

**FUNDING GRANT AGREEMENT BETWEEN THE VILLAGE OF OAK PARK  
AND THE OAK PARK AREA ARTS COUNCIL**

**THIS FUNDING GRANT AGREEMENT** (hereinafter referred to as “Agreement”) is entered this \_\_\_ day of December, 2023, between the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter referred to as the “Village”) and the Oak Park Area Arts Council, an Illinois not-for-profit corporation (hereinafter referred to as “Grantee”).

**RECITALS**

**WHEREAS**, the Grantee is an Illinois not-for-profit corporation organized for the purpose of enhancing and promoting arts in the community; and

**WHEREAS**, Section 10 of Article 7 of the 1970 Constitution of the State of Illinois authorizes units of local government to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance; and

**WHEREAS**, units of local government entering into such agreements may use their credit, revenues, and other resources to pay costs and to service debt related to activities which promote a public purpose; and

**WHEREAS**, the Village has determined that it is in the public interest to provide the Grantee with a grant of funds for the Grantee to provide programs that support Oak Park’s quality of life by creating a community awareness of the arts and providing support to the local arts organizations and individuals (hereinafter referred to as the “Project”).

**NOW THEREFORE**, in consideration of the mutual promises contained in this Agreement, the Village and the Grantee agree as follows:

**1.0 RECITALS INCORPORATED.**

1.1. The above recitals are incorporated herein as though fully set forth.

**2.0 TERM OF AGREEMENT.**

2.1. Grantee shall perform the Project pursuant to this Agreement beginning on the effective date as defined herein and ending on December 31, 2024, unless earlier terminated by either party as set forth herein.

**3.0 PAYMENTS TO GRANTEE.**

3.1. In consideration of the Grantee undertaking and performing the Project, the Village shall pay to Grantee \$263,000, payable as set forth in Exhibit 1, provided that the Grantee has performed its obligations pursuant to this Agreement. Grantee shall submit an invoice to the

Village together with a progress report on Grantee's completion of the Project goals, which invoice will be paid upon approval as provided herein.

3.2. Payments pursuant to this Agreement are subject to availability of funds and their appropriation and authorized expenditure pursuant to applicable law. The Village's obligations shall cease immediately without penalty or liability for further payment, if, the Village or any other funding source fails to appropriate, budget or otherwise make available sufficient funds for this grant.

3.3. Payments to Grantee under this Agreement shall be made payable in the name of Grantee and sent to the following person and place, or directly deposited into a financial account maintained by the Grantee:

Executive Director  
Oak Park Area Arts Council  
123 Madison Street  
Oak Park, Illinois 60302

Grantee may change the person to whom payments are sent, or the place to which payments are sent, by delivering 30 days prior written notice pursuant to Section 24.0 of this Agreement.

3.4. The Village's financial obligation under this Agreement shall not exceed the grant amount set forth in Section 3.1 of this Agreement.

**4.0 SCOPE OF SERVICES.**

4.1. The Grantee shall perform the services and make a good faith effort to achieve the goals set forth in the description of services attached hereto as Exhibit 2 and made a part hereof.

**5.0 ADHERENCE TO VILLAGE POLICIES.**

5.1. The Grantee shall adhere to the policies set forth in the Addendum to the Agreement, attached hereto as Exhibit 3, or, in the alternative, that it will have adopted policies of its own which are in substantial compliance with the policies set forth in the Addendum, attached hereto as Exhibit 3.

5.2. All such Grantee policies require prior review and approval by the Village before the Grantee can substitute adherence to its own policies for adherence to the Village policies set forth in Exhibit 3. Such policies may be submitted to the Village for review and approval prior to the execution of this agreement or at any time during the term of this agreement.

5.3. The Village shall provide the Grantee with timely written approval or disapproval of all such policies submitted by the Grantee. Disapproval shall be accompanied by the specific reasons why the submitted policy is not in substantial compliance with the Village policy set forth in Exhibit

3. The Grantee may revise and resubmit policies to the Village for review and approval. Approval shall not be unreasonably withheld by the Village.

5.4. The Grantee shall be obligated to adhere to the policies set forth in Exhibit 3 until such time as its own written equivalent policy or policies have been filed with and approved by the Village.

5.5. The Grantee shall be obligated to submit any change in, or amendment to, such approved policy during the term of this agreement to the Village for its approval in the same manner as if it were submitting an entire new policy to the Village for its review and approval.

#### **6.0 GRANTEE'S AUTHORITY.**

6.1. Grantee warrants that it is the real party in interest to this Agreement, that it is not acting for or on behalf of an undisclosed party, and that it possesses the legal authority to apply for this grant and to execute this Agreement. Any person binding the Grantee shall, when required, provide written evidence of the legal authority for his or her agency. The Grantee acknowledges that it has read, understood and agreed to all provisions of this Agreement.

#### **7.0 GRANTEE'S RESPONSIBILITIES.**

7.1. **Requests for Written or Verbal Reports.** At the Village's request, Grantee shall submit, in a timely fashion, such written or verbal reports as reasonably deemed necessary by the Village Manager, or the Village Manager's designee, while this Agreement is in effect.

7.2. **Grantee's Designee.** In connection with the foregoing and other actions to be taken under this Agreement, Grantee hereby designates Executive Director, Annie Coakley as its authorized representative who shall have the power and authority to make or grant or do all things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of Grantee and with the effect of binding Grantee. The Village is entitled to rely on the full power and authority of the person executing this Agreement on behalf of Grantee as having been properly and legally given by the Grantee. Grantee shall have the right to change its authorized representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 24.0 of this Agreement.

7.3. **Submit Strategic Plan.** Grantee shall provide the Village with a copy of its current strategic plan which shall include the date of adoption of the plan with the date of said plan's last adoption and any updates/amendments to the plan. If a schedule is in place to update Grantee's strategic plan on a regular basis, Grantee shall provide the Village with the schedule.

7.4. **Village Branding and Marketing Program.** Grantee shall cooperate with the Village's branding and marketing program coordinated by the Village's Communications Department by participating in any marketing meetings scheduled by the Village's

Communications Department and utilizing the materials developed with the Communications Department in the Grantee's marketing materials to the public when communicating to the public the activities of the Grantee.

7.5. **Disaster Recovery Plan.** Grantee shall develop and maintain a disaster recovery plan during the term of this Agreement in the event there is a significant disruption to Grantee's core business ("Force Majeure Event"). The disaster recovery plan shall describe the key recovery steps to be performed by Grantee during and after a disruption in services, to enable Grantee to return to normal operations as soon as possible. Upon occurrence of a Force Majeure Event, Grantee shall promptly notify the Village of the Force Majeure Event, its effect on performance, and how long Grantee expects it to last. Thereafter, Grantee shall update that information as reasonably necessary. During a Force Majeure Event, Grantee shall use reasonable efforts to limit damages to the Village and to resume its performance under this Agreement. Notwithstanding the foregoing, the Village shall have the right to terminate this Agreement immediately if Grantee is unable to resume performance of this Agreement within a reasonable period of time as determined by the Village in its sole discretion.

#### **8.0 STATUS OF GRANTEE AND GRANTEE'S PERSONNEL OR CONTRACTED AGENTS.**

8.1. Grantee shall be an independent contractor to the Village. Grantee shall solely be responsible for the payment of all salaries, benefits and costs of supplying personnel for the Project.

8.2. All technical, clerical, and other personnel necessary for the performance required by this Agreement shall be Grantee's employees, or contracted agents, and shall in all respects be subject to Grantee's rules and regulations governing its employees. Neither the Grantee, nor its personnel, nor its contracted agents shall be considered to be agents or employees of the Village.

#### **9.0 THE GRANTEE'S BUSINESS ORGANIZATION.**

9.1. During the term of this Agreement, Grantee shall maintain its registration to do business in the State of Illinois with the Illinois Secretary of State, and be incorporated as an Illinois not-for-profit corporation. Grantee shall also be registered with the United States Internal Revenue Service and approved to operate as a tax-exempt organization pursuant to 26 U.S.C. § 501(c)(6), commonly referred to as "501(c)(6)," as amended.

9.2. Grantee shall hire and maintain a qualified and competent staff to provide all management and administrative services necessary to accomplish the Project.

9.3. Grantee's Board of Directors shall oversee the expenditure of the funding grants provided pursuant to this Agreement.

9.4. Grantee shall operate in accordance with this Agreement, Grantee's articles of incorporation and by-laws, and actions of Grantee's board of directors.

**10.0 FINANCIAL RECORDS.**

10.1. At any time during the term of this Agreement, the Village shall have the right to examine Grantee's financial records with reasonable notice, during regular business hours, with regard to the funds provided pursuant to this Agreement. The Village's requests for information may be based on requests from federal or state regulatory agencies, other governmental agencies, courts of law, consultants hired by the Village or other parties, which in the Village's opinion, require the information.

