

K23-135

SUBRECIPIENT AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
HOPE ENTERPRISE CORPORATION OF THE MID SOUTH
FOR
FRESH FOOD RETAILER INITIATIVE

THIS SUBRECIPIENT AGREEMENT (“**Agreement**”), is entered into by and between the City of New Orleans, herein represented by LaToya Cantrell, Mayor (the “**City**”), and Hope Enterprise Corporation of the Mid South, herein represented by Alan Branson, its Chief Operating Officer (“**HOPE**” or the “**Sub-recipient**”). The City and Sub-recipient may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**”. The Agreement is effective as of December 15, 2021 (the “**Effective Date**”).

RECITALS

WHEREAS, City is a local government subdivision of the State of Louisiana;

WHEREAS, Sub-recipient is a private, not-for-profit organization domiciled in the Parish of Orleans, State of Louisiana;

WHEREAS, the City is undergoing massive recovery in the aftermath of Hurricanes Katrina and Rita, which devastated city infrastructure, economy, and housing stock thereby increasing the number of blighted properties; and further, damaging the social fabric of the City;

WHEREAS, the United States Congress has allocated to the State of Louisiana \$10.4 billion for disaster recovery through the U.S. Department of Housing and Urban Development (“**HUD**”) Community Development Block Grant Program (“**Disaster CDBG**” or “**D-CDBG**”) (P.L. 109-148 and P.L. 109-234) for recovery from Hurricanes Katrina and Rita and subsequently the State of Louisiana approved New Orleans’ Citywide Strategic Recovery and Rebuilding Plan and has since committed to providing the City with \$410,720,016.00 in Disaster CDBG funds through the Long Term Community Recovery Program to finance implementation of the Plan;

WHEREAS, there is an increasing amount of evidence that supermarket access reduces the risk of developing diet-related diseases such as obesity, heart disease and diabetes;

WHEREAS, the City desires to institute a Fresh Food Retailer Initiative (“**FFRI**”) program to increase access to fresh foods in traditionally underserved neighborhoods in the City, provide quality employment opportunities in such neighborhoods, and serve as a catalyst for revitalization of such neighborhoods;

WHEREAS, the FFRI program will provide direct financial assistance to retail businesses that will satisfy the aforementioned goals of the program by awarding forgivable and/or low-interest loans to supermarkets, grocery stores, and other fresh food retailers that are located in, or plan to locate in, underserved areas of Orleans Parish that have been adversely affected by Hurricane Katrina;

WHEREAS, the City has allocated \$7 million in D-CDBG funds for the FFRI program;

WHEREAS, the FFRI program will meet the national objective of benefitting low- and moderate-income persons on an area-wide basis as defined by 24 CFR 570.200(a)(2);

WHEREAS, the FFRI program is considered a special economic development activity as defined by 24 CFR 570.203;

WHEREAS, the City issued a request for proposals seeking experienced organizations to administer the FFRI program, including provide loan underwriting, technical assistance, matching funds and other services;

WHEREAS, offers were evaluated by the City on the basis of the best return on investment with regard to the objective of providing financial assistance to enable vendors to open, renovate or expand retail outlets that sell fresh fruits and vegetables;

WHEREAS, Sub-recipient submitted an offer to implement a loan and forgivable loan program in accordance with the FFRI program;

WHEREAS, the Parties recognize that the State has received Community Development Block Grant ("CDBG") funds from HUD (CFDA#14.228) and has allocated funding to the City from its Long Term Community Recovery Program, and the City requests the State to retain and pay the aforementioned CDBG funds directly to those persons and entities as necessary to complete the obligations of the City and the State under this Agreement;

WHEREAS, HOPE, whose office is located at 1726 Oretha Castle Haley Blvd, New Orleans, LA 70113, is dedicated to strengthening communities, building assets and improving lives in economically distressed areas of the Mid South by providing access to high-quality financial products and related services. HOPE sponsors Hope Federal Credit Union ("HOPE/HOPE"), which is a low-income-designated credit union that converts federally-insured deposits into financial services for low-wealth communities. Since 1994, HOPE/HOPE has generated over \$1 billion in financing for entrepreneurs, homebuyers and community development projects and directly benefitted more than 70,000 individuals;

WHEREAS, HOPE initially agreed to provide matching funds equivalent to 100% of the total funds allocated by the City for the FFRI program;

