

Village of Phoenix  
**Regular Board Meeting**  
Tuesday, July 5, 2016 at 7:00 PM  
Sweet Memorial Building  
455 Main Street, Phoenix, NY 13135

Present:	Mayor Ryan Wood	Chief Martin Nerber
	Absent Trustee Jennifer Burgess	Deputy Clerk Laura Gonzalez
	Trustee Andrew Bittel	Attorney Steve Primo
	Trustee David Pendergast	Administrator James Lynch
	Trustee Eric Shaffer II	

3 Public in Attendance

Mayor Ryan Wood began the Board Meeting with a salute to the flag at 7:00 PM.

**Miller Engineering**

Engineer Miller presented to the board a timeline for the bidding of the pump station. The bidding is being done online thru Plan and Print. He is very confident that we will get a good quantity of bids. He also said that thru Regional Planning we were able to get a grant for stormwater activities at no cost to the Village. They met today with our D.P.W. and went out with gps units. He thinks that Kathy (Bertuch, of CNYRPD) has 30 hours' worth of time and he thinks that we can get all the stormwater system mapped which is a requirement for the EPA.

**Kristy LaManche**

Kristy said that the New York Main Street Grant is now completed and all properties have been completed and inspected, she is very pleased with the overall results. She said that she met with Administrator Lynch in regards to two grants from Senator Ritchie's Office of \$50,000 each, one is for the Bridge House improvements and the other one is for the Memorial Park, and they are almost ready to be submitted.

Governor Cuomo on June 20<sup>th</sup> announced round four for the Restore New York Grant, the program is designed for continuous community development restoration. She said that she is having a public meeting on Monday July 11<sup>th</sup> at 6:00pm to see if there is any property owners interested in participating in this round four. This grant is 90% reimbursement and it is for commercial or mixed used property owners. This program requires a letter of intent and this letter is due by July 13<sup>th</sup>, 2016.

She is also working on the Marina Feasibility Study. She has been forwarding to Sergeant McKenna some police grants, she asked Chief to look at them to see if something is applicable and they would like to go after.

Lastly, the deadline for submittal for the Community Development Block Grant is July 29<sup>th</sup>, she said we will have to hold two public hearings one is a general one, and the other one has to be

specific to the project, these public hearings need to be held before July 29<sup>th</sup>.

### **Mayor Comments**

Mayor Wood said we need a motion to approve the signing of the document for the NY Main St. grant that Kristy spoke about earlier, it's a closure declaration in relation to completion of the Village part of the public improvements and declaring that the Village will maintain everything that we've put in place. Attorney Primo indicated he reviewed and approved of same. A Motion was made by Trustee Bittel, seconded by Trustee Shaffer. All Board members voted aye.

### **Trustee Comments**

Trustee David Pendergast asked about the stops signs. Mayor Wood said that they have to look more into this matter. Mayor also mentioned changing parking signs on Jefferson Street to the opposite side. Administrator Lynch said that it is not only changing sides but adding some signs too. Chief Nerber said that since there are some gaps between signs it could be confusing. After a brief discussion a motion was made by Trustee Bittel to changing the signs to the opposite side with discretion from DPW and PD, seconded by Trustee Shaffer. All Board members voted aye.

Trustee Andrew Bittel said that some residents complained about brown water, and that they heard there is someone filling up some tanks causing water quality going down the last two weeks or so, he asked if we can investigate this issue.

Trustee Eric Shaffer said that a couple of FD members complained about the old gas station on County Route 264 saying that the owner is filling the place with rocks and concrete, Administrator Lynch indicated there was some awareness of this but that it was to grade the site with fill and not use it as a continuous dumpsite. He said that he will contact the owner and if necessary will see that he is given a 30 day notice to remedy. Trustee Eric Shaffer also said that next to his house was Chuck Gas Station and since they removed part of the contaminated rocks, soil and dirt a few years ago, when its rain his backyard floods in part because the culvert is blocked from these materials flowing in. There was some discussion as to whether the soil was contaminated in which case it should have been removed and restored only after decontamination or replaced and that the DEC would have required this. Doug Miller indicated he would look into it.

Trustee Burgess had nothing.

### **Police Comments**

Chief Nerber had nothing.

### **Administrator Comments**

Administrator Lynch said that we had to order manhole risers but we have no plans as to when to install them yet. Administrator Lynch said the DPW has started grading and seeding on State Street from Bridge Street to the DPW. There's a large pooling of water on Davis Street and State Street. That's part of the reason why the no-parking signs haven't gone up yet. They need to dig part of the road up and place a catch basin there; then the manhole risers can be done at that time also. He said that DPW have completed some sidewalks, and are presently working on one on Main Street and Lock Street that we will get reimbursed by Centro Bus for, and there are two more on the list on Jefferson Street that will started next week after which the DPW will stop doing sidewalks for a while and start some road maintenance.

### **Abstract**

Mayor Ryan Wood asked if anyone has any questions or concerns regarding Abstract #9 dated July 5, 2016 in the amount of \$120,248.04. Trustee Bittel made the motion to approve, general fund vouchers 267-295; water fund vouchers 267-294; sewer fund vouchers 267-292; capital water/sewer fund vouchers 282-283; library fund vouchers 50-58 and trust and agency fund vouchers 45-51, seconded by Trustee Shaffer. All ayes.