10.2. Grantee is accountable for all Village disbursed funds under this Agreement. Grantee's financial management system shall be structured to provide for accurate, current, and complete disclosure of the expenditure of all funds provided by the Village under this Agreement. Grantee shall maintain effective control and accountability over all funds disbursed and equipment, property, or other assets acquired with Village funds. Grantee shall keep records sufficient to permit the tracing of funds to a level of expenditure adequate to ensure that funds have not been unlawfully spent.

10.3. Grantee shall maintain for a minimum of five (5) years following the latter of the expiration or termination of this Agreement, or longer if required by law, adequate books, records, and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with this Agreement. All books, records and supporting documents related hereto shall be available for inspection and audit by the Village, or any duly authorized Village representative, and Grantee agrees to cooperate fully to accomplish any such audit. Grantee shall provide full access to all relevant materials and to provide copies of same upon request.

10.3.1. Grantee shall cooperate with the Village and provide the Village, when requested, with access to data, information and documentation pertaining to the Project.

10.3.2. The Village shall have the right to audit any records necessary to permit evaluation and verification of the Grantee's compliance with the requirements of this Agreement throughout the term of the Agreement and for a period of five (5) years after any payment, or longer if required by law.

10.3.3. The Village shall have the right to interview any of the Grantee's current and former employees, as related to this contract, during the audit.

10.3.4. Grantee shall provide the Village with adequate and appropriate workspace, with access to photocopy machines, during any audit.

10.3.5. Grantee shall provide the Village with copies of all requested records in a computer-readable format (if available) as well as hard copy.

10.4. If any of the services to be performed under this Agreement are subcontracted, Grantee shall include in all subcontracts a provision that the Village, or any duly authorized representative of the Village, shall have full access to and the right to examine any pertinent books, documents, papers and records of any subcontractor involving transactions related to this Agreement for a period of five (5) years from the later of the expiration or termination of this Agreement.

**11.0 FINANCIAL DISCLOSURES.**

11.1. If required by law, Grantee shall conduct an annual audit by an independent audit/accounting firm, which is licensed by the State of Illinois to conduct an audit in accordance with generally accepted auditing standards within six (6) months after the end of Grantee's fiscal year. The audit shall include all income received by Grantee, disbursements by Grantee, and all investment transactions for the prior fiscal year. Grant funds shall be included in Grantee's annual audit. If applicable by law, a copy of the audit report shall be provided to the Village within 30 days of Grantee's receipt of the audit report.

**12.0 PROCUREMENT OF CONSTRUCTION AND PROFESSIONAL SERVICES; ACQUISITION OF EQUIPMENT.**

12.1. The Grantee shall procure all construction and professional services, and acquire assets and materials financed in whole or in part with grant funds provided hereunder, through written, contractual agreement(s).

12.2. In the event that Grantee ceases to exist, all such assets, equipment, and materials purchased with Village funds shall become Village property.

**13.0 UNEXPENDED FUNDS.**

13.1. Any unexpended funds provided by the Village pursuant to this Agreement shall be maintained in a federally insured account by Grantee and shall be returned to the Village within thirty (30) days of the expiration of this Agreement.

13.2. Upon dissolution of Grantee's corporation or termination of this Agreement, any unexpended funds originally provided by the Village to Grantee shall be immediately returned to the Village. Funds which have already been obligated by Grantee at the time of the dissolution of Grantee's corporation or at the time of Grantee's receipt of the Village's notice to terminate this Agreement shall not be considered as "unexpended funds" for purposes of this Section 13.0. Upon dissolution, Grantee shall notify the Village of the name of the individual or entity responsible for winding up its affairs.

#### **14.0 LEGAL COMPLIANCE.**

14.1. In addition to complying with the statutes and regulations specifically referenced in this Agreement, Grantee is responsible for determining the applicability of, and complying with, any other laws, regulations or ordinances.

14.2. Grantee shall not discriminate against any worker, employee, or applicant, or any member of the public because of race, religion, disability, creed, color, sex, age sexual orientation, status as a disabled veteran or Vietnam era veteran, or national origin, nor otherwise commit an unfair employment practice.

14.3. Grantee shall take affirmative action to ensure that applicants are employed without regard to race, religion, handicap, creed, color, sex, age, sexual orientation, status as a disabled veteran or Vietnam era veteran, or national origin, with such affirmative action, including but not limited to the following: employment, upgrading, demotion or transfer, termination, rates of pay, other forms of compensation, or selection for training, including apprenticeship.

14.4. All applicable federal, state and local laws, rules and regulations applicable to this Agreement shall be deemed to be included in this Agreement as though fully set forth herein. Except where expressly required by applicable laws and regulations, the Village shall not be responsible for monitoring Grantee's compliance.

14.5. Grantee certifies that it shall comply with all applicable provisions of federal, state and local law in its performance of this Agreement.

14.6. Grantee shall comply with the policies set forth in Exhibit 3, or, in the alternative, that it has adopted policies of its own which are in substantial compliance with those in Exhibit 3. All such Grantee policies require prior review and approval by the Village Manager or the Manager's designee. The Village shall provide Grantee with timely written approval or disapproval of all such policies submitted by Grantee. Disapproval shall be accompanied by the specific reasons why the submitted policy is not in substantial compliance with the Village's Policies. Grantee may revise and resubmit policies to the Village for review and approval. Approval shall not be unreasonably withheld by the Village. Grantee shall comply with the Village Policies until such time as its own written equivalent policy or policies have been approved by the Village. Grantee shall be obligated to submit any change in, or amendment to, such approved policy during the term of this Agreement to the Village for its approval in the same manner as if it were submitting a new policy to the Village for approval.

14.7. The Village is authorized to conduct reviews and conduct other procedures or practices regarding Grantee's compliance with this Section 14.0. Grantee agrees to post, in conspicuous places available to employees and applicants for employment or distribute to employees and applicants for employment, notices setting forth the non-discrimination provisions of this Section 14.0.

**15.0 TERMINATION; SUSPENSION.**

15.1. This Agreement may be terminated without cause by either party upon providing ninety (90) days written notice pursuant to Section 24.0 of its intention to terminate this Agreement.

15.2. During the term of this Agreement, the Village may terminate this Agreement for cause or suspend payments of grant funds due to: (1) use of funds in a manner inconsistent with this Agreement; (2) Grantee's failure to submit required documents pursuant to this Agreement; (3) Grantee's submission of incorrect or incomplete reports; or (4) Grantee's failure to perform in accordance with this Agreement.

15.3. In the event the Village elects to terminate this Agreement for cause or to suspend payments under this agreement for any reason set forth in this Agreement, the Village shall provide written notice pursuant to Section 24.0 to Grantee of its intention to terminate this Agreement for cause or suspend payments if Grantee fails to cure the noted deficiency within thirty (30) days after receipt of the notice. The written notice shall provide Grantee with a description of the alleged deficiency, and Grantee shall be afforded an opportunity to refute the statement of deficiency set forth in the notice prior to the Village's termination or suspension of payments. If Grantee fails to adequately refute the alleged deficiency, or fails to correct the deficiency within thirty (30) days of the Village's notice, the Village may terminate or suspend payment of any funds to be provided pursuant to this Agreement.

15.4. The Village's obligations under this Agreement shall cease immediately without penalty of further payment being required if the Village or other funding source fails to, budget, appropriate, or otherwise make available sufficient funds for this Agreement. In the event a lack of funding occurs in full or in part, the Village shall give the Grantee written notice pursuant to Section 24.0, which shall set forth the effective date of full or partial termination, or if a change in funding is required, setting forth the change in funding and changes in the approved budget.

**16.0 INDEMNIFICATION AND INSURANCE.**

16.1. To the fullest extent permitted by law, Grantee shall defend, indemnify and hold harmless the Village and its officials, officers, agents, employees and volunteers against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, cost and expenses, including, but not limited to, reasonable attorneys' fees and court costs (hereinafter referred to as "Claims") which may accrue against the Village and its officials, officers, agents, employees and volunteers to the extent arising out of Grantee's performance of this Agreement, except for the negligence of the Village and its officials, officers, agents, employees, or volunteers.

16.2. Grantee shall, at Grantee's expense, secure and maintain in effect throughout the duration of this Agreement, insurance of the following kinds and limits set forth in this Section 16.0. Grantee shall furnish Certificates of Insurance to the Village before starting work pursuant

to this Agreement. All insurance policies shall be written with insurance companies licensed or authorized to do business in the State of Illinois and having a rating of at least A according to the latest edition of the Best's Key Rating Guide; and shall include a provision preventing cancellation of the insurance policy unless fifteen (15) days prior written notice is given to the Village. This provision (or reasonable equivalent) shall also be stated on each Certificate of Insurance: "Should any of the above described policies be canceled before the expiration date, the issuing company shall mail fifteen (15) days' written notice to the certificate holder named to the left." Grantee shall require any of its subcontractors to secure and maintain insurance as set forth in this Section 16 and indemnify, hold harmless and defend the Village, its officials, officers, employees, attorneys and volunteers as set forth in this Agreement.

