal water services for the commercial and residential use of the Town of Marbletown.
  - F. Ensure that the Project terminates on the Property.
  - G. Once expenditures commence on the Project the subrecipient shall continue the Project until final completion.
  - H. Provide the County with copies of budgetary and other supporting documentation related to funds.
  - I. Ensure Project compliance with SLFRF regulations.
4. The Subrecipient understands the Project’s activities shall begin after notification of funding approval from the County and shall be performed by the Subrecipient until completion of the Project, submission and acceptance of the final close out documents, and the end of the Term of Agreement.
5. The Subrecipient understands that this Agreement shall remain in effect during the period that the Subrecipient has control over SLFRF funds. The following milestones shall be utilized to determine adequate progress on the Project.

Agreements	April 2023 – May 2023
Detailed Design	June 2023 – September 2023
Regulatory Submittal and Review	September 2023 – November 2023
Public Bidding	December 2023 – January 1, 2024
Project Construction	January 2024 – December 2024

6. The Subrecipient understands that this Agreement, including any of its schedules, may be reviewed and revised if there are Project changes, amendments, or other issues requiring technical assistance from the US Treasury or the County, which delay the expected Project progress. Such revisions, if any, shall be made by written amendment as more fully defined in the General Provisions of Article VII of this Agreement.
7. The Subrecipient’s staff shall report the Project’s progress upon the request of the Finance Department, or as requested by the County Executive or his authorized designee.

**RECORDS AND REPORTS:**

8. The Subrecipient shall establish and maintain such records as necessary to document and account for all activities and expenditures under the Project throughout the course of the project.

9. The Subrecipient shall submit quarterly technical/progress reports to the Ulster County Department of Finance within twenty (20) days after the end of each annual calendar quarter. These reports are due no later than the following dates: January 20<sup>th</sup>, April 20<sup>th</sup>, July 20<sup>th</sup>, and October 20<sup>th</sup>. The reports shall list the percentage of completion of each subcategory shown in Schedule “B”.

10. The Subrecipient agrees to provide all additional information that may be requested to complete the County’s quarterly, ‘Project and Expenditure Reports’ required by the United States Department of the Treasury.

11. The Subrecipient understands and agrees that all reports and correspondence with the County with regard to this Project shall be through the County’s Finance Department.

**OTHER PROJECT REQUIREMENTS:**

12. The Subrecipient and the County agree to carry out each activity in compliance with all federal laws and regulations and any regulations and program requirements of the United States Department of Treasury with regard to ARPA in effect during the term of this Agreement. Specifically, the Firm agrees to comply with the requirements of sections 602 and 603 of the Social Security Act, regulations adopted by the US Treasury implementing section 603(c) and pursuant to section 602(f) of the Act, and guidance issues by the US Treasury regarding the foregoing.

**DESCRIPTION OF PROPOSED DEVELOPMENT AT THE PROPERTY**

13. The Project shall be completed to extend an existing water supply system in substantial conformance with the Schematic plan attached to this contract as Schedule E, or other stamped plans provided by the project engineer to the Subrecipient and approved by the County.

**ENVIRONMENTAL REVIEW:**

14. Compliance with Environmental Laws, Rules and Regulations:

The Subrecipient, shall be responsible for adhering to all application federal, state, and local laws and obtaining all required permits. A checklist shall be established in the project file that lists the permits and applicable regulations that includes but is not limited to adherence to the rules and regulations of the New York State Historic Preservation Office, the New York State Department of Environmental Conservation, the US Army Corps of Engineers, other federal, state and local regulations of general applicability.

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

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

**I. CONDITIONS OF INSURANCE**

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

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

**II. CERTIFICATES OF INSURANCE**

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

The Certificates of Insurance shall include:

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

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

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

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

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

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

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

#### **IV. WORKERS' COMPENSATION REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Subrecipient) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity with which it is entering into a contract including a Waiver of Subrogation Endorsement. The Subrecipient should contact their insurance agent to obtain acceptable proof of WC coverage:

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

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

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

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

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

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

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

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

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

- Bodily Injury and Property Damage Liability Insurance in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** for each occurrence, and in an amount not less than **FOUR MILLION AND 00/100 (\$4,000,000.00) DOLLARS** general aggregate.

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

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

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

Umbrella Liability or Excess Liability Insurance shall be provided by the Subrecipient in an amount not less than **FIVE MILLION AND 00/100 (\$5,000,000.00) DOLLARS**.