### **Old Business**

Mayor Wood asked if anyone had any questions with the meeting minutes of June 21, 2016. Motion was made by Trustee Shaffer to approve, seconded by Trustee Bittel. All ayes.

Mayor Wood asked if anyone had any questions with the executive session meeting minutes of June 21, 2016. Motion was made by Trustee Shaffer, seconded by Trustee Burgess. All ayes.

### **Attorney Comments**

Attorney Primo read and asked for board approval of the proposed letter to the Town of Schroepfel enclosing our approved plans and specs for the proposed water booster pump station required to access water for Metropolitan Water Board. He read it into the record. Motion was made by Trustee Pendergast, seconded by Trustee Burgess. All ayes.

Attorney Primo brought up the issue regarding cost of lateral work at 423 Main Street, and after looking into it his recollection of the history and reasons why the Board approved the local law relative to "submains" several years ago. After a lengthy discussion the Board decided to keep the original reimbursement offer of \$500.00 open for a limited time to be determined and not to increase same. Primo indicated that he had drafted the proposed Local Law setting up a Village Board comprehensive special permitting scheme for Business and Commercial District; he said that this has to go to County Planning for required review before having a public hearing and he recommended the board to schedule it for the meeting following the next one. Motion was made by Trustee Pendergast to schedule a public hearing for Local Law #4 on August 16<sup>th</sup>, 2016 at 6:50pm, seconded by Trustee Bittel. All ayes.

Primo indicated the Village Board was required to address the CDBG Monitoring report issues

and that he thought it best to address all issues by one blanket resolution in substantially the form proposed, adopting various policies and procedures, and making and establishing certain positions and appointments such as a Fair Housing Policy and officer, and ADA Section 504 Grievance policy and coordinator, and labor standards compliance policies a labor standard compliance inspecting officer and to take measures to ensure that file organization and disbursement time lines are met. The draft resolution provides that the Village adopt such policies and made such appointments as necessary, and to going forward explain how compliance will be ensured, and to address the report in a written response. The Village Board will also be appointing, in effect confirming as this had also been done at the organizational meeting although not in as exact terms, the Village Administrator and any future person or person appointed to that position is the Fair Housing and labor standards officers and section 504 coordinator. The resolution presented and motions, voting record of the Village Board is as follows:

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**IN THE MATTER  
OF  
THE ESTABLISHMENT OF AND  
APPOINTMENT TO CERTAIN POSITIONS  
INCIDENTAL TO, AND THE ADOPTION OF  
CERTAIN POLICIES AND PROCEDURES  
RESPONSIVE TO NYS CDBG PROJECT  
#911PR79-11 MONITORING REPORT DATED  
APRIL 22, 2016**

**RESOLUTION**

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The **VILLAGE BOARD OF THE VILLAGE OF PHOENIX**, in the County of Oswego, State of New York, met in regular session at the Sweet Memorial Building in the Village of Phoenix, Oswego County located at the Sweet Memorial Building, Main St. Village of Phoenix, New York on the 5th day of July, 2016, at 7:00 p.m.

The meeting was called to order by Ryan Wood, Mayor and the following were present, namely:

Ryan Wood	Mayor
David Pendergast	Trustee
Eric Shaffer, II	Trustee
Andrew Bittel	Trustee
Jennifer Burgess	Trustee

Absent:

Also Present: Laura Gonzalez, Deputy Village Clerk-Treasurer  
Jim Lynch, Village Administrator  
Steven J. Primo, Village Attorney

Doug Miller, Village Engineer

The following resolutions were moved, seconded and adopted:

**WHEREAS**, as a recipient of grant funds pursuant to a certain agreement with New York State Community Development Block Grant (“NYSCDBG”) for the Village of Phoenix’s 2011 project identified as NYS CDBG Project #911PR79-11 (“Project”), the Village of Phoenix must comply certain NYSCDBG regulations as contained in 24 CFR Part 85, as well as the provisions of the contract(s) executed with the NYS Housing Trust Fund Corporation dated December 9, 2011; and

**WHEREAS**, the Office of Community Renewal’s (“OCR”) Community Developer, Scott LaMountain, conducted a monitoring visit of the Project on or about March 22, 2016 to determine whether the program operations were compliant with the program requirements, and issued a comprehensive mandatory report dated April 22, 2016 outlining the results of the monitoring visit (“Monitoring Report”); and

**WHEREAS**, the Report contained one “Finding,” five “Concerns,” each requiring a written response addressing same, and one “Recommendation,” the Finding relating to a specific event of non-compliance (“Finding”) and Concerns raising issues that if not addressed can potentially result in a Finding (“Concern”), and the Recommendation, if not addressed, having the potential to raise to a “Concern” level, all of the following relating to federal and/or state regulatory or program policies and procedures governing grantees of agency funding incentive and benefits and more specifically the following are as follows:

- (1) The Fair Housing Act. A Finding that: the Village of Phoenix must comply with those provisions of Title VIII of the Civil Rights Act of 1968 (“The Fair Housing Act”) and Sections 104 and 106 of Title I of the Housing and Community Development Act of 1974 relating to fair housing and prohibitions of discrimination in the sale, financing or rental of housing, as well as related brokerage services. Grant recipients must administer programs and activities relative to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of The Fair Housing Act. At the time of monitoring, the Village was unable to provide information demonstrating the appointment of a Fair Housing Officer or the development of a local fair housing plan or policy, or the promotion of fair housing through such vehicles as the display of fair housing brochures or posters in the Village’s municipal building.
- (2) Section 504 of the Rehabilitation Act of 1973. A Concern raised relative to Section 504 of the Rehabilitation Act of 1973, as amended, and which provides that no qualified individual shall solely by reason of his or her handicap be excluded from program participation, including employment, be denied program benefits or be subject to discrimination. The Americans with Disabilities Act of 1990 establishes provisions for assuring an equality of

opportunity, full participation, independent living and self-sufficiency of disabled persons relative to employment benefits and services accommodations, commercial facilities and multi-family housing. 24CFR8.53 requires adoption of a grievance policy and 24CFR8.54 requires providing notice of grievance procedures for municipalities with 15 or more employees; the Village of Phoenix has not established or provided notice of same, including due process requirements.

- (3) File Maintenance. The Village did not adequately evidence that CDBG funds were being used in compliance with program requirements as required under 24 CFR 570.501, more specifically the Village's files for the Project contained "a significant amount of information" not directly related to the completed Project and it appeared that copies of certain grant administration ERR documents were not easily located, this making a comprehensive file review exceedingly difficult.
- (4) Contract Provisions. The Report revealed that two construction contracts between the Village and the prime contractors (North Country Construction, LLC and Barber Corporation) did not contain all required contract provisions under 24CFR85.36(i) including provisions reflecting various governmental agency and recipient access to contractor books, documents, papers and records directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions; a provision indemnifying the Housing Trust Fund Corporation from and against all claims, liabilities, etc.; and provisions acknowledging that all parties shall be bound by and comply with all applicable federal, state local laws and regulation, including without limitation, 24CFR Parts 85 and 570
- (5) Per 24CFR85.36(i) that all contracts in excess of \$100,000 are to contain and require compliance with a number of provisions including without limitation:
  - (a) Remedies in instances of contractor violation or breach of contract terms;
  - (b) Termination for Cause and convenience;
  - (c) Equal Employment Opportunities and Minority and Women's Business Enterprises;
  - (d) Copeland Anti-kickback Act and related regulations;
  - (e) Davis-Bacon Act and related regulations;
  - (f) Contract Work Hours and Safety Standards Act;
  - (g) Section 3 of the Housing and Community Development Act of 1968; and
  - (h) Clean Air Act and Clean Water Act and related regulations.

Each of the foregoing (a)-(h) were not shown in the Village office maintained construction contracts with the foregoing contractors, nor was a final executed contract with bid materials incorporated therein produced by the Village.

- (6) Labor Standards Compliance. Per 29CFR5.6 it is required that recipients conduct onsite inspections, including interviews with laborers and mechanics employed on the project site in order to ensure that wage decisions and Department of Labor required notices are posted at the worksite; the Village was unable to provide any evidence that such inspections and interviews were conducted by Labor Standards Compliance Officer (hereinafter “Labor Standards Officer”) including specifically a sufficient number of confidential employee interviews to ensure that the correct wages and fringe benefits are being paid and to verify that employees listed as apprentices or trainees are enrolled in approved training programs and that wage statements are posted as required under applicable federal and state labor laws; likewise evidence could not be found relative to a posting of wage decisions and Department of Labor notices onsite and the Village was unable to identify its Labor Standards Officer.
- (7) Account Management. The Report was critical of the Village for not, as required under 24CFR85.20(b)(7) receiving regulated CDBG funds timely, i.e. within five days thereof, paying over same (or as was the case here, reimbursing itself for previous expenditures and depositing or noting a transfer of same into the proper fund or file maintained by the Village for project costs. Per 24 CFR85.20(b)(7) the time elapsing between funds receipt and disbursement for approved project costs should not exceed five (5) business days. The Village Clerk-Treasurer however indicated that disbursements did not occur for over six (6) months because the Village had previously advanced, all such project costs. Such payment costs from bond and BAN proceeds relative to the overall project (i.e., including this and all the related projects) and therefore awaited the end of fiscal year to reconcile all such CDBG proceeds in reimbursement of project costs in the Village’s books and records.
- (8) The one Recommendation made in the Monitoring Report was respecting the Village’s official procurement policies and procedures which generally refer to the General Municipal Law public bidding requirements for purchase and public works contracts, related legal requirements and the respective dollar thresholds and provides certain detail governing solicitation of contracts for public works and purchases under respectively \$35,000 and \$20,000. The procurement policies made no provisions for the selection of professional services contracts. At the time of the Monitoring Report the Village was able to provide a copy of its written procurement policies, however it was noted that same did not address equal (employment) opportunities or (Housing and Community Development Act of 1968) Section 3 requirement and standards; and