16.3. The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

(A) **Commercial General Liability:**

- i. Coverage to include, Broad Form Property Damage, Contractual and Personal Injury.
- ii. Limits:
 

General Aggregate	\$ 2,000,000.00
Each Occurrence	\$ 1,000,000.00
Personal Injury	\$ 1,000,000.00
- iii. Cover all claims arising out of Grantee's operations or premises, anyone directly or indirectly employed by Grantee.

(B) **Workers' Compensation:**

- i. Workers' compensation insurance shall be in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees who work on the Services, and in case work is sublet, Grantee shall require each subcontractor similarly to provide workers' compensation Insurance. In case employees engaged in hazardous work under this Agreement are not protected under workers' compensation insurance, Grantee shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

(C) **Comprehensive Automobile Liability:**

- i. Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury and property damage.
- ii. Limits:
 

Combined Single Limit	\$1,000,000.00
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- (D) **Umbrella:**
  - i. Limits:
 

Each Occurrence/Aggregate	\$2,000,000.00
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- (F) The Village and its officers, officials, agents, employees and volunteers shall be named as additional insureds on all insurance policies identified herein except workers' compensation. Grantee shall be responsible for the payment of any deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the Village and its officers, officials, agents, employees, and volunteers.

16.4. The Village and Grantee agree to waive against each other all claims for special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

16.5. Grantee understands and agrees that any insurance protection required by this Agreement or otherwise provided by Grantee shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village as herein provided. Grantee waives and agrees to require its insurers to waive its rights of subrogation against the Village and its officers, officials, agents, employees, and volunteers.

**17.0 COVENANT NOT TO SUE.**

17.1. Grantee forever releases and discharges the Village and its officials, officers, agents, employees and volunteers from all claims, demands, damages, actions or causes of action which arise out of the Village's performance of this Agreement.

17.2. Grantee covenants not to sue or otherwise bring any action in law or equity against the Village and its officials, officers, agents, employees or volunteers for any claims, loss, damage, expense, debt or liability of any nature whatsoever which the Grantee may sustain arising out of the Village's performance of this Agreement.

**18.0 NON-WAIVER OF RIGHTS.**

18.1. Any failure on the part of the Village to exercise any right under this Agreement shall not be construed as a waiver of that right.

**19.0 NON ASSIGNMENT AND SUCCESSORS IN INTEREST.**

19.1 This Agreement shall not be assigned, sublet, or transferred by either party hereto.

19.2 The parties each bind themselves and their successors, and assigns to the other party of this Agreement and to the successors, and assigns of such other party in respect to all covenants of this Agreement.

19.3 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the Village, nor shall it be construed as giving any right or benefits hereunder to anyone other than the Village and Grantee.

## **20.0 MODIFICATION AND AMENDMENT.**

20.1. This Agreement may only be amended or modified by a written instrument, signed by the parties hereto, other than modifications required by changes in federal or state law or regulations or required by Village ordinance applicable to this Agreement. No amendment or modification of this Agreement shall be valid or enforceable unless in writing and signed by the authorized representatives of the parties.

20.2. This Agreement is subject to such modifications as the Village determines may be required by changes in federal, state or local law or regulations. Any such required modification shall be incorporated into and be part of this Agreement as if fully set forth herein. The Village shall notify the Grantee of any change in law or regulation which it has notice.

## **21.0 CONFLICT OF INTEREST.**

21.1. The Grantee shall establish safeguards to prohibit its officers, directors, agents and employees from using Village funds for their own private use.

21.2. No Village officer or employee may be hired or paid with funds derived directly or indirectly through this Agreement.

21.3. The parties acknowledge and agree that Village officers and employees may serve as directors and volunteers of the Grantee and their service shall not be deemed to be a conflict of interest.

21.4. Grantee covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Project pursuant to this Agreement. Grantee further covenants that in the performance under this Agreement, no person having a conflict of interest shall be employed by Grantee.

## **22.0 NO COLLUSION.**

22.1. Grantee hereby represents and certifies that Grantee is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Grantee is contesting, in accordance with the procedures established by the appropriate revenue Act, its

liability for the tax or the amount of the tax, as set forth in 65 ILCS 5/11-42.1-1; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* Grantee hereby represents that the only persons, firms, or corporations interested in this Agreement are those disclosed to the Village prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Grantee has in procuring this Agreement, colluded with any other person, firm, or corporation, then Grantee shall be liable to the Village for all loss or damage that the Village may suffer thereby, and this Agreement shall, at the Village's option, be null and void and subject to termination by the Village.

**23.0 GOVERNING LAW AND VENUE.**

23.1. This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance.

23.2 Venue for any action brought pursuant to this Agreement shall be in the Circuit Court of Cook County, Illinois.

**24.0 NOTICE.**

24.1. Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, by personal service, or by electronic transmission to the persons and addresses indicated below or to such other addresses as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

If to the Village:

Village Manager  
Village of Oak Park  
123 Madison Street  
Oak Park, Illinois 60302  
Email: [villagemanager@oak-park.us](mailto:villagemanager@oak-park.us)

If to Grantee:

Executive Director  
Oak Park Area Arts Council  
123 Madison Street  
Oak Park, Illinois 60302  
Email: [camilleW2@oakparkareaartscouncil.org](mailto:camilleW2@oakparkareaartscouncil.org)

24.2. Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

24.3. Notice by email transmission shall be effective as of date and time of email transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event email notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

**25.0 ENTIRE AGREEMENT.**

25.1. This Agreement represents the entire agreement between the parties and supersedes all previous communications or understandings, whether oral or written.

25.2. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement.

**26.0 SAVINGS CLAUSE.**

26.1. If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of it requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

**27.0 CAPTIONS AND PARAGRAPH HEADINGS.**

27.1. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

**28.0 AUTHORIZATIONS**

28.1. Grantee's authorized representatives who have executed this Agreement warrant that they have been lawfully authorized by Grantee's board of directors or its by-laws to execute this Agreement on its behalf. The Village Manager and Village Clerk hereby warrant that they have been lawfully authorized by the Village Board to execute this Agreement. Grantee and the Village shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement.

**29.0 HEADINGS AND TITLES.**

29.1. The headings or titles of any provisions of this Agreement are for convenience or reference only and are not to be considered in construing this Agreement.

**30.0 COUNTERPARTS; FACSIMILE OR PDF SIGNATURES.**

30.1. This Agreement shall be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement.

30.2. A facsimile or pdf/email copy of this Agreement and any signatures thereon will be considered for all purposes as an original.

**31.0 EFFECTIVE DATE.**

31.1. The effective date of this Agreement shall be January 1, 2024.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF** the parties to this Agreement by their signatures acknowledge they have read and understand this agreement and intend to be bound by its terms as of the date first written above.

**VILLAGE OF OAK PARK**

**OAK PARK AREA ARTS COUNCIL**

\_\_\_\_\_  
By: Kevin J. Jackson  
Its: Village Manager

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

Date: \_\_\_\_\_, 2023

Date: \_\_\_\_\_, 2023

**ATTEST**

**ATTEST**

\_\_\_\_\_  
By: Christina M. Waters  
Its: Village Clerk

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

Date: \_\_\_\_\_, 2023

Date: \_\_\_\_\_, 2023

**EXHIBIT 1**

**FUNDING SCHEDULE - 2024 BUDGET**

**Oak Park Area Arts Council**

Monthly Bills are Paid in Arrears and Submitted and Paid the Following Month

Month	General Revenue Funds		Capital Funds	TOTAL
	General Operating Support	Arts Fund and Off the Wall	Public Art Support*	
January	\$8,583.34			\$8,583.34
February	\$8,583.34			\$8,583.34
March	\$8,583.32		\$22,500.00	\$31,083.32
April	\$8,583.34			\$8,583.34
May	\$8,583.34			\$8,583.34
June	\$8,583.32	\$70,000.00	\$22,500.00	\$101,083.32
July	\$8,583.34			\$8,583.34
August	\$8,583.34			\$8,583.34
September	\$8,583.32		\$22,500.00	\$31,083.32
October	\$8,583.34			\$8,583.34
November	\$8,583.34			\$8,583.34
December	\$8,583.32		\$22,500.00	\$31,083.32
<b>Total Monthly Payments</b>	<b>\$103,000.00</b>	<b>\$70,000.00</b>	<b>\$90,000.00</b>	<b>\$263,000.00</b>

**NOTE: \*Capital Funds budgeted based on approximate date anticipated and are maximum amounts available subject to actual expenses.**

EXHIBIT 2  
OAK PARK AREA ARTS COUNCIL  
2023 SCOPE OF SERVICES PROGRAM GOALS AND MEASURES

*Use the attached Agency Update Report form provided as a cover sheet for delivering each of your quarterly updates, audits, annual financials, and any other required deliverables.*

The Oak Park Area Arts Council (OPAAC) will operate the following programs that support Oak Park's quality of life by creating a community awareness of the arts and providing support to the local arts organizations and individuals.