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

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

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

**VIII. AUTOMOBILE LIABILITY INSURANCE**

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

Coverage shall include:

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

**IX. POLLUTION LIABILITY INSURANCE**

If this box is checked, Pollution Liability Insurance shall be provided by the Subrecipient in an amount not less than

**FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** for each occurrence and in an amount of not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** general aggregate.

**X. PROFESSIONAL LIABILITY INSURANCE (e.g. MALPRACTICE, MEDIA LIABILITY, ERRORS & OMISSIONS INSURANCE)**

If this box is checked, Professional Liability Insurance shall be provided by the Subrecipient in an amount not less than **FIVE MILLION AND 00/100 (\$5,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **FIVE MILLION AND 00/100 (\$5,000,000.00) DOLLARS** general aggregate.

**XI. RIGGERS LIABILITY INSURANCE**

If this box is checked, Riggers Liability Insurance shall be provided by the Subrecipient in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** general aggregate.

**XII XCU (Explosion, Collapse, and Underground) Endorsement/Commercial General Liability Coverage:**

If this box is checked, an Explosion, Collapse, and Underground Endorsement shall be provided by the Subrecipient in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** for each occurrence, and in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

**SCHEDULE C**  
**CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS**  
**UNDER FEDERAL AWARDS**

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

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

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

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

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

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under

Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

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

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

(J) Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

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

(1) Procure or obtain;

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

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

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

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

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

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

(L) Domestic preferences for procurements.

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

(b) For purposes of this section:

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

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

**SCHEDULE D  
FEDERAL AWARD IDENTIFICATION**

Subrecipient Name: Town of Marbletown

Subrecipient's Unique Entity Identifier: DH6ZNCBH7NV3

Employer Identification Number: 14-6002289

Federal Award Date: **May 26, 2021**

Amount of Federal Funds Obligated to Subrecipient: **\$500,000.00**

Total Amount of Federal Funds Obligated to Subrecipient by Ulster County including Current Financial Obligation: **\$500,000.00**

Name of Federal Awarding Agency: **United States Department of the Treasury**

Name of pass-through entity: **County of Ulster**

Contact information for awarding official of Ulster County:

**Ulster County, Interim Commissioner of Finance, Kenneth Juras**

**244 Fair Street**

**Kingston, NY 12401**

**[kjur@co.ulster.ny.us](mailto:kjur@co.ulster.ny.us)**

**(845)-340-3460**

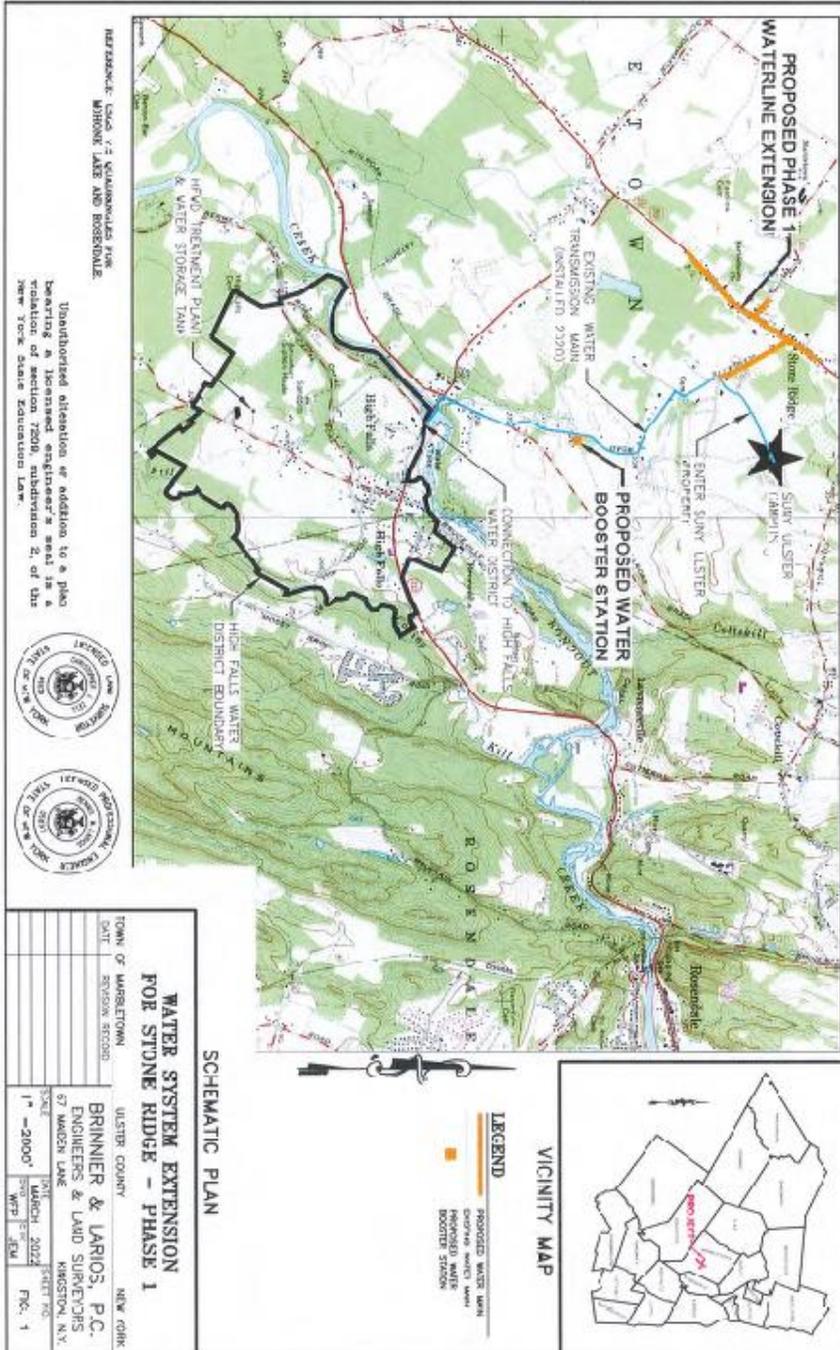
Assistance Listings Number: **21.027**

Title of Assistance Listing: **Coronavirus State and Local Fiscal Recovery Funds**

This award is not for Research and Development (R & D).

Indirect Cost Rate for the Federal Award (Including if the de minimis rate is charged): 0%

# SCHEDULE E SCHEMATIC PLAN



**EXHIBIT A**  
**ESTIMATED PROJECT COSTS & FUNDING BREAKDOWN**

Subrecipient: Town of Marbletown  
County: Ulster County

**A: ESTIMATED PROJECT COST**

<b>Category</b>	<b>Subcategory</b>	<b>Estimated Cost</b>
Engineering		
	Planning	\$20,000.00
	Design	\$250,000.00
	Construction	\$200,000.00
	Other	
Construction		
	Maintenance & Traffic Protection	\$50,000
	8 in. Ductile Iron or C900 Pipe	\$1,380,000
	8 in. Gate Valves	\$43,200
	Hydrant & Valve Assembly	\$50,400
	Services - Commercial	\$72,000
	Services - Residential	\$45,000
	Services – Residential w/ HWAY crossing	\$100,000
	Services – Commercial w/ HWAY crossing	\$130,000
	Shoulder Restoration	\$26,700
	Rock Excavation - Allowance	\$20,000
	Route 209 Highway Crossing	\$60,000
	Water Booster Station	\$750,000
Equipment		
Land Acquisition		
Contingencies		\$272,700.00
Other Expenses		
<b>TOTAL PROJECT COST</b>		<b>\$3,470,000.00</b>

**B: FUNDING BREAKDOWN**

<b>Type</b>	<b>Amount</b>	<b>Details</b>
Town of Marbletown ARP	\$550,000.00	Federal
Town Bond	\$1,950,000.00	Town
Ulster County ARP	\$500,000.00	Federal
<b>TOTAL FUNDING AMOUNT</b>	<b>\$3,000,000.00</b>	<b>Funding Gap (\$470,000)</b>

DRAFT

**EXHIBIT B**  
**SUBAWARD DISBURSEMENT REQUEST FORM**

Town of Marbletown

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

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

I, the undersigned and Authorized Person of the Town of Marbletown (the “Subrecipient”), hereby certify and agree as follows:

1. All representations and warranties of the Subrecipient as set forth in Article III of the Subaward Agreement (the “Agreement”) dated as of [date of last signature on the Agreement] between the County of Ulster (the “County”) and the Subrecipient are still valid and effective as of today’s date.
2. This request is being delivered pursuant to the Agreement. All capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.
3. The County is hereby requested to make a disbursement under the Agreement in the amount FIVE HUNDRED THOUSAND AND 00/100 (\$500,000.00) for Project Costs.
4. The above Project Costs have not been paid with the proceeds of any Third-Party Funding, except as specifically described here:

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

5. The Subrecipient has determined that such Project Costs are reasonable, necessary, and allocable to the Project under generally accepted governmental accounting standards. Monies requested for disbursement herein reflect actual costs for materials and services that are to be used for the sole purpose of completing the approved Project stated above and none of these monies are to be expended, in part or in full, for any other purpose.
6. This disbursement if made, together with the prior disbursements made under the Agreement, will not exceed \$500,000.00.
7. The Subrecipient hereby represents and warrants that it is not in default under the Agreement, that no event has occurred which, with the passage of time or the giving of notice or both, would become a default thereunder, that it has performed all of covenants and agreements that it is required to perform under the Agreement, that the making of the payment requested has been duly authorized by the Subrecipient, and that no change in circumstances has occurred, or will occur upon the making of the payment hereby requested, which would constitute a breach or a default under the Agreement.
8. Based upon information provided by the Subrecipient’s engineer for the Project, as applicable, all amounts requested hereunder are for eligible Project Costs which have not been included in any previous disbursement of Subaward proceeds.