**WHEREAS**, the Village Clerk-Treasurer and Village Administrator having, responsive to the Monitoring Report, attempted to locate certain past board minutes, file documents and records and having also requested relevant information from certain of those Village officers, employees, vendors and consultants involved in order to shed further light on the foregoing issues and from April 20 through mid June 2016 having continued these efforts in earnest, and having their investigation offer the following in explanation of many of the issues raised in the Monitoring Report, however specifically not presuming or suggesting that same are indicative or evidence of compliance but namely that the Village's non-compliance was not a result of any intentional or reckless disregard of the applicable legal and contractual requirements, but more the result of : (i) lack of institutional experience with agency funding projects of this type, (ii) reliance on professional consultants for funding agency program compliance, bid and construction contract documents preparation and proper administration assistance, (iii) an innocuous, under the circumstances, but nevertheless technical violation in holding funding proceeds that should have been transferred on the Village books to other Village maintained funds ie payments due and any third party contractor, supplier or consultant were not held up and had been timely made from advances by the Village from BAN proceeds

- (a) The issue of appointment of a Fair Housing Officer had arisen early on, in fact some three (3) years prior, and the (then) Village Mayor indicated he would assume the position rather than having the (then) Village Administrator do so, or appointing someone else. As Village Mayor, no Board resolution would have been required to assume this position as performance of such duties are part of the Mayor's statutory duties as chief executive officer of the Village. Thereafter (i.e., after the Mayor became terminally ill and following termination of the Village's original administrator (see following paragraph), it was represented by the (then) Village Engineer, in writing, and after assuming administration assistance duties that Village Administrator James Lynch had assumed such duties and was the Fair Housing Officer for CDBG funding purposes. Neither the Village Administrator Jim Lynch, the Village Clerk-Treasurer, or anyone else was aware of this correspondence from the Village Engineer, was aware of these until researching the issue in response to the Monitoring Report.
- (b) As to the remaining Fair Housing compliance issues, a Fair Housing Policy was and is required to be adopted by the Village and as part of same the Village was required to post and distribute posters and brochures disclosing its Fair Housing policies and perform its duties as Fair Housing Officer. In 2013 when the subject of CDBG file maintenance, required contract provisions and appointment of a Fair Housing Officer was first broached with OCR officials, this was at or near the very start of project construction and disbursement of any CDBG funds. It was then advised that the Fair Housing Office should be held by Village personnel and not an independent consultant, but that practically speaking the duties of Housing Officer can be administered in

consultation with and having assistance from the administration consultant retained in connection with the project under the approved RFP. The Village specifically asked and was particularly advised that invoices for legal services submitted for administration assistance would not be reimbursable and should be performed by the administrator and Village. Accordingly the Village initially relied on its administrator awarded the contract following the RFP procedure for this and upon termination of his services, received administrative assistance through the then Village and Project Engineer.

- (c) At the Village's required organizational meeting for the 2016-17 year held on April 5, 2016 and based upon issues the Village's now recognized (similar to those raised in the Monitoring Report), relating to the Village's administration of several component projects under the overall "Project" i.e., the sanitary sewer/WWTP plant and water supply project (mandated by Consent Decree and Stipulation with respect to the NYSDEC and Oswego County) the Village determined that not having a single "go-to" person at the Village with knowledge of this specific project and the overall Project, assisted by a consultant with knowledge of and able to provide the professional/specialized assistance needed resulted in the omissions cited within the Monitoring Report. As such, the Village has now affirmatively taken steps to, going forward, place project responsibility and authority with a pre-designated official or officials of the Village and for such person or persons to ensure that various project and funding agency requirements are met by their oversight and/or performance of compliance duties including wherever appropriate seeking assistance for such duties from (a) specific retained administrator and/or project engineer to specifically cover or oversee the performance of compliance requirements and to confirm and verify that same are timely and satisfactorily performed. As such, one of the blanket resolutions adopted at the organizational meeting on April 5, 2016 was to establish and appoint the Village Administrator (presently James Lynch) as the representative or officer charged with ensuring the Village's performance and compliance under any such funding agency projects and contracts, and including without limitation, the Fair Housing Officer. This blanket resolution also applies to the appointment of a Labor Standards Officer, and although not mandated, a Section 504 Coordinator.
- (d) In addition, and also at the 2016-17 Organizational Meeting of the Village Board of Trustees, the Village's official procurement policies were, as is the case each year, reviewed and approved as the official procurement policies of the Village. The Village procurement policies are modeled on and with little exception from those offered by official New York municipal government trade associations and the New York State Department of State Division of Local Government Services, and contain all of the provisions legally required and as provided in such publications, and is amended as periodically permitted