**A. SCOPE OF SERVICES**

1. Arts Funds Grants

OPAAC will administer the Arts Funds grant program, which provides grants to local Oak Park not-for-profit organizations for operations and/or project support. OPAAC will award funds based on Arts Funds criteria including artistic and application merit and to what degree the proposed work contributes to the arts community. Grants are awarded to approximately 25 local organizations that offer programs or performances in the community.

2. Community Awareness/ e-Art newsletter.

OPAAC will create and distribute the e-Art newsletter, an electronic listing of the latest art and cultural happenings in the tri-Village area. The newsletter will be issued every two weeks. It is also a resource for art space listings, employment opportunities, auditions and exhibit space.

3. Public Art Programs – OPAAC will be responsible for the management and execution of the following duties to encourage and maintain Public Art throughout the community:

3.1 The OPAAC Board of Directors discusses public art at every board meeting. Board members take part in public art ideas and decisions for all Village projects.

3.2 Recommend to the Village President and Board of Trustees as part of the OPAAC Annual Budget Submission an annual designation of funds to the Public Art Acquisition and Maintenance Fund for the acquisition of new public art and the repair and maintenance of the existing public art collection, together with a supporting acquisition and maintenance plan and cost analysis.

3.3 Maintain a detailed inventory and record of all existing public art in the Village, including site drawings, photographs, designs, explanations of the piece, the artist's name and the year of creation, obtain appraisals if needed, artist waivers, evidence of ownership and purchase price, whenever applicable and/or feasible.

- 3.4 Inspect the condition of existing public artworks on at least a tri-annual basis and to communicate maintenance problems and/or suggested solutions to owner, artist or other person or entity designated as responsible for the artwork, or to recommend removal if maintenance efforts are unsuccessful in the case of privately-owned artwork. Report on these inspections in required quarterly reports.
- 3.5 Provide public education on existing public artworks throughout the Village.
- 3.6 Approve and monitor the installation of all public art sponsored by not-for-profit organizations located on Village owned property.
- 3.7 Work with local developers to advise, review, and approve the installation of public arts elements in accordance with the Village of Oak Park's Planned Development Ordinance.
- 3.8 Administer the Village of Oak Park Community Mini-Mural Program for the Village. Artists will be selected to paint murals at such locations in the Village as are designated by the Mini Mural Jury and approved by the Village Manager. The Arts Council will recruit artist applicants and facilitate the selection of the artist and the installation of the art. The Arts Council will coordinate with appropriate Village staff with regard to the technical requirements for the installation/application of the murals.
- 3.9 Assist arts organizations and artists to find office, retail, and studio or gallery space.
- 3.10 Run the "Off the Wall" program, a summer art employment program which recruits area youth who work with professional artists to install murals in the Village.
- 3.11 Administer the Oak Park Sculpture Walk featuring works of art produced by local and national professional artists which will be displayed within the Village of Oak Park between the months of June through September. Management services include artist outreach, judging, installation and removal, and event marketing. The annual business district location of the Sculpture Walk to be determined in coordination with Development Services staff.

## **B. PROGRAM GOALS AND MEASURES**

The OPAAC shall provide to the Village, during the term of this Agreement, a quarterly report of expenditures, including year to date actuals as compared to the budget, as well as such reports as the Village may require, including a quarterly report. Included in the quarterly report will be data, measuring the performance criteria listed below.

1. Number of participants in Arts Council supported programs.
  - Students in sponsored or funded programs
  - Participants in Arts Council-sponsored activities and programs, including artists
2. Number of e-ART subscribers, news stories, and distinct website hits.
3. Amount of funds granted to local art organizations with name of awardee and grant dollars provided.
4. Level of private support for Arts Organizations and sponsored activities - Funds raised from Private and Outside Sources, including private foundations. Report should include a profit and loss statement for each fundraising event and membership data (including Memberships).
5. Number of installations of "Public Art" in the community including displays of local artists' works and works placed in cooperation with the Public Art Advisory Commission, not-for profit mural installations, the Community Mini-Mural Program, and private installations by developers.
6. Number of public art pieces receiving regular maintenance.
7. Number of activities sponsored with or for other organizations (e.g. business groups).
8. Number of artists referred to studio or residential spaces.

[Insert Agency Name]

Your Address Line 2

Your Address Line 3

Your Address Line 4

Executive Director/CEO/President

Phone: (555) 555-5555

E-mail: yourname@email.com

## Agency Update Report

To: Village of Oak Park

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

From: [Insert Submitted by Name]

1st Quarter     2nd Quarter     3rd Quarter     4th Quarter

Audit (Year and Date)

Annual  
Financials

Other

### **Confidentiality Statement**

*This report may contain confidential information and is intended for the exclusive use of the individual or entity to whom it is addressed. This report may also be privileged or protected by work product laws and regulations.*

### EXHIBIT 3

The Contractor shall comply with the terms and conditions set forth herein. Any violation of the terms and conditions set forth herein shall subject the Contractor, at the Village's discretion, to possible contract termination or suspension of payments in accordance with the Agreement.

#### **A. Conflicts of Interest and Standards of Conduct.**

The Contractor shall adhere to the "Conflicts of Interest and Standards of Conduct" set forth below or to such equivalent policies of the Contractor as has been reviewed and approved by the Village in accordance with the Agreement.

#### **Conflicts of Interest and Standards of Conduct**

1. Compensation: Members of the Board of Directors shall serve without salary, but the Board of Directors may authorize payment of the reasonable expenses incurred by such members in the performance of their duties.
2. Impartiality: Every director and employee shall perform his or her duties with impartiality and without prejudice or bias in furtherance of the goals, objectives and contractual obligations of the Contractor. No director or employee shall, in the performance of his or her duties on behalf of the Contractor, grant or make available to any person or entity, including other directors or employees of the Contractor, any consideration, treatment or service beyond that which is available to every other similarly situated person or entity served by the Contractor.
3. Conflict of Interest: No director or employee shall engage in any business transaction or shall have any financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of the Director's official duties in the interest of the Contractor or which may tend to impair his/her independence of judgment or action in the performance of his/her official duties.
4. Interest in contracts: No director or employee shall have any financial or personal interest, directly or indirectly, in any contract, work or business with the Contractor except that a director may provide materials, merchandise, property, services or labor under the following circumstances:
  - a. The contract is with a person, firm, partnership, association, or corporation in which the director has less than a 7.5% share in the ownership, and the aggregate of any contracts awarded to the director or the director's firm, association, partnership or corporation under this subsection (b) during the same fiscal year does not exceed \$25,000; or

- b. The contract does not exceed \$2,000, and the aggregate of any contracts awarded to the director or the director's firm, association, partnership or corporation under this subsection (a) during the same fiscal year does not exceed \$4,000; or
- c. The contract is with a person, firm, partnership, association or corporation in which the director has less than a 1% share in ownership; or
- d. The Contractor is not a party to the contract, and the contract is with a person or entity served by the Contractor as a part of its corporate purpose.

Any contract awarded under this Section 4 must comply with the Contractor's policies concerning competitive bidding and outreach to women and minority business enterprises.<sup>1</sup>

- 5. In the event that the Board of Directors considers taking any action, including but not limited to entering into a contract in which any director has any financial or personal interest, direct or indirect, which may reasonably tend to impair the director's independence of judgment or action in the best interests of the Contractor, the director shall:
  - a. Before consideration of the proposed action, publicly disclose any such interest to the Board of Directors; and
  - b. Refrain from evaluating, recommending, approving, deliberating or otherwise participating in negotiation, approval or both of the contract or work; and
  - c. Abstain from voting on the proposed action; and
  - d. The contract must be approved by a majority of the Board of Directors.

For purposes of this Section, personal interest shall include the financial interest of the spouse and minor children of the director, but shall not include any interest that a director may have in a proposed general policy of the Contractor solely by virtue of his business or profession.<sup>2</sup>

- 6. Disclosure and/or Use of Confidential Information: No director or employee shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the Contractor or use such information to advance the financial or other private interest of the director, or employee or others.

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<sup>1</sup> The exceptions in Section 4 are drawn from 65 ILCS 5/3.1-55-10.

<sup>2</sup> The final sentence in Section 5 is intended to ensure that a board member who may be a landlord, realtor, banker, etc., is not prevented from voting on general policies that may have some impact, direct or indirect, on all members of that profession.

7. Corporate Property: No director or employee shall request, permit or engage in the unauthorized use of the Contractor's funds, vehicles, equipment, materials or property of personal convenience or profit.

## **B. Procurement Policy.**

The Contractor shall comply with the provisions set forth below relating to the procurement of goods and services which are funded, in whole or in part, by the Village or through the Village as funding agent, or such equivalent policy of the Contractor as has been reviewed and approved by the Village in accordance with the Agreement. The Contractor shall comply with the Procurement Policy attached hereto and incorporated herein by reference as Exhibit D if the Contractor is a recipient of United States Department of Housing and Urban Development funds.