WHEREAS, after further assessment of the FFRI program participants and their funding needs, the Parties acknowledge that there are limitations on HOPE's ability to provide matching loan funds for certain FFRI projects;

WHEREAS, HOPE will continue to endeavor to provide matching funds equivalent to 100% of the total \$7 million in funds allocated by the City for the FFRI program;

WHEREAS, the Parties acknowledge that this Agreement will modify the definition of “matching funds” as described in Article II Section 2 for all funds after a match of two million and no/100 dollars (\$2,000,000.00) has been met with HOPE funds in accordance with this Agreement;

WHEREAS, Sub-recipient, by agreeing to undertake the implementation of this endeavor utilizing D-CDBG funds provided to the City for the Program, will be acting as a sub-recipient of the City as defined by 24 CFR 570.201(o), hereby agree to carry out this endeavor in full compliance with the laws and regulations of the CDBG program set forth in **EXHIBIT E** CDBG Program Administration and Compliance, **EXHIBIT F** CDBG Compliance Provisions for Construction and Professional Services Contracts, and **EXHIBIT G** the Grantee Statement of Assurances; and

WHEREAS, the Parties acknowledge that The Food Trust (“**Food Trust**”), whose office is located at One Penn Center, Suite 900, 1617 John F. Kennedy Blvd., Philadelphia, PA 19103, a party to the prior agreement that ended December 14, 2020 will not be included as a party to this agreement as their work on the FFRI program is completed. All tasks required by the Food Trust in the administration of the FFRI program listed in this agreement and any **EXHIBITS** attached thereto have been deemed completed. **HOWEVER**, this does not terminate any of Food Trust’s ongoing obligations set forth in any prior agreements to which they were a party.

NOW THEREFORE, the Parties, for the consideration and under the conditions set forth, agree as follows:

ARTICLE I – SERVICES

Section 1. Scope of Work. Sub-recipient will administer the FFRI program to award forgivable loans and low-interest loans to supermarkets, grocery stores, and other fresh food retailers that are located in or plan to locate in a low-to-moderate income area of Orleans Parish. Sub-recipient will perform the activities and services outlined in the tasks included in **EXHIBIT D – Scope of Work**. Sub-recipient may procure contractors for consultant services associated with the Scope of Work in accordance with CDBG requirements. Sub-recipient may also designate sub sub-recipients following a risk assessment to be performed by the City’s financial monitor if approved by the City. **HOWEVER**, activities and services performed will be limited to closing out projects that have been identified prior to the execution date of this Agreement.

Section 2. Performance Measures. Sub-recipient’s performance will be measured by continuing to meet program milestones as set forth in the schedule **EXHIBIT A**. Failure to meet these performance measures in accordance with **EXHIBIT A** may result in termination of this Cooperative Endeavor Agreement.

Section 3. Reporting. As required in Task 7, Sub-recipient shall provide financial reports, progress reports, a final report and a final financial status report that meets the following standards:

- 1) Financial Reports. Monthly financial reports on program expenditures from CDBG and match funds shall be submitted alongside progress reports to the City
- 2) Progress Reports. Monthly progress reports shall be submitted alongside financial reports to the City. The report shall include, but not limited to, the items described below, or as otherwise agreed upon by the parties. Progress reports shall include data and sources, frequency of data collection, and the validity and reliability of the measurements as an indicator of progress.
 - a. Loan Commitments:
 - i. Number of Applications received and processed;
 - ii. Number of Loans initiated and closed;
 - iii. Value of Loans made;
 - iv. Number of Forgivable Loans initiated and closed; and
 - v. Value of Forgivable Loans made.
 - b. Types and frequency of technical assistance provided.
 - c. Details on awardees:
 - i. Use of funds;
 - ii. Geographic area served;
 - iii. Number of low- and moderate-income residents served;
 - iv. Size of retail space (sq ft);
 - v. Shelf space dedicated to the sale of fresh produce; and
 - vi. Number of jobs created.
 - d. Work Plan:
 - i. Problems and Delays: Note unexpected delays or impediments;
 - ii. Future Program Plans: Outline work to be performed during the succeeding period; and
 - iii. Funding to Date: State the level of CDBG and match funds expended to date.
- 3) Final Report. A narrative final report is required 60 days after the program's ending date at the end of this Agreement. As this report is an important vehicle for sharing results and lessons learned, the FFRI Partnership is expected to work with the City before submission to determine a format suitable for wide distribution.
- 4) Final Financial Status Report. The final financial status report is required 60 days after the program's ending date at the end of this Agreement. The FFRI Partnership also shall submit to the City written receipts or other documentation to verify the total amount of the program costs.