or required prior to or at the time of annual review and approval at the Village's annual Organizational Meeting. This annual review is not cursory in nature. The procurement policies are utilized frequently and by various Village officers and employees independently of the Village Board. It is required that same be kept updated to meet all legal requirements. The Village has thus frequently updated its procurement policies and just in the past two or so years adopting "Best Value" and "Piggybacking" standards as authorized by New York State and recommended by municipal trade groups and the NYS Comptroller's Office. There are however no legal requirements for the Village procurement policies to include procedures relating to professional services contracting nor to include mention of provisions relating to contracts for agency funding involving New York State or federal funds. While this Recommendation seems to make good sense there is also a concern that the Village procurement policies remain easily read and understood by all Village personnel especially those required to interpret and apply same in the event of sudden emergency expenditures, and nevertheless regardless of the failure to include these provisions in its present policies, the Village initially proceeded with the CDBG grant per the RFP requirements shown in the OHCR, CDCR, CDBC website, thus retaining its administrator using the RFP process prescribed in the New York DHCR/OCR Grant Administration Manual ("Grant Administration Manual") and in fact forwarded its proposed RFP for administrative services in draft to the NYSDHCR/OCR representative for prior review and approval and received same. Likewise using that same approved template for solicitations for the proposed project engineering services an RFP for this CDBG funded project was also forwarded to NYSDHCR/OCR prior to letting of the RFP for proposals, but in any event each was compliant with the Grant Administration Manual's requirements for professional services contracts. Unfortunately, issuance of an RFP resulted in the inability of the Village to have its usual grant writer/administrator (not then WMBE certified), and the hiring of an administrator that although very thorough, almost immediately resulted in serious problems for the Village. Administrative fees soon met and then exceeded the budgeted and contracted for fee, and an additional sum of several thousand dollars was also paid separately by the Village well before the project was substantially underway. The administrator was billing by the hour, visiting the Village offices constantly, monopolizing Village staff time with questions and requests relating to this particular grant file and sending the Village "proprietary" reports in a format that was too difficult for anyone to understand and certainly not of assistance to the Village in understanding where the project was then at, nor in complying with the applicable contract and legal requirements. To put this in proper perspective, this was at the same time the Village was also being required to undertake the planning, design and intended construction of several (3-6) other component projects relating to its sanitary sewer, WWTP, storm sewer and water supply issues, (the CDBG

funded project being one of these) and Village staff were overwhelmed by the Administrator's approach to performing his contract duties. As a result, our administrative contract had to be terminated in order to avoid incurring administrative fees that would end up being 4-5 times what the original approved budgeted amount was for all services. In any event, the Village intends to accept this Recommendation and therefore and the procurement policies as set forth further herein and to further develop a standard consolidated version of all agency funding contract requirements where federal and/or state benefits and programs are involved for the purpose of soliciting proposals and bids.

- (e) As aforementioned following our initial Administrator's termination, the (then) Village and Project engineer was asked and agreed to assume administrative duties, specifically agreeing to perform same under the existing engineering services contract as same might need to be amended by extra work authorization or change order to equitably adjust the contract price. And to be clear, since already serving as Village and project engineer and having been from very early on, involved in all discussions with potential funding agencies, the Village's financial advisor and grant writer/administrator relative to the Village's other funding and bonding (both secured and sought), the engineer was not only well aware of the various state and federal funding agencies intended or thought to be involved in Village projects but affirmatively asserted they had expertise in agency funding projects of all kinds and would guide the Village through the policies. The OCR representatives can verify that most, if not all, substantive contact with the Village during the period following the initial Administrator's termination was at the Project engineer's office and on more or less dedicated person at that office. It has over time become clearly apparent that the Village Project engineer was directly responsible for numerous failures to document compliance as required under the engineering contract and in addition under numerous construction (public works) contracts they prepared bid packages for and contract documents, and administered administration of. Certain of the errors and omissions cited in the Monitoring Report relating to the construction contracts cited directly arise from this failure to ensure that required provisions were included in construction contracts. This was also the case relative to other (non-CDBG) construction contract documents and the contract for engineering services and notwithstanding that invoices were submitted by the engineer and paid by the Village for performance of specific and non-specific administrative duties.
- (f) The Village continues to be in the midst of component projects relating to the aforementioned DEC and OCDOH Consent Decree and Stipulation and for which other Village bond financing and agency funding has been sought and committed to. In the course of administration of same and the Village

becoming increasingly aware of the nature and number of additional errors and omissions arising from compliance issues required to be overseen by its original administrator and Village Project engineer, and covered under the administrative, engineering and contractor's respective contracts the Village has been much more vigilant respecting these technical compliance requirements. These sundry other omissions and errors include many of the same types of errors and omissions noted by OCR relating to the construction contracts with North Country Construction LLC and Barber Corp. in the Monitoring Report.

(g) The Village of Phoenix effective as of May 2014 terminated the services of its then Village and Project engineer as a result of the foregoing and other failures, retaining a new Village/project engineer. The present Village project engineer with assistance of the present Village Administrator, obtained, inspected and produced much of the documentation outstanding and required for CDBG and other agency funding compliance and in some cases, even where not contractually required due to the engineer's omission to include such provisions in the original bid packages, obtained required documentation from the contractors.

(1) As stated at the outset of this particular section (i.e., WHEREAS paragraph and subparagraphs (a)-(h)), the foregoing is not offered in defense of the Finding, Concerns and Recommendation in the Monitoring Report, or to evidence compliance, but simply to state the Village's side of the story and that the Village did act in good faith in attempting to ensure regulatory compliance. This CDBG agency funding project was the first of any significance undertaken by the Village for its own public works projects in well over a decade, the first sizeable public works project involving agency funding undertaken by the present and past Mayors and Village Administrators and significantly, was the first grant or funding action undertaken without the Village's usual grant writer/administrator being actively involved. The Village's preferred grant writer/administrator was not at the time a certified WMBE and was "out-bid" by the Village's first retained administrator under the RFP process (where it was also specifically required that no weight be given to a proposer's past experience working for or specific knowledge of Village matters) at \$500.00 lower than the budgeted number approved by DHCR for administrative services relative to this grant. The Village was obligated to accept the proposal based upon the RFP criteria. The Village's preferred grant writer/administrator has administered several large grants for the Village successfully and without compliance issues. However, none involved any large public works construction contracts. Institutional experience was therefore lacking with respect to administration of the CDBG grant. The Village however acted in good faith throughout and failures were not intentional or with disregard for the fact that there were

regulatory requirements above and beyond those normally applicable to Village operations- case in point The Village Clerk-Treasurer however indicated that disbursements did not occur for over six (6) months because the Village had previously advanced, all such project costs. Such payment costs from bond and BAN proceeds relative to the overall project (i.e., including this and all the related projects) and therefore awaited the end of fiscal year to reconcile all such CDBG proceeds in reimbursement of project costs in the Village's books and records.