1. **All Contracts for Goods and Services Require the Approval of the Board of Directors; Exceptions.** No contract shall be made for goods or services when the total cost exceeds ten thousand dollars (\$10,000.00), unless such contract shall have been authorized by the Board of Directors. Whenever the total cost of such contract shall not exceed, in any one case, one thousand dollars (\$1,000.00), the Executive Director or his or her designee (hereinafter "Executive Director"), without such previous authorization, shall cause the same to be purchased upon his or her written order; and further provided that when the total cost thereof shall exceed one thousand dollars (\$1,000.00) but shall not exceed ten thousand dollars (\$10,000.00), the Executive Director may cause the same to be purchased without previous authorization in like manner, but the Executive Director shall first obtain in writing, whenever possible, at least three (3) informal quotes to furnish same, which quotes shall be attached in every case to the accounts payable vouchers authorizing payment for such goods or services and filed with the financial records of the Contractor. All contracts shall be let to the lowest responsible bidder, provided that any and all informal quotes for equipment, supplies or repair work may be rejected by the Executive Director if the character or quality of the goods or services does not conform to requirements. In determining the lowest responsible bid or quote, other factors, in addition to cost, such as experience, availability, expertise, resources, work history with the Contractor, work history with others, quality of work and ability to meet all specifications and/or requirements of the Contractor may be taken into consideration and may form the basis for an award of contract. Many of these factors will have increased significance when considering the award of contracts for professional services.
2. **Contracts Which Require the Use of the Formal Bidding Process.** Except as set forth in Section 3 below, when the total cost of a contract for goods, materials, equipment, supplies or construction work is expected to exceed ten thousand dollars (\$10,000.00), the Executive Director or his or her agent shall issue a call for bids which shall be formally advertised. All such bids for construction work shall require a bond for the faithful performance of the work.

All contracts for which bids are required shall be let to the lowest responsible bidder within the judgment of the Board of Directors, provided that any and all bids received in response to an advertised call for bids may be rejected by the Board of Directors if the character or quality of goods, materials, equipment, supplies or construction work does not conform to the specifications and/or requirements set forth in the call for bids.

- 3. Exception to Bid Requirements for Urgent Materials or Repairs; Lack of Competition and Inability to Draft Adequate Specifications; Bid Waiver.** In cases of urgently needed materials or urgently needed repairs which are expected to exceed ten thousand dollars (\$10,000.00), the Executive Director is authorized to obtain such materials and/or services through a negotiated contract without formal advertising when it is in the best interest of the Contractor and it is impractical to convene a meeting of the Board of Directors. If it is practical to convene a meeting, the Board of Directors shall be required to waive the bidding requirement and approve such a negotiated agreement.

Such negotiated contracts may also be approved by the Board of Directors when (1) the contract is for professional services, (2) it is impractical to secure competition, or (3) it is impossible to draft adequate bid specifications. The Executive Director or his or her designee shall, however, whenever possible, obtain in writing at least three (3) informal quotes to furnish same.

Bidding in all instances may be waived by a two-thirds (2/3) vote of the Board of Directors.

- 4. Procedure for Advertising for Bids.** Whenever any formal bids are required, as stated above, the Executive Director or his/her authorized agent shall advertise in some newspaper published in the Village and/or in such other newspaper of general circulation as, in his/her judgment, may be desirable. A plan or profile of the work to be done, accompanied by specifications for doing the same and specifications for material, supplies or equipment to be furnished, shall be first placed on file in the office of the Executive Director or his/her authorized agent before any such advertisement shall be made, which plan, profile and specifications for goods, material, supplies, equipment or construction work shall at all times be open for public inspection. Such advertisement shall be published not less than ten (10) days before the day fixed for opening such bid, and shall state the work to be done, or material, supplies or equipment to be furnished, and the time and place for the filing and the opening of the sealed bids.
- 5. Filing of Bids; Deposit Accompanying Bids, Preservation and Opening of Bids.** In all cases, the formal bids under the preceding section shall be sealed bids and directed to the Executive Director. A bid deposit may be required, the amount of which shall be fixed by the Executive Director but which shall not exceed five percent (5%) of the estimated cost of the work or material to be furnished, not less than the sum of twenty-five dollars (\$25.00). Such bid deposit shall be in the form of a cashier's check, a certified check, or at the discretion of the Executive Director, a bid bond. Checks shall be drawn upon a bank in good standing, payable to the order of the Contractor and shall be forfeited to the

Village in the event the bidder shall neglect or refuse to enter into a contract and bond when required, with approved sureties, to execute the work or furnish the material for the price mentioned in his/her bid and according to the plans and specifications in case the contract shall be awarded to him/her. Bids shall be opened at the hour and place mentioned in the notice.

- 6. Contracts to be Executed in Writing.** All contracts, whether for work or materials, shall be executed in writing and in duplicate by the President of the Board of Directors or the Executive Director. One original so executed shall be kept and filed in the Contractor's office and the other shall be given to the contractor. All contracts and bonds so taken shall be in the name of, and run to, the Contractor.
- 7. Contractors' Bonds.** Whenever any construction work, expected to be in excess of ten thousand dollars (\$10,000.00), is let by contract to any person or entity, the Contractor shall, in all cases, take a bond from such person or entity with good and sufficient sureties, licensed in the State of Illinois to be approved by the Board of Directors, in such amount as shall not only be adequate to insure the performance of the work in the time and manner required in such contract, but also to save and indemnify and keep harmless the Contractor against all liabilities, judgments, costs and expenses which may in any manner accrue against the Contractor in consequence of granting such contract or which may in any manner result from the carelessness or neglect of such person, or entity or its agents, employees or workers in any respect whatever.
- 8. Bid Tabulation.** The Contractor shall prepare a spreadsheet for each separate contract over ten thousand dollars (\$10,000.00) for goods and services awarded by it. Each spreadsheet shall name and identify all entities submitting bids or proposals on specific contracts by name and address, describe the goods provided or the work performed, set forth the cost, fee or amount proposed by each such entity in response to the call for bids or request for proposals or quotes, the name and address of the entity who was awarded the contract, and the reasons therefore. The Contractor shall submit copies of all such spreadsheets to the Village on a quarterly basis as a part of the general quarterly reporting process required under this agreement.

### **C. Diversity Statement**

In 1997, the Village of Oak Park first adopted what is now known as the Village's "Diversity Statement." Every new Village Board elected since that time has readopted this Diversity Statement incorporating amendments over time which have added to the Statement's scope and strength.

Attached hereto as Exhibit A and made a part hereof is the Diversity Statement adopted by the President and Board of Trustees of the Village of Oak Park in 1997 and amended in 2007.

As a partner agency of the Village of Oak Park, the Contractor agrees to adhere to the Diversity Statement, attached hereto as Exhibit A with regard to diversity, or such equivalent policy of the Contractor as is reviewed and approved by the Village in accordance with that section of the Agreement entitled "Adherence to Village Policies."

In carrying out its commitment to diversity as set forth in the Diversity Statement, the Contractor shall use its best efforts to affirmatively recruit qualified women and minority candidates to fill vacant positions within its Contractor and to use its best efforts to affirmatively recruit qualified minority owned business enterprises ("MBE") and women owned business enterprises ("WBE") to participate in the Contractor's process of contracting for goods and services. The Village shall upon request provide the Contractor with the names of known MBEs and WBEs and business referral agencies.

The Contractor shall annually submit to the Village an Equal Employment Opportunity ("E.E.O.") Report in the form attached as Exhibit B showing the breakdown of its employees by race, sex and job classification. In addition, the Contractor shall report the race, sex and job classifications for any new employee hired during the preceding year and indicate the general efforts which were made by the Contractor during the course of the previous year to recruit qualified women and minority candidates for such position(s).

The Contractor shall also provide a report to the Village, on an annual basis, which indicates the number of contracts and the dollar value of contracts for goods and services which it let during the preceding year and the number of contracts, the dollar value of contracts and the percentage of the total dollar value of contracts for goods and services which have been let to women and minority contractors.

This report shall also contain a section setting forth the general efforts made by the Contractor during the course of the previous year to affirmatively recruit women and minority businesses to participate in the contracting process.

The Contractor's E.E.O. employment and contracting reports for the entire preceding year shall be submitted as a part of the regular quarterly report submitted for the fourth quarter of the year.

#### **D. Drug Free Workplace.**

The Contractor agrees to adhere to the following policy related to a drug free workplace or such equivalent policy of the Contractor as has been reviewed and approved by the Village in accordance with Section 5 of the agreement, entitled "Adherence to Village Policies."

The content of the notice set forth below sets forth the policy of the Village with regard to the Village as a drug free workplace. The Contractor shall post the notice below or its own equivalent policy in a conspicuous location on the Contractor's premises where it will be visible to all employees, or provide a copy of the following notice or its own equivalent policy to each

employee. Any such notice or policy posted or provided to employees shall name the Contractor and the individual or position which fulfills the “Human Resources Director” position, where indicated.