Section 4. Deliverables. HOPE and sub sub-recipients shall submit the following deliverables in accordance with the roles and responsibilities delineated in **Article 1, Section 1.5** and the schedule included in **EXHIBIT A**. Failure to submit these deliverables in accordance with the schedule may result in termination of this Cooperative Endeavor Agreement.

- 1) Task 1: Program Development
 - a. Application Process
 - b. Program Documents
 - c. Program Manual
 - d. Methodology for Evaluating Applicants
 - e. Comprehensive Outreach Plan

- f. Interest Rate Policy
 - g. Program Targets
- 2) Task 2: Program Outreach: Database of economic and community development contacts with potential interest in the FFRI program
- 3) Task 3: Evaluation of Fresh Food Applicants: Written evaluations based around the evaluation criteria for Step 1 applicants
- 4) Task 4: Provision of Financing
 - a. Written evaluations based around the evaluation criteria for Step 2 applicants that include draft financing packages
 - b. Final financing packages
- 5) Task 5 Technical Assistance, Task 6 CDBG Compliance, and Task 7 Monitoring and Reporting:
 - a. Monthly Financial Reports including Program Income Reports
 - b. Monthly Progress Reports
 - c. DBE Compliance Reports
 - d. Final Report
 - e. Final Financial Status Report
 - f. All contracts and/or cooperative endeavor agreements entered into for consultant services.

Section 5. Services to be provided by City. City shall perform each of the following services as set forth in this Article:

- 1) Provide administration via programmatic and fiscal monitoring through the Mayor's Project Delivery Unit (PDU).
- 2) Provide technical assistance and programmatic support.
- 3) Review all program proposals, methodology for evaluating applicants, comprehensive outreach plan, low interest loan rate and program targets requested by this Agreement and inform Sub-Recipient as to whether the above is complete or incomplete within fourteen (14) business days of receipt.
- 4) The Contract Monitor shall review and analyze Sub-recipient's Request for Reimbursement Reports to ensure Sub-recipient's compliance with contract requirements; and shall:
 - a. Contact Sub-recipient for further detail, information or documentation when necessary.
 - b. Coordinate with the City's fiscal office for reimbursements to Sub-recipient, and/or obtaining of any further needed documentation.
- 5) Process invoices determined to be complete within 60 days when feasible.
- 6) Provide environmental review services in compliance with CDBG regulations for all projects funded through FFRI program.

Section 6. Standard of Care. Sub-Recipient hereby represents and warrants that it has the requisite skills and expertise necessary to perform the Services. Accordingly, Sub-Recipient shall be obligated to perform such services with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in which Sub-Recipient is engaged in providing similar services in major United States metropolitan areas under the same or similar circumstances. Sub-Recipient acknowledges and agrees that, at City's option, Sub-

Recipient shall be obligated to re-perform, at no additional cost to City, any or all of the Services that fail to satisfy the foregoing standard of care.

Section 7. Representations and Warranties of Sub-Recipient. Sub-Recipient represents and warrants that:

- A. Sub-Recipient has not employed or retained any entity or person, other than a bona fide employee working solely for Sub-Recipient, to solicit or secure this Agreement nor has Sub-Recipient paid or agreed to pay any entity or person, other than a bona fide employee, any gift, commission, percentage, brokerage or any other such fee for the purpose of assisting Sub-Recipient in securing this Agreement. Sub-Recipient acknowledges its understanding that any gifts made or fees paid in contravention of this representation and warranty shall be considered bribery pursuant to City Code Section 70-509 and shall subject the offender to criminal penalties in addition to suspension from participation in City contracting for a period of not less than three years. The execution of this Agreement by Sub-Recipient's duly authorized representative shall be deemed a sworn statement by Sub-Recipient of its compliance with this representation and warranty, as required by City Code Section 46-51;
- B. Sub-Recipient, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding upon and enforceable against Sub-Recipient in accordance with its terms;
- C. Sub-Recipient is not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit or impair in any way its performance of any obligations hereunder;
- D. Sub-Recipient has the requisite expertise, qualifications, staff, materials and equipment in place and available to enable it to fully perform the Services and Sub-Recipient, along with its employees, as required, and all sub-Sub-recipients, if any and as required, possess all necessary permits, licenses, consents, registrations and/or certifications required under federal, state and/or local law to perform the Services;
- E. As of the Effective Date of this Agreement, Sub-Recipient has no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations or its ability to fulfill its obligations under this Agreement;
- F. Sub-Recipient is not in breach of any federal, state or local statute or regulation applicable to Sub-Recipient or its operations;
- G. Sub-Recipient's work shall be accurate and free from any material errors. Sub-Recipient's duties as set forth in this Agreement shall at no time be in any way diminished by reason of any approval by City nor shall Sub-Recipient be released from liability by reason of such approval by City—it being understood that City, at all times, is ultimately relying upon Sub-Recipient's skill and knowledge in performing the Services;

- H. Sub-Recipient is bonded, if required by law, and fully and adequately insured to for the injury of its employees and any others incurring loss or injury as a result of the actions of Sub-Recipient or its employees or sub sub-recipients in the performance of its obligations under this Agreement; and
- I. Sub-Recipient has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

Section 8. Reliance on Representations, Warranties and Covenants. All representations, warranties, covenants and agreements made in this Agreement are intended to material and shall be conclusively deemed to have been relied upon by the receiving party.

Section 9. Reversion of Assets. Upon expiration of this Agreement, the Subrecipient shall transfer to the City any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 is either:

- 1) Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
- 2) Not used in accordance with subsection 1 above, in which event the Subrecipient shall pay to the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

ARTICLE II – COMPENSATION

Section 1. Rate of Compensation

The City agrees to provide Sub-recipient up to \$1,126,000.00 in D-CDBG funds that remained from the previous Agreement, which ended on **December 14, 2021**. These funds may only be spent in accordance with the budgets in **EXHIBIT B**. **More specifically they may be only spent in accordance with EXHIBIT B (Year 11, 2021), as the general purpose of this Agreement is to extend year 11 of the previous agreement for one year in order for the Sub-recipient to close ongoing projects.** No D-CDBG funds will be allocated or allowed to be used for the administration of the FFRI program. Total D-CDBG loan funds available for payment shall not exceed \$1,126,000.00. Such amount is subject to modification based on Sub-recipient's meeting the requirements enumerated in **EXHIBIT A** on a monthly basis. Should the Sub-recipient fail to comply with **EXHIBIT A**, the City reserves the right to reduce the amount of the grant funds allocated herein provided Sub-recipient have failed to cure said deficit within 30 days of written notification by the City.

Disbursements of forgivable loans and low interest loans will be made in accordance with **EXHIBIT C**. Review and approval shall be made in a timely manner as to enable Sub-recipient to continue to operate its portion of the Program.

In the event the Contract Monitor determines that the Sub-recipient has failed to close a loan or forgivable loan for which a reimbursement payment has been made, or has not processed a loan or forgivable loan which has been rejected for which a reimbursement payment has been made, reimbursement funds for such failed loan or forgivable loan payments shall be refunded by the Sub-recipient or, at the option of the City, withheld from subsequent payments. In addition, the City may initiate suspension or termination procedures, as outlined by **EXHIBIT F**. Loans properly made by the Sub-recipient, but which are not repaid, in whole or in part by a borrower, shall not be subject to recoupment by the City.