- (h) The Village has taken note of these voids and by having a pre-designated "point person" in place from the outset, such Village official or employee appointed will then going forward be the responsible person(s) relative to ensuring compliance with all requirements for a particular project or projects and any related lending, bonding and/or agency funding. Likewise, by implementing specific required (and consolidated) policies, Village officials, employees, and consultants as well, will now be specifically aware of same (i.e., versus failing to act in compliance with seemingly "boilerplate" provisions), and even where prospective agency funding sources have not yet been secured, any RFP's and bid solicitations can seek proposals and bids including, i.e., with or without such agency funding provisions being applicable.

**WHEREAS**, the Village accordingly desires to formally adopt, or ratify and confirm adoption of such policies and/or the creation of such positions and appointments as are necessary to satisfy the foregoing and to address and respond to the Monitoring Report; and

**WHEREAS**, all such policies and positions may be established and personnel appointments made and/or modified by duly adopted resolution of the Village Board of Trustees; and accordingly, it is hereby

**RESOLVED**, that the following specific policies and procedures are hereby adopted and imposed as active and affirmative policies of the Village of Phoenix:

### **FAIR HOUSING POLICY**

This notice is published pursuant to the requirements of Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with federal assistance, and with Title VIII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in the provision of housing because of race, color, creed, religion, sex, national origin, disability or familial status.

The Village of Phoenix, New York advises the public that it will administer its assisted

programs and activities relating to housing and community development in a manner to affirmatively further fair housing in the sale or rental of housing, the financing of housing and the provision of brokerage services.

The Village of Phoenix shall assist individuals who believe they have been subject to discrimination in housing through the resources of the New York State Division of Human Rights or the U.S. Department of Housing and Urban Development.

The Village of Phoenix has designated the following as the Fair Housing Officer to coordinate efforts to comply with this policy. Inquiries should be directed to: Village Administrator at [jlynch@villageofphoenix-ny.gov](mailto:jlynch@villageofphoenix-ny.gov), or by mail at the Village of Phoenix, 455 Main Street, Phoenix, New York 13135, or by phone at (315) 695-1307 between 9:00am to 4:00 pm Monday – Friday)

## **SECTION 504 POLICY/GRIEVANCE PROCEDURES AND NOTICE**

### **Policy**

It is the policy of the Village of Phoenix not to discriminate on the basis of disability. The Village of Phoenix has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

The Law and Regulations may be examined in the office of the Village Administrator, at the Village of Phoenix, 455 Main Street, Phoenix, New York 13135, and the Village Administrator has been designated as Section 504 Grievance Coordinator to coordinate the efforts of the Village of Phoenix to comply with Section 504.

Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for the Village of Phoenix to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

### **Procedure**

1. Grievances must be submitted to the Section 504 Coordinator within 90 days of the date the person filing the grievance becomes aware of the alleged discriminatory action.
2. A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.
3. The Section 504 Coordinator (or her/his designee) shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The Section 504 Coordinator will maintain the files and records of the Village relating to such

grievances.

4. The Section 504 Coordinator will issue a written decision on the grievance no later than 30 days after its filing.
5. The person filing the grievance may appeal the decision of the Section 504 Coordinator in writing to the Mayor of the Village within 30 days of receiving the Section 504 Coordinator's decision. The Mayor shall issue a written decision in response to the appeal no later than 30 days after its filing.
6. The availability and use of this grievance procedure does not prevent a person from filing a complaint of discrimination on the basis of disability with the New York State Division of Human Rights or any other New York State or Federal agency or court or similar body or person having original jurisdiction over any such claims and not requiring as a condition precedent the filing of a grievance and/or appeal hereunder.
7. The Village of Phoenix will make appropriate arrangements to ensure that disabled persons are provided other accommodations, if needed, to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings. The Section 504 Coordinator will be responsible for such arrangements.
8. The Section 504 Coordinator is the Village Administrator. The Section 504 Coordinator can be contacted, and grievances may be filed at: Village Administrator at [jlynch@villageofphoenix-ny.gov](mailto:jlynch@villageofphoenix-ny.gov), or by mail at the Village of Phoenix, 455 Main Street, Phoenix, New York 13135. The office can be reached by phone at (315) 695-1307 between 9:00am to 4:00 pm Monday – Friday).