### **DRUG-FREE WORKPLACE NOTICE**

All employees should be aware pursuant to Illinois and United States law that the (Name of Contractor) is a drug-free workplace. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance as defined in Illinois law at 720 ILCS 570/201 *et. seq.* and United States law, 41 U.S.C. §§ 701-707, is prohibited at the workplace and by any employee of (Name of Contractor). Any violation will subject the employee to dismissal from employment. As a condition of employment, an employee convicted of any drug related offense occurring at the workplace must notify the (Human Resources Director) within five (5) days of the conviction. Failure to so notify the (Human Resources Director) is grounds for dismissal from employment.

#### **E. Sexual Harassment Policy.**

The Contractor shall comply with the sexual harassment policy set forth below or with an equivalent policy that has been reviewed and approved by the Village in accordance with the Agreement.

### **SEXUAL HARASSMENT POLICY**

Sexual harassment is illegal and against the employment policy of the (Name of Contractor).

Any employee found by the (Name of Contractor) to have engaged in sexual harassment will be subject to appropriate disciplinary action, up to and including termination.

“Sexual harassment” means any unwelcome sexual advances or requests for sexual favors or any verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment may include, but are not limited to:

- Verbal: Sexual innuendo, suggestive comments, insults, threats, jokes about gender specific traits, or sexual propositions;
- Non-Verbal: Making suggestive or insulting noises, gestures, leering, whistling or obscene gestures; and

- Physical: Touching, pinching, brushing the body, coercing sexual intercourse or assault.

An employee who believes he or she has been the subject of sexual harassment shall report the alleged conduct immediately to the Contractor's Human Resources Director, Executive Director or such other employee, other than the alleged harasser, as may be designated by the Contractor. The information will then be forwarded to the CEO/Manager/Executive Director. A confidential investigation of any complaint will be undertaken by the Human Resources Director or such other officer or employee designated by the Executive Director.

Retaliation or discrimination against an employee who makes a sexual harassment complaint is strictly prohibited. Any employee found by the (Name of Contractor) to have retaliated or discriminated against an employee for a sexual harassment complaint will be subject to appropriate disciplinary action up to and including termination.

The (Name of Contractor) recognizes that the issue of whether sexual harassment has occurred requires a factual determination based on all the evidence received. The (Name of Contractor) also recognizes that false accusations of sexual harassment can have serious effects on innocent men and women. All employees will continue to act in a responsible and professional manner to establish a working environment free of sexual harassment.

**F. Domestic Partnership Program.**

The Contractor agrees to adhere to the Domestic Partnership Program attached hereto as Exhibit C and made a part hereof as a program for the benefit of employees of the Contractor or to such equivalent Contractor policy as has been reviewed and approved by the Village in accordance with that section of the Agreement entitled "Adherence to Village Policies."

The Village will assist the Contractor with the implementation of the Program at the Contractor's request.

The Village agrees to save and hold harmless, protect and defend the Contractor, its employees, Board Members and other agents, from any and all costs, losses, suits for damage or other relief, damages, rights, claims, demands or actions resulting from or in any way arising out of the actions or operations of the Contractor or its agents in approving or carrying out or fulfilling the terms of the Domestic Partnership Program required herein and to pay all costs, including attorneys' fees, of any involvement in any litigation or administrative proceedings or other legal actions based thereon. Said obligations of the Village shall survive any termination of the Agreement between the Contractor and the Village.

**G. Compliance with Employment Laws.**

The Contractor shall perform the services set forth in the Agreement in compliance with all applicable federal and state employment laws, including but not limited to all laws prohibiting discrimination in employment.

**H. Compliance with HUD Guidelines.**

In the event that the Contractor is a recipient of Community Development Block Grant (CDBG) funds under the terms of the Agreement, the Contractor shall comply with all U.S. Department of Housing and Urban Development (HUD) rules, regulations, and guidelines adopted in relation to the administration of such CDBG funds.



## EXHIBIT A

### **Oak Park's Diversity, Equity and Inclusion Statement**

The Village of Oak Park reverently recognizes this land that we live, learn, play, and work on was first the original homelands of numerous Native Nations. These indigenous sovereign tribes were unjustly removed from their ancestral land through colonial force. We acknowledge this painful history to ground the work of becoming a diverse, equitable, and inclusive community beginning with recognition and acknowledgment of the harm, hardships, and horrors experienced by the Indigenous community. Nevertheless, the Native American community remains steadfast and enduring in their cultural traditions, rich histories, and relentless advocacy to protect and preserve their sacred homelands. May we atone by honoring this land through our commitment around sustainability, and overall environment wellbeing for all that inhabit this biodiverse land.

As, the Village of Oak Park commits itself to diversity, equity, and inclusion by recognizing that creating a mutually respectful, multicultural and equitable environment does not happen on its own; it must be intentional.

We believe and put into praxis diversity. As Oak Park is a dynamic community that welcomes, respects, and encourages the contributions of all people, in all our rich variety by race, color, ethnicity, ancestry, national origin, religion, age, sex, sexual orientation, gender identity or expression, marital and/or familial status, language, mental and/or physical impairment and/or disability, military status, economic class, immigration status, foster status, body size, criminal history, or any of the other characteristics that are often used to marginalize people and communities.

We believe in and put into praxis equity. As Oak Park leads with an explicit but not exclusive focus on racial equity. We work tirelessly to break down systems of oppression, including racism, sexism, ableism, ageism, homophobia, transphobia, islamophobia, xenophobia and other forms of bias and hate to achieve a society where everyone has what they need to thrive. This is both a process and a goal. As we must actively reject and rectify any barriers that prevent the full participation of marginalized groups. As equity requires an active attention to the advancement for historically excluded communities.

We believe in and put into praxis inclusion. As Oak Park must create environments in which all voices can genuinely and safely be themselves. Which is achieved through full and broad participation of all community members, and the ongoing commitment to active and intentional engagement. We believe the best decisions are made when everyone is authentically represented in decision-making and power is shared collectively.

In conclusion, the Village of Oak Park commits itself to always reflecting on our past, taking steps presently, in order to ensure a future grounded in diversity, equity, and inclusion in all aspects of local governance and community life. We strive to advance these values by ensuring that they are operationally reflected in our everyday practices and priorities. We strive to always push ourselves outside of our comfort zones to grow in our understandings to cultivate a diverse, equitable, and inclusive society for all. May we always remain in a perpetual state of learning, listening and leading in all ways that promotes diversity, equity, and inclusion.

The President and Board of Trustees of the Village of Oak Park reaffirm their dedication and commitment to these precepts.

*Revision adopted May 1, 2023*

**EXHIBIT B  
VILLAGE OF OAK PARK  
EEO REPORT**

Vendor Name \_\_\_\_\_

Total Employees \_\_\_\_\_

Job Categories	Total Employees	Total Males	Total Females	Male				Female				Total
				Black	Hispanic	Amer. Indian & Alaskan Na	Asian & Pacific Islande	Black	Hispanic	Amer. Indian & Alaskan Na	Asian and Pacific Islande	
Officials & Managers												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Semi-Skilled												
Laborers												
Service Workers												
Total												
Management Trainees												
Apprentices												

This completed and notarized report must accompany your bid. It should be attached to your Affidavit of Compliance. Failure to include it with your bid will disqualify you from consideration.

\_\_\_\_\_, being first duly sworn, deposes and says that he/se is the \_\_\_\_\_ of  
 (Name of Person Making Affidavit) Title or Officer

**EXHIBIT C**  
**DOMESTIC PARTNERSHIPS**  
**FOR EMPLOYEES OF THE VILLAGE OF OAK PARK**

A. **DEFINITIONS.** When used in the Ordinance, the following terms have the following meanings:

**AFFIDAVIT OF DOMESTIC PARTNERSHIP:** A form, provided by the Director of Human Resources, in which two people agree to be jointly responsible for the necessities of life incurred during the domestic partnership and state under oath that all qualifications for domestic partnership as set forth in this Article are met when the Affidavit is signed.

The form shall set forth all the requirements for a domestic partnership as defined herein. The form shall indicate that the fraudulent misrepresentation of information set forth therein by the Village employee executing same shall be considered cause for the termination of the employee's employment with the Village. The affidavit shall further state that the persons executing such affidavit may be held civilly liable for the misstatement of any information set forth therein and that such affidavit may further be construed by a court of law as creating enforceable, legal obligations between the persons executing the affidavit.

**DEPENDENT:** One who lives with a domestic partner and is a biological, adopted or step child of a domestic partner, a dependent of a domestic partner as defined by Internal Revenue Service regulations, or a ward of a domestic partner as determined under the laws of guardianship or agency.