Section 2. Match

As previously agreed, HOPE shall leverage the \$7 million of CDBG funding allocated by the City for the FFRI program in a prior Agreement between the City, HOPE and Food Trust effective December 15, 2013 to achieve at least a 1:1 match of financing provided by Hope Enterprise Corporation or Hope Credit Union (collectively known as HOPE) or sources other than the City of New Orleans. HOPE shall be required to provide at least the sum of TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) (the “**Catch Up**”) pursuant to a prior Agreement between these parties, dated September 26, 2014, and pursuant to the Settlement Agreement between these parties, dated August 24, 2016. The parties acknowledge and agree that only in the event the above-described Catch Up matching has been met by HOPE using its own funds and that (i) HOPE can demonstrate to the City’s reasonable satisfaction that financing cannot be provided directly by HOPE on a 1:1 loan dollar match basis due to restrictions on HOPE’s lending capabilities for reasons outside of HOPE’s control or (ii) the project receiving FFRI funds chooses not to accept non-FFRI financing from HOPE, will HOPE be entitled to credit financing provided by sources other than the City and other than HOPE toward its match obligations. Furthermore, upon full satisfaction of HOPE’s obligation to provide Catch Up financing as further detailed herein and in the Settlement Agreement between these parties, all financing provided after the Catch Up has been met by sources other than the City of New Orleans shall count as match. Therefore, HOPE expects to reach and “Match” the City’s total investment as of December 14, 2014. Moving forward from the point at which Catch Up financing has been achieved by HOPE, the proposed modifications will effectively recognize and count all sources of funding other than those provided by the City of New Orleans as “Match” or when projects are structured in a manner that does not allow for or desire any direct financing from HOPE. After the Catch Up has been met, FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00) of Match shall remain, and may be met under this revised Match recognition standard.

The City’s FFRI funds will be in the form of both low-interest - rates that range between the current Wall Street Journal Prime Rate to the Wall Street Journal Prime Rate plus three percent (3%), and forgivable loans. Any FFRI leverage funds provided by either Hope Enterprise Corporation or Hope Credit Union will be interest-bearing, risk-based adjusted, and determined by HOPE during the underwriting and HOPE Credit Committee approval process. The interest rates on the HOPE loans will be fixed, and longer, more flexible terms will be considered, depending upon the financing needs of the borrower. The overall program low interest rate will be defined as the cumulative average of the interest rates used for the program.

ARTICLE III – TERM

This Agreement shall commence on the Effective Date of **December 15, 2021**, and shall continue for a period of twelve months thereafter, ending on **December 14, 2022**. Services which are identified in **EXHIBIT A** and described above are expected to be completed within this time period. All funds shall be obligated in accordance with the schedule **EXHIBIT A**. It is understood and acknowledged by Sub-recipient and the City that the term of loan commitments made as a part of this agreement will extend beyond this Agreement and that the Sub-Recipient, HOPE, is responsible for the monitoring of designated activities of Task 7 throughout the duration of the loan terms.

ARTICLE IV – PAYMENT TERMS

Section 1. Payment Terms

Payments to Sub-recipient and any designated Sub-grantees are governed by 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” Accordingly, payments will be made on a cost reimbursement basis. Each request for reimbursement shall identify the approved FFRI program task(s) and quantity of services or items and the reimbursement rate for each approved budget category as defined in **EXHIBIT B**. Payments to Sub-recipient’s contractors and vendors are conditioned upon compliance with the procurement requirements provided for in 2 CFR Part 200.317 through 200.326 in addition to any other applicable requirements by 2 CFR Part 200.

Allowable costs shall be in compliance with 2 CFR Part 200, Subpart E in particular the following items:

- a. Wages and Salaries: 2 CFR Part 200.431 “Compensation for personal services”; to include item 8.g. “Fringe benefits”.
- b. Travel: CFR 2 Part 200.474 “Travel Costs.”
- c. Supplies and Materials: CFR 2 Part 200.453 “Materials and supplies costs.”
- d. Professional Services: CFR 2 Part 200.459 “Professional services costs.”
- e. Equipment/Acquisitions: CFR 2 Part 200.439 “Equipment and other capital expenditures.”
- f. Media, outreach or public relations: CFR 2 Part 200.421 “Advertising and public relations costs” also “Selling and marketing.”
- g. Rent of building and equipment: CFR 2 Part 200.465 “Rental costs of buildings and equipment.”

Section 2. Reimbursement Procedures

- a. Source Documentation. Sub-recipient and all sub sub-recipients are responsible for keeping the **original** invoices and source documentation for expenses incurred available for any audit that might result in this program. Requests for payment must be accompanied by one (1) original and one (1) electronic set of the request for payment, complete with the State’s request for payment form and proof of the payments being made and/or entered into accounts payable in their general ledger in addition to **copies** of Sub-recipient invoices and source documentation detailing each billable item

and related costs. Examples of sufficient source documentation include, but are not limited to:

1. Salaries - Examples: Payroll records including time sheets, pay vouchers, or payroll ledgers, approved by a responsible official(s) of the organization and supported by personnel activity reports.
2. Fringe Benefits - Supported by payroll records, copy of policy or formula benefits computation is based on.
3. Travel - Reimbursement for travel and expenses is for CDBG projected-related business only. Please note how the travel is required for the CDBG project along with invoice documentation. Follow the travel guidelines established by the General Services Administration (GSA): <http://www.gsa.gov/portal/category/21287>.
4. Operating Services - Supported by copies of original invoices, or copies of agreements for services.
5. Supplies and Materials - Supported by copies of original invoices.
6. Professional Services - Supported by copies of original invoices or billings submitted with sufficient detail as to the time expended and nature of the actual services provided or tasks performed.
7. Equipment/Acquisitions - Supported by copies of original invoices.

Section 3. Minor Budget Amendment.

The Sub-recipient (or designated Sub-grantees) further understands and acknowledges that the contract sum will be paid to the Sub-recipient (or designated Sub-grantees) on a cost reimbursable basis computed on actual or accrued expenditures. It is further expressly understood and agreed that in no event will the Sub-recipient (or designated Sub-grantees) exceed any budget line item **prior** to receiving, in writing, a budget revision from the City authorizing the excess except when the revision is less than 10% of the budget line item. Sub-recipient (or designated Sub-grantees) understands and agrees that all expenditures will be made in accordance with Office of Management and Budget Circular A-110, 'Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations', Office of Management and Budget Circular A-122, 'Cost Principles for Non-Profit Organizations', '2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)', and all other procedures related to the expenditures of the amount of compensation provided by this contract as may be imposed on the Sub-recipient (or designated Sub-grantees) by the City or Federal government." The Sub-recipient (or designated Sub-grantees) further understands and agrees that the Sub-grantee will only be entitled to the compensation upon satisfactory performance of the work of the contract as shall be determined by the City. Sub-recipient (or designated Sub-grantees) shall be responsible for collecting and maintaining any and all source documents evidencing eligible and authorized expenditures as provided for in the budget for administrative cost. The Sub-recipient (or designated Sub-grantees) will not be compensated for any ineligible or unsupported costs.

Section 4. Truth-In-Negotiation. As of the Effective Date of this Agreement, Sub-Recipient represents and warrants that the rates charged City as set forth in this Article II for the performance of the Services are no higher than those charged Sub-Recipient's most favored customer for the same or substantially similar services. In the event Sub-Recipient's "most favored customer" rates

are reduced during the term of this Agreement, Sub-Recipient shall be obligated to promptly notify City of such reduction in writing, and such reduced rates shall apply to any services provided on or after the date that Sub-Recipient first reduced such rates. City shall have the right to enforce this provision for up to one (1) year following the termination of this Agreement.

Section 5. No Payment for Services Beyond Scope of Agreement. Except as may be provided by laws governing emergency procedures, officers and employees of City are not authorized to request Sub-Recipient to provide additional services that would result in the performance of services beyond the scopes set forth in **EXHIBIT A**, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such additional services and/or expenditures. City shall not be required to reimburse Sub-Recipient for any services that are provided by Sub-Recipient that are beyond the scope of this Agreement, in the absence of a duly authorized executed amendment hereto. In addition, the City shall not be required to reimburse Sub-Recipient for any services and cost incurred that are not approved by the State OCD in the form of an approved grant application.

Section 6. No Payments in Excess of Maximum Compensation. Officers and employees of City are not authorized to offer or promise to Sub-Recipient additional funding for the contract in excess of the maximum amount of funding set forth above. Additional funding for services provided under this Agreement, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such increase and the Department of Finance has certified the availability of such additional funding. Absent the prior duly authorized amendment of this Agreement and the necessary certification of the Department of Finance, City shall not be required to honor and will not remit to Sub-Recipient any offered or promised additional funding for any of the Services performed pursuant to this Agreement in excess of the maximum amount set forth above.

Section 7. Indirect Costs. Indirect costs and overhead rates may be approved to the extent that they have been reviewed by the City of New Orleans; supported by an approved indirect cost plan; and program funds are available to reimburse them. Indirect costs are only eligible for reimbursement to the extent allowed pursuant to the terms of the Cooperative Endeavor Agreement (**K07-715**) between the State of Louisiana Division of Administration Office of Community Development – Disaster Recovery Unit and the City of New Orleans.