## **FAIR LABOR STANDARDS COMPLIANCE POLICIES/PROCEDURES AND NOTICE**

### **Policy/Procedures**

29CFR 5.6, entitled Enforcement requires general compliance with 29 CFR Part 5 - LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE...SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT) and in particular the provisions of 29CFR 5.1 and 5.5 relating to respectively general statutes and laws the within referenced regulations are promulgated under, and required contract and related provisions. Included amongst or incorporated therein, in particular, is the requirement under 29CFR5.6 that if imposed by the funding agency, recipients themselves **shall** conduct onsite inspections and a Fair Labor Standards Compliance Officer (“Labor Standards Officer”) be appointed for such purposes.

The Village of Phoenix, accordingly hereby adopts as a standard policy that in the event of any agency funding projects required to comply herewith, the Village shall, through its Labor Standards Officer, comply with all applicable provisions of 29CFR 5.6 and incorporated provisions, and direct or itself conduct on site inspections including without limitation, such random interviews with laborers and mechanics employed on any construction project as sufficient to ensure that wage decisions and Department of Labor notices are posted at the job sites. Accordingly, in the instance of any grant of agency funding, loans, bonds, incentives or benefits, by any federal or state governmental agency required to comply herewith, a sufficient number of Labor Standards Officer conducted or directed employee interviews shall be confidentially conducted in order to verify that the correct wages and fringe benefits are being paid. The Labor Standards Officer shall likewise verify that any employees listed as apprentices or trainees are enrolled in approved training programs and that wages are posted at the site as required by federal and state law.

### **File Maintenance**

Pursuant to 24CFR570.501 the Village of Phoenix shall ensure that CDBG funds are used in compliance with all program requirements. To ensure compliance, the Village of Phoenix will follow all CDBG program requirements by retaining documents and organizing files as outlined in Chapters 1 and 6 of the OCR Grant Administration Manual in order to permit proper review of project information, if requested. The Village Administrator and Village Clerk-Treasurer shall ensure that it is compliant with the requirements of any agency funding programs subject to these provisions, and however subject also to the Implementation and Effectiveness Sections hereof (following).

### **Contract Provisions**

All contracts between the Village of Phoenix and any contractors shall include all required provisions under 24CFR85.36(i), including without limitation relating to access to construction records and documents, indemnifications in favor of the Housing Trust Fund, and procedures ensuring compliance with 24CFR Parts 85 and 570. Any such contracts in excess of \$100,000 shall also contain and require full compliance with all legal and contractual requirements, including without limitations, the following provisions:

1. Remedies in instances of contractor violation or breach of contract terms.
2. Termination for cause and convenience.
3. Equal Employment Opportunities and Minority and Women's Business Enterprises.
4. Copeland Anti-kickback Act and related regulations.
5. Davis-Bacon Act and related regulations.
6. Contract Work Hours and Safety Standards Act.
7. Section 3 of the Housing and Community Development Act of 1968.
8. Clean Air Act and Clean Water Act and related regulations.

All final executed contracts with all bid materials incorporated therein shall be kept on file and readily available for proper review, if requested.

### **Accounts Management**

Pursuant to 24CFR85.20(b)(7) Village shall ensure the minimization of the time elapsing between the transfer of CDBG funds received into the Village's account and the disbursement of funds from such account. Disbursements of such funds shall occur within five (5) business days of receipt of funds. The Village of Phoenix shall not request funds for reimbursement until all required disbursement of the funds can be made within this five (5) business day time frame.

### **General Procurement Policies and Procedures/Requirements**

The Village of Phoenix Procurement Policies is/are hereby modified to include the Equal Employment Opportunities and Section 3 of the Housing and Community Development Act of 1968 provisions stated herein. The Village shall ensure that it includes in its general or prime contract(s) with any Contractor that the Contractor shall comply with, and must also ensure that the following is included however, without limitation, and also subject to the resolution provisions stated at the last two (2) "RESOLVED" paragraphs hereof, in all applicable subcontracts for work related to this Contract (the term "Contractor" as used herein shall also be deemed to mean "Subcontractor"):

1. Section 3 Clause (24 CFR 135.38)
  - (a) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of Section 3 is to ensure that Employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - (b) The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.
  - (c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understand, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this (Section 3) clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the

name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 DFR Part 135. The Contractor will not subcontract with any Subcontractor where the Contractor has notice knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
  - (e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
  - (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
  - (g) With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
2. Contractor shall maintain such records, and complete and submit forms as may be amended from time to time, as required by the NYS Office of Community Renewal ("OCR") and/or HUD including but not limited to the Section 3 New Hires Report and the Section 3 Business Certification Package. Such forms shall be submitted in accordance with the directions contained therein and at such other times as the OCR and/or HUD may direct.

### **IMPLEMENTATION AND EFFECTIVENESS OF FOREGOING POLICIES, PROCEDURES AND APPOINTMENTS**

All such policies and procedures established herein, and personnel and/or officer positions established, persons appointed and appointments herein shall be effective as and from the date of