**DOMESTIC PARTNER:** Each adult in a domestic partnership.

**DOMESTIC PARTNERSHIP:** Two unrelated adults of the same sex, one of whom is an employee of the Village of Oak Park who is otherwise eligible for employee benefits, who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, who also:

1. share the same primary, regular and permanent residence and have lived together for the previous six (6) months;
2. agree to be jointly obligated and responsible for the necessities of life for each other;
3. are not married to anyone;
4. are each eighteen (18) years of age or older;
5. are competent to enter into a contract;
6. are and have been each other's sole domestic partner for at least six (6) months prior to execution of the Affidavit of Domestic Partnership required under this Article;

7. agree to file a Termination of Domestic Partnership within 30 days if any of the above facts change;
8. have filed the required notice of Termination of any prior domestic partnership acknowledged under the provision of this Article in the manner required herein and no less than six (6) months prior to the execution of the current Affidavit of Domestic Partnership; and
9. execute an Affidavit of Domestic Partnership, indicating compliance of the persons executing such affidavit with all the requirements for a domestic partnership set forth in this Article.

**LIVE TOGETHER:** Two people claiming domestic partnership status share the same primary, regular and permanent residence. It is not necessary that both domestic partners have the legal right to possess the residence. Domestic partners do not cease to live together if one leaves the shared residence for a period not to exceed one (1) year, but intends to return.

**NECESSITIES OF LIFE:** Basic food, shelter, clothing, medical care and the costs associated therewith. The domestic partners need not contribute equally or jointly to the cost of these expenses as long as they agree that both are responsible and obligated for the cost.

**TERMINATION OF DOMESTIC PARTNERSHIP:** Any change in the domestic partnership which causes the partnership not to satisfy any one of the requirements for a domestic partnership, set forth herein.

**B. AFFIDAVIT OF DOMESTIC PARTNERSHIP; EXECUTION AND ACCOMPANYING DOCUMENTATION.** An Affidavit of Domestic Partnership must be signed, under oath, by both parties seeking recognition by the Village as a domestic partnership. The Director of Human Resources shall, within thirty (30) days of the effective date of this ordinance, make such forms available.

The signatures of both persons must be witnessed and notarized. The affiants will also be required to indicate that they have thoroughly read the affidavit and that they understand the content thereof at the time of execution. The Director of Human Resources, or the Director's designee, shall receive executed affidavits of domestic partnership and may require reasonable documentation verifying the truth and accuracy of any statements contained in the affidavit, including verification of the primary, regular and permanent residence address of the persons seeking recognition as a domestic partnership.

Once the affidavit has been properly executed by both individuals seeking recognition as a domestic partnership by the Village and presented to the Director of Human Resources, or the Director's designee, along with all supporting documentation requested by the Director, or the Director's designee, and the Director is satisfied that the individuals seeking recognition as a domestic partnership have satisfied the requirements for same, the Director,

or the Director's designee, shall provide those individuals with a letter under the Director's signature, recognizing the domestic partnership, identifying the parties to same and identifying the benefits to which the domestic partners are then entitled. The letter shall further indicate that the domestic partners must comply with the provisions of Section Four herein and notify the Director, or the Director's designee, of the termination of the domestic partnership within thirty (30) days of the termination and the possible consequences for the failure to do so.

C. **EMPLOYMENT BENEFITS**. The Village of Oak Park shall provide the same family sick leave, funeral leave benefits and H.M.O. health and dental benefits available to any Village employee, and the spouse and dependents of any Village employee, to any Village employee and any other person with whom the employee has formed a domestic partnership and the dependents of such domestic partnership as defined herein. The Village shall, however, not extend health insurance benefits to a domestic partner, or the domestic partner's dependents, if the domestic partner who is not a Village employee is otherwise eligible for health insurance benefits through his or her employer.

D. **TERMINATION OF DOMESTIC PARTNERSHIP: NOTICE REQUIRED**. Any employee of the Village who is receiving employment benefits as a member of a domestic partnership and whose domestic partnership terminates as defined herein, shall notify the Director of Human Resources of the termination of the employee's domestic partnership within thirty (30) days of such termination.

E. **FRAUDULENT MISREPRESENTATION: REIMBURSEMENT TO VILLAGE AND CAUSE FOR TERMINATION**. Any employee who fraudulently misrepresents information in the Affidavit of Domestic Partnership executed by such employee, or fails to inform the Village of the termination of his or her domestic partnership, shall reimburse the Village for any expenditures made by the Village in reliance on such misrepresentations or for expenditures made due to the employee's failure to notify the Village of the termination of a domestic partnership. Such fraudulent misrepresentations shall also constitute cause for the termination of the employee's employment with the Village.

## EXHIBIT D

### PROCUREMENT POLICY OF THE HOUSING AUTHORITY OF THE VILLAGE OF OAK PARK

This Procurement Policy (Policy) is hereby established for the Housing Authority of the Village of Oak Park (PHA) by official action of its Board of Commissioners. It complies with HUD's Annual Contributions Contract (ACC), HUD Handbook 7460.8 REV-1 entitled "Procurement Handbook for Public Housing Agencies and Indian Housing Authorities," and the procurement standards of 24 CFR 85.36.

#### I. GENERAL PROVISIONS

##### A. PURPOSE

The purpose of this Policy is to: provide for the fair and equitable treatment of all persons or firms involved in purchasing by the PHA; assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the PHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that PHA purchasing actions are in full compliance with Federal, State and local laws and regulations, as defined or interpreted by the applicable Federal, State or local granting authority.

##### B. APPLICATION

This Policy applies to all contracts for the procurement of supplies, **service**, and construction entered into by the PHA after the effective date of this Policy. It shall apply to every expenditure of Federal funds by the PHA for public purchasing, funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the PHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. Funds obtained from public sources other than HUD shall use the procurement standards applicable to those funds, provided such standards are consistent with the **minimum** requirements of this Policy. The term "procurement," as used in this Policy, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

##### C. PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a matter of public record to the extent provided State law and shall be available to the public as provided by State statute.

#### II. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director or other individual he or she has authorized in writing. The Executive Director shall issue operational procedures to implement this Policy, which shall be based on HUD Handbook 7460.8. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section IX below, consistent with State law.

B. The Executive Director or his/her designee shall ensure that:

1. procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
2. contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
3. for procurements other than small purchases, public notice is given of each upcoming procurement at least 10 days or other **time** period if required by State or local law before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 15 days or other time period if required by State or local law is provided for preparation and submission of bids or proposals; and notice of contract awards is **made** available to the public;
4. solicitation procedures are conducted in full compliance with Federal standards stated in 24 CFR 85.36, or State and local laws that are more stringent, provided they are consistent with 24 CFR 85.36;
5. an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;
6. contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified within ten days or other **time** period required by State or local law after contract award;
7. there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment **is made** promptly for contract work performed and accepted; and
8. the PHA complies with applicable HUD **review** requirements, as provided in the operational procedures supplementing this Statement.

C. This Policy and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the PHA.

### III. PROCUREMENT METHODS

#### A. SELECTION OF METHOD

If it has been decided that the PHA will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.

#### B. SMALL PURCHASE PROCEDURES

1. General. Any contract not exceeding \$20,000 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section **VIII** of this Policy).
2. Petty Cash Purchases. Small purchases under \$100 **may be** processed through the use of a petty cash account. The Contracting Officer shall ensure that: the account is established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one **week**); security is maintained and only authorized individuals **have** access to the account; the account is periodically reconciled and replenished by submission of a voucher to the PHA finance officer; and, the account is periodically audited by the finance officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.
3. Small purchases of \$5,000 or less. For small purchases of \$5,000 or less only one quotation need be solicited if the price received is considered reasonable. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.
4. Small purchases over \$5,000. For small purchases in excess of \$5,000 but not exceeding \$20,000 no less than three offerers shall be solicited to submit price quotations, which may be obtained orally, by telephone, or in writing, as allowed by State or local laws. Award shall be made to the offerer providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerers and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public

record (unless otherwise provided in State or local law).

5. Small purchases over \$10,000. For small purchases in excess of \$10,000 but not exceeding \$20,000, staff shall follow the procedures outlined in paragraph 4 above but such purchases must be approved by a vote of the Board of Commissioners.

C. SEALED BIDDING

1. Conditions for Use. Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred **method** for construction procurement. For procurements under the Comprehensive Improvement Assistance Program (CIAP), sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. For professional services contracts, sealed bidding should not be used.
2. Solicitation and Receipt of Bids. An invitation for bids shall be issued including specifications and contractual terms and conditions applicable to the procurement, including a statement that award will **be made** to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
3. Bid Opening and Award. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection. Award shall be made as provided in the invitation for bids by written notice to the successful bidder.

The Executive Director or Chairman and Board of Commissioners, as the case may be, shall make the applicable purchase from or award the contract to the lowest responsible bidder on the basis of the bid or proposal that is in the best interest of the PHA to accept. In awarding the contract or making the purchase, in addition to price, the Chairman and Board of Commissioners and/or the Executive Director shall consider;

- a) the ability, capacity and skill of the bidder to perform the contract to provide the service required;
- b) whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

- c) the character, integrity, reputation, judgement, experience and efficiency of the bidder;
- d) the quality and timeliness of the performance of previous contracts or services rendered to the Housing Authority or third parties.
- e) the previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- f) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g) the quality, availability and adaptability of the supplies or contractual services to the particular use required;
- h) the ability of the bidder to provide the future maintenance and service for use of the subject of the contract; and
- i) the number and scope of conditions attached to the bid.