Section 8. Program Income. Pursuant to any service that utilizes D-CDBG funding, any funds derived from said service as a result of the activities carried out by the Sub-recipient shall be considered program income and shall be returned by the Sub-recipient to the City for activities pursuant to and for the duration of this Agreement and in a manner consistent with the requirements set forth at 24 **CFR 570.504**. The Sub-recipient agrees that any amounts to be refunded to the City shall be repaid monthly in accordance with **EXHIBIT E**.

ARTICLE V – TERMINATION

Section 1. Termination for Cause. City and Sub-Recipient shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party

of its intent to terminate and the reasons therefore. These reasons shall include, but not be limited to:

- A. Failure, for any reason, of Sub-Recipient to fulfill in a timely and proper manner the obligations under this Agreement and/or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time; or
- B. Submission by Sub-Recipient of reports that are incorrect or incomplete in any material respect, provided Sub-Recipient is given notice of said failure and fails to correct the same within a reasonable amount of time; or
- C. Ineffective or improper use of funds as provided for under this Agreement.

If such termination occurs, this Agreement shall remain in full force and effect between the Parties other than the terminated party, but the terminated party shall not have any further rights against or liability to the other under this Agreement other than (i) the right to receive payment for services rendered prior to termination; (ii) the record retention and auditing requirements set forth in this Agreement; and (iii) the confidentiality obligations set forth in this Agreement.

If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

Section 2. Severability. The parties hereto intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, should a court of competent jurisdiction find any provision to be unenforceable as written, the parties intend and desire that the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If, however, the court should find such provision to be illegal and not subject to reformation, such provision shall be fully severable. In such event, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision was never a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect.

Section 3. Termination for Convenience. City and Sub-Recipient shall each have the right to terminate this Agreement without cause by giving the other party written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event City elects to terminate for convenience, City shall be obligated to pay Sub-Recipient only for those Services performed up to and through the date of termination.

Section 4. Survival of Certain Provisions. All representations and warranties and all responsibilities regarding record retention, access and ownership, cooperation with OIG investigations, indemnification and payment for services rendered shall survive the termination of this Agreement and continue in full force and effect.

Section 5. Remedies for Non-Compliance. If the Subrecipient fails to comply with federal statutes, regulations or the terms and conditions of a Federal award, the HUD or the City may impose additional conditions, as described in § 200.207 Specific conditions. If HUD or the City determines that noncompliance cannot be remedied by imposing additional conditions, then either may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

ARTICLE VI – RETENTION, ACCESS, AND OWNERSHIP OF RECORDS

Section 1. Ownership/Confidentiality. All data collected and all products of work prepared, created or modified by Sub-Recipient in the performance of its obligations under this Agreement, including, without limitation, any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, (collectively, “**Work Product**”) shall become the exclusive property of City, and no reproduction of any portions of such Work Product may be made in any form without the express written consent of City. City shall have all right, title and interest in such Work Product, including, without limitation, the right to secure and maintain the copyright, trademark and/or patent of Work Product in the name of City. All such Work Product may be used and distributed for any purpose deemed appropriate by City without the consent of and for no additional consideration owing to Sub-Recipient.

Section 2. Right to Audit; Access. At any time during normal business hours, upon receipt of reasonable notice and as often as City may deem necessary, Sub-Recipient shall make all data, records, reports and all other materials relating to this Agreement available to authorized representatives of the City, State or Federal government for examination and copying. In addition, Sub-Recipient shall permit City to audit, and shall cooperate fully in any such audit of, all invoices, materials, payrolls, work papers, personnel records and other data necessary to enable City to verify the accuracy of Sub-Recipient’s invoices for payment for the performance of the Services.

Section 3. Retention. Sub-Recipient agrees to keep all such business records related to, or arising out of, this Agreement as would be kept by a reasonably prudent practitioner of Sub-Recipient’s profession for a period of five (5) years after the termination of this Agreement. All accounting records shall be maintained in accordance with generally accepted principles and practices.