9. **(If applicable):** A description of any and all In-Kind Services to be used in connection with this request for disbursement of funds for the Project is attached hereto.

**10. (If requesting payment for costs of construction):**

(a) As of the date hereof, the Subrecipient holds, and will retain, a legal and valid fee simple title or other estate or interest in the site(s) of the Project, including all necessary easements and/or rights-of-way, as or will be necessary for the Subrecipient's continued undisturbed use and possession of the site(s) of the Project during the construction, operation and maintenance of the Project.

(b) The Subrecipient has obtained all licenses, permits or other approvals required as of the date hereof to undertake the Project.

(c) The payment requested does not include any costs of construction (other than costs of planning and design) associated with plans and specifications which have not been accepted by the Agency or the County.

11. **(If requesting payment for costs associated with professional services agreement):** The payment requested does not include any costs incurred pursuant to any professional services agreements which have not been furnished to the County.

12. **(If requesting payment for costs for engineering services associated with inspection and services during construction):** The payment requested does not include any costs incurred pursuant to any professional services agreement pertaining to inspection and engineering services during construction of the Project which has not been reviewed and so accepted by the County.

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

Town of Marbletown

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

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

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

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

Town of Marblertown

I, the undersigned and Authorized Person of the Town of Marblertown (the “Subrecipient”), hereby certify as follows:

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

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

Town of Marblertown

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

Authorized Person

Printed Name: \_\_\_\_\_

Title:

**EXHIBIT D**  
**PROJECT COMPLETION CERTIFICATE**  
**(project engineer)**

Subrecipient: \_\_\_\_\_  
County: \_\_\_\_\_  
Location: \_\_\_\_\_  
Name of Project: \_\_\_\_\_  
Project Description: \_\_\_\_\_

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

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

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

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

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

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

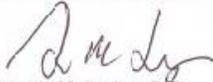
Engineer Name:	_____
Engineer Title:	_____
Engineering Firm:	_____
Eng. Firm Address:	_____
Signature	Date

Engineer's Stamp

**EXHIBIT E**  
**PRELIMINARY DESKTOP COST ESTIMATE**  
**FOR CONSTRUCTION EXPENSES**

<b>PRELIMINARY DESKTOP COST ESTIMATE</b> <b>PHASE 1 WATER SERVICE EXT TO ROUTE 209 CORRIDOR - STONE RIDGE</b> Town of Marbletown, Ulster County March 2022					
Item	Description	Units	Estimated Qty	Unit Price	Total
1	Maintenance & Protection of Traffic	ls	1	\$50,000	\$50,000
2	8 inch Ductile Iron or C900 Pipe	lf	6000	\$230	\$1,380,000
3	8 inch Gate Valves	each	12	\$3,600	\$43,200
4	Hydrant & Valve Assembly	each	12	\$4,200	\$50,400
5	Services- Commercial	each	20	\$3,600	\$72,000
5B	Services-Residential	each	15	\$3,000	\$45,000
5C	Services -Residential with HWAY crossing	each	20	\$5,000	\$100,000
5D	Service- Commercial with HWAY crossing	each	20	\$6,500	\$130,000
6	Shoulder Restoration	ls	LS	\$26,700	\$26,700
7	Rock Excavation-allowance	cy	100	\$200	\$20,000
8	Route 209 Highway Crossing	each	1	\$60,000	\$60,000
9	Water Booster Station	ls	1	\$750,000	\$750,000
10	Sub-Total Construction				\$2,727,300
11	Construction Contingencies		10.00%		\$272,700
12	<b>TOTAL CONSTRUCTION</b>				<b>\$3,000,000</b>

**BRINNIER AND LARIOS, P.C.**



Dennis M. Larios, P.E.

**NOTE:**

This is a desktop analysis performed to determine approximate cost of an extension of municipal water service. Actual cost may vary depending on regulatory factors and geology that would be studied during the design process.

This estimate does not include engineering design, permitting, environmental studies or construction inspection