The Executive Director shall report to the Chairman and Board of Commissioners any conditions, variance from specifications or other non-conforming aspects of any particular bid.

If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in State or local law and stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.

#### 4. Mistakes in Bids.

- a. Correction or withdrawal of inadvertently erroneous bids may be permitted, **where** appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the **mistake**, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.
- b. All decisions to allow correction or withdrawal of bid

mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the PHA or fair competition shall be permitted.

5. Bonds. In addition to the other requirements of this Statement, the following requirements apply:
  - a. For construction contracts exceeding \$ 100,000, other than those specified in Sb and Sc below, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations:
    - (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and
    - (2) a performance bond for 100% of the contract price; and
    - (3) a payment bond for 100% of the contract price.
  - b. In the case of construction of conventional development projects funded pursuant to the U.S. Housing Act of 1937, the contractor shall be required to **submit** the following, unless otherwise required by State or local laws or regulations:
    - (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and
    - (2) one of the following:
      - (i) a performance and payment bond for 100% of the contract price; or
      - (ii) a 20% cash escrow; or
      - (iii) a 25% irrevocable letter of credit.
  - c. In the case of construction under the Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (CGP) funded pursuant to the U.S. Housing Act of 1937, for any contract over \$25,000, the contractor shall be required to submit the following, unless otherwise required by State or local laws or regulations:
    - (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and
    - (2) one of the following:
      - (i) a performance and payment bond for 100% of the contract price; or

(ii) **separate** performance and payment bonds, **each** for 50% or **more** of the contract price; or

(iii) a 20% cash escrow; or

(iv) a 25% irrevocable letter of credit.

D. COMPETITIVE PROPOSALS

1. Conditions for Use. Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the PHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
2. Solicitation. The request for proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerers, identity of the offerers, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals.
3. Negotiations. Unless there is no need for negotiations with any of the offerers, negotiations shall be conducted with offerers who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerers shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerers of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offerer's proposal, and no offerer shall be assisted in bringing its proposal up to the level of any other proposal. Offerers shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
4. Award. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the PHA.
5. Architect/Engineer Services. Architect/engineer services in the excess of the small purchase limitation (or less if

required by State or local law) may be obtained by either the competitive proposals method or qualifications-based selection procedures, unless State law mandates the specific method. Sealed bidding, however, shall not be used to obtain architect/engineer services.

Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method.

Qualifications-based selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

#### E. NONCOMPETITIVE PROPOSALS

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

- a. The item is available only from a single source, based on a good faith **review** of available sources;
- b. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the PHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;

In case of an apparent emergency which requires immediate purchase of supplies, materials, or services, the Executive Director is empowered to secure without bids at the lowest obtainable price, the necessary supplies, materials or services regardless of the amount of expenditure. If a contract of \$10,000 or more is awarded on an emergency basis, the Executive Director shall **make** a report of the award to the Chairman and Board of Commissioners.

- c. HUD authorizes the use of noncompetitive proposals; or
  - d. After solicitation of a number of sources, competition is determined inadequate.
2. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer.

3. Price reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph IIIIF below.

F. COST AND PRICE ANALYSIS

1. General. A cost or price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall be determined as follows. The degree of analysis shall depend on the facts surrounding each procurement.
2. Submission of Cost or Pricing Information. If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as **deemed** necessary by the PHA (e.g., when contracting for professional, consulting, or architect/engineer services) the offerer shall be required to submit:
  - a. a cost breakdown showing projected costs and profit;
  - b. commercial pricing and sales information, sufficient to enable the PHA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
  - c. documentation showing that the offered price is set by law or regulation.
3. Cost Analysis. Cost analysis shall be performed if an offerer/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the PHA shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1). In establishing profit, the PHA shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.
4. Price Analysis. A comparison of prices shall be used in all cases other than those described in IIIIF3 above.

G. CANCELLATION OF SOLICITATIONS

1. An invitation for bids, request for proposals, or other solicitation may be cancelled before offers are due if: the PHA no longer requires the supplies, services or construction; the PHA can no longer reasonably expect to

fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.

2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if the supplies, services, or construction are no longer required; ambiguous or otherwise inadequate specifications **were** part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the PHA, prices **exceed** available funds and it would not be appropriate to adjust quantities to **come** within available funds; **there** is reason to **believe** that bids or proposals may not have **been** independently arrived at in open competition, may have been, collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of the PHA.
3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offerer solicited.
4. **A** notice of cancellation shall be sent to all offerers solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar **items**.
5. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the PHA shall cancel the solicitation and either:
  - a. resolicit using a request for proposals; or
  - b. complete the procurement by using the competitive proposals method, following paragraphs IIID3 and IIID4 above (when **more** than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph IIIE2 above (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the PHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

#### H. COOPERATIVE PURCHASING

The PHA may enter into State and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions.

The PHA will endeavor to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

#### IV. CONTRACTOR QUALIFICATIONS, AND DUTIES

##### A. CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with responsible contractors, **i.e.**, those who have the technical and financial, competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the PHA shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the list of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other PHAs), and financial and technical resources. (see list of award factors detailed in Section III. C.3). If a prospective contractor is found to be nonresponsible, a written determination of nonresponsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

##### B. SUSPENSION AND DEBARMENT

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies (e.g., Department of Labor for violation of Secretary of Labor regulations) when necessary to protect the PHA in its business dealings.

##### C. QUALIFIED BIDDER'S LISTS

Interested businesses may be given an opportunity to be included on qualified bidder's lists if the PHA decides, in its sole discretion, to maintain such lists. Any prequalified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such prequalified suppliers.

#### V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

##### A. CONTRACT TYPES

Any type of contract which is appropriate to the procurement and which will promote the best interests of the PHA may be used, provided that the cost-plus-a-percentage-of-cost and percentage

of construction cost methods are prohibited.

Al.1 procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.

A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the PHA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor **exceeds** at its own risk.

#### B. OPTIONS

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

#### C. CONTRACT CLAUSES

In addition to containing a clause identifying the contract, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36(i), such as the following:

1. Termination for convenience,
2. Termination for default,
3. Equal Employment Opportunity,
4. Anti-Kickback Act,
5. Davis-Bacon provisions of the United States Housing Act of 1937,
6. Contract Work Hours and Safety Standards Act, reporting requirements,
7. Patent rights,
8. Rights in Data,
9. Examination of records by Comptroller General, retention of records for three years after closeout,

10. Clean air and water,
11. Energy efficiency standards,
12. Bid protests and contract claims,
13. Value engineering, and
14. Payment of funds to influence certain Federal transactions.

The operational procedures required by section IIA of this statement shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the PHA.

D. CONTRACT **ADMINISTRATION**

A contract administration system designed to insure that contractors perform in accordance with their contracts shall be maintained. The operational procedures required by Section IIA above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2.

VI. SPECIFICATIONS

A. GENERAL

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition insatisfying the PHA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items.

Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible.

Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see VIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

B. LIMITATIONS

The following specification limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the PHA's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State licensing laws.

Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for **example**, having a consultant perform a study of the PHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

## VII. APPEALS AND REMEDIES

### A. GENERAL

It is the PHA's policy to resolve all contractual issues informally at the PHA level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the PHA level. When appropriate, the PHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. HUD will only review protests in cases of violations of Federal law or regulations and failure of the PHA to review a complaint or protest.

### B. BID PROTESTS

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

### C. CONTRACT CLAIMS

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to a higher level in the PHA, such as the Executive Director or a designated Board member, or a Procurement Appeals Board.

## VIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

### A. REQUIRED EFFORTS

1. Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the PHA shall **make** efforts to ensure that small and minority-owned

businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a PHA project are used when possible. Such efforts shall include, but shall not be limited to:

- a. Including such firms, when qualified, on solicitation mailing lists;
  - b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit **maximum** participation by such firms;
  - d. Establishing delivery schedules, **where** the requirement permits, which encourage participation by such firms;
  - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
  - f. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135;
  - g. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in A1.a through A1.f above.
2. Goals may be established by the PHA periodically for participation by small businesses, minority-owned businesses, women's business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project, in the PHA's **prime** contracts and subcontracting opportunities.

#### B. DEFINITIONS

1. A small business is defined as a business which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The **size** standards in 13 CFR 121 shall be used, unless the PHA determines that their use is inappropriate.
2. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which

at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals.

Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.

3. A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.
4. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
5. A business concern located in the area of the project, is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

## IX. ETHICS IN PUBLIC CONTRACTING

### A. GENERAL

The PHA shall adhere to the following code of conduct, consistent with applicable State or local law.

### B. CONFLICT OF INTEREST

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

1. An employee, officer or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather,

stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister;

3. His/her partner, or,
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

PHA officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

D. PROHIBITION AGAINST CONTINGENT FEES

Contractors shall not retain a person to solicit or secure a PHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

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