adoption of this resolution. Notwithstanding such appointments made, and not intending to or in effect release such appointee or other person above specified from all such duties and requirements of such office and position hereunder, and in connection with the laws and regulations referenced, it shall be permitted and is contemplated that performance of certain acts and duties required hereunder may or shall require professional, academic or specialized expertise, and as such, assistance in performance of all such required duties may be contractually delegated or assigned to an administrator, project engineer, architect or other professional or specialized consultant, procured and retained under contract with the Village in connection with a specific project or projects, or agency funding actions, and subject and pursuant to such policies, procedures and requirements for procurement of administrative/consulting or other professional services contracts as required under Village Code, state, federal or other such statutes, laws, rules and/or regulations and including as otherwise pertains to the specific project and agency funding conditions. Any such assignment or delegation of duties shall only be as legally permitted under the foregoing statutes, laws, rules, and regulations, and shall not in any event effect or be interpreted as an intent to transfer legal liability or responsibility for the statutory, regulatory and contractually required duties hereby imposed from the Village of Phoenix (and such persons, employees and/or officers) or other legally obligated persons to such third party administrator, consultant or the like, or to release or relieve the Village of Phoenix, such officers, employees, or persons or other independent contractor/consultants, and including specifically those officers and/or employees appointed hereunder or as described herein and otherwise required under applicable law, if and from such legal requirements and/or any other legal responsibility or liability as imposed by the applicable contract or by applicable statute, laws, regulations, rules and/or those duties and/or obligations arising hereunder. Rather, same is and shall be reflective only of the Villages intent to, wherever economically and/or practically advisable and feasible, obtain specialized or expert assistance with respect to the performance of such duties as requiring certain professional or other specialized expertise, experience, and/or the like, and to such person(s) or entity as are best equipped, trained, educated and otherwise to perform such duties and however, in any and all events and time(s) under the general direction and control of the Village and its appointee above named, and/or otherwise the Mayor or Village Board, as the case may be, and it is,

**FURTHER RESOLVED, RATIFIED AND CONFIRMED,** that the following positions prior hereto, and are, hereby specifically confirmed as established and determined to be within those job duties of the Village Administrator: Fair Housing Officer, Labor Standards Officer and Section 504 Grievance Coordinator, and however, subject to the taking and filing of a specific oath of office as to the Fair Housing and Labor Standards Officer positions and that James Lynch, Village Administrator and any future or successor person appointed to the Village Administrator position is and shall be appointed, and/or confirmed as appointed, as the case may be, to serve in the foregoing Officer(s) and Coordinator positions; and it is

**FURTHER RESOLVED,** that the Village Clerk-Treasurer is hereby directed to, in consultation with the Village Attorney, notice, post, publish and/or otherwise satisfy such legal

requirements relative to the foregoing as are imposed by applicable law, including to commence the acquisition, display and dissemination of any brochures, bulletins and informational guides as and in the manner required by applicable law and the policies herein adopted, and to otherwise effect the implementation of these policies, on or before fourteen (14) days from the adoption date hereof, and such other officers and employees, the Village Attorney and Village Mayor and Trustees are hereby likewise authorized and directed to perform, execute and/or deliver such further and other documents and instruments and to do and perform such other acts as are necessary and/or reasonably required to effecting the foregoing, including without limitation that the Village Administrator, shall execute and deliver such oath(s) of office as are required for the performance of the foregoing required duties of Fair Housing Officer and Labor Standards Officer; and it is

**FURTHER RESOLVED**, that the Village Attorney, Steven J. Primo, shall compile standard consolidated agency contract provisions applicable to all agency (federal and/or state) funding and similar projects required by applicable law to include same (including for public works, purchase and professional services) and the Village’s procurement policies are hereby amended to and shall incorporate all of same by reference, and the Village Attorney shall ensure that all Village personnel involved in purchase and public works projects and agency funding actions as well, receive a copy of same together with a memorandum of explanation, and shall notify and inform the NYSDHCR OCR representative, for such agency, of this Resolution, its affect, and of the Village response, as outlined herein, and of any and all measures taken in furtherance of same, per the foregoing RESOLVED paragraph, on or before the time periods noted in the foregoing paragraph.

Upon motion made by Trustee Burgess and seconded by Trustee Pendergast, the foregoing resolution was put to a roll call, which resulted as follows:

Ryan Wood, Mayor	Aye/yes
Eric Shaffer, Trustee	Aye/yes
Jennifer Burgess, Trustee	Aye/yes
David Pendergast, Trustee.	Aye/yes
Andrew Bittel, Trustee	Aye/yes

Resolution was adopted on the 5th day of July, 2016.

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**CERTIFICATION**

I, the undersigned, Clerk-Treasurer of the Village of Phoenix, Oswego County, New York, do hereby certify: that the above is a true copy of the original resolution passed at a meeting of the Village of Phoenix Board of Trustees on July 5, 2016.

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Roxanne Demo, Clerk-Treasurer

Primo outlined the tentative settlement originally considered in January or February with the former Village engineer, outlined the now more specific terms, including the contract terms required to apply for an exemption from WMBE compliance, the payments made and required, and the release and related terms making the compliance provisions unenforceable by the village, and asked the Board to ratify the prior approval of the settlement of the Engineer in the EFC related matter. Motion was made by Trustee Shaffer, seconded by Trustee Bittel. All ayes. Primo said that he has a propose letter to Mr. Kline related to well closure. There was a brief discussion in regards to this matter. Mayor said that he will follow up with Administrator Lynch on this matter.

### **Public Comments**

No public comments.

Motion was made by Trustee Burgess to adjourn the regular meeting at 8:40pm, seconded by Trustee Shaffer. All ayes.

Respectfully submitted,

Laura Gonzalez  
Village of Phoenix  
Deputy Clerk/Treasurer