ARTICLE VII – INDEPENDENT ENTITY STATUS

Section 1. Independent Entity Status. Sub-Recipient shall not be deemed an employee, servant, agent, partner or joint venture of City. Rather, Sub-Recipient herein expressly acknowledges and agrees that it is providing services exclusively as an independent entity to City, as such term is defined in La. Rev. Stat. 23:1021(6). As such, Sub-Recipient agrees that it shall not hold itself or any of its employees, contractors or agents to be an employee, partner or agent of City. Further, Sub-Recipient acknowledges and agrees that, as an independent entity, neither Sub-Recipient nor any of its employees shall be entitled to receive any benefits that employees of City are entitled to receive, including, without limitation, workers' compensation coverage, unemployment compensation coverage, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to City under this Agreement.

Section 2. No Withholding; Form 1099 Reporting. Sub-Recipient understands and agrees that (a) City will not withhold on behalf of Sub-Recipient any sums for any federal, state or local income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body, and that City will not make available to Sub-Recipient any of the benefits afforded to employees of City; (b) all of such withholdings and benefits, if applicable, are the sole responsibility of Sub-Recipient; and (c) Sub-Recipient will indemnify and hold City harmless from any and all loss or liability arising with respect to any such withholdings and benefits. The parties agree that if the Internal Revenue Service questions or challenges Sub-Recipient's independent entity status, both Sub-Recipient and City shall have the right to participate in any discussion or negotiation with the Internal Revenue Service. Sub-Recipient acknowledges that all compensation paid to Sub-Recipient pursuant to this Agreement will be reported annually by City to the Internal Revenue Service on Form 1099.

Section 3. No Control of Method of Performing Services. City is interested only in the results obtained under this Agreement. With regard to Sub-Recipient's performance of the Services, nothing herein shall be construed as giving City control over (a) the manner or method of Sub-Recipient's performance or (b) the professional judgment of Sub-Recipient with respect such performance. City waives any rights to direct, instruct, or control Sub-Recipient as to the manner in which Sub-Recipient achieves the general and specific objectives, except that Sub-Recipient agrees to perform the Services in a manner designed to minimize delay, duplication of efforts, redundancy and expenses, including, without limitation, Sub-Recipient's compensation. In sum, Sub-Recipient agrees and shall be obligated to perform the Services in the most expeditious and economical manner consistent with the interests of City.

ARTICLE VIII – INDEMNIFICATION

Section 1. Duty to Indemnify City Against Loss. To the fullest extent permitted by law, Sub-Recipient shall protect, defend, indemnify and hold harmless City, its agents, elected officials and employees (collectively, the "Indemnified Parties") from and against all claims, actions, liabilities, losses (including, without limitation, economic losses) and costs, arising out of or related to (a) any actual or alleged act or omission in the performance of the Services by Sub-Recipient or any contractor or (b) any act outside the scope of the Services by Sub-Recipient or any contractor. By way of illustration—not limitation, Sub-Recipient's obligation to indemnify City shall extend to the following, provided that such claims arise out of or relate to the performance of the Services

by Sub-Recipient: (i) personal injury claims, (ii) property damage or loss claims, (iii) fines or sanctions resulting from violations of any law, statute, ordinance, rule, regulation or intellectual property rights by Sub-Recipient and (iv) liens, claims or actions made by Sub-Recipient, any contractor or any employees thereof under workers compensation acts, disability benefits acts, other employee benefit acts or any statutory bar.

Section 2. Limit on Duty to Indemnify. Notwithstanding anything to the contrary herein, Sub-Recipient shall not be required to indemnify the Indemnified Parties for any loss that results from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that Sub-Recipient or any contractor did not contribute to such gross negligence or willful misconduct.

Section 3. Independent Duty to Defend. Sub-Recipient specifically acknowledges and agrees that it has an immediate and independent obligation to, at City's option, (a) defend City from or (b) reimburse City for its costs incurred in the defense of: any claim that actually or potentially falls within this Article VI, even if the allegations are or may be groundless, false or fraudulent. This obligation shall remain in full force and effect even if Sub-Recipient is ultimately absolved from liability.

Section 4. Expenses. All expenses, including, without limitation, reasonable attorney fees, incurred by City in enforcing this Agreement shall be borne by Sub-Recipient.

ARTICLE IX – GOVERNING LAW, JURISDICTION AND VENUE

Section 1. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Louisiana, excepting its conflict of law provisions and all federal laws, licensing standards and other regulations applicable to the provision of these services. Provisions detailed in the Cooperative Endeavour Agreement between the State of Louisiana Office of Community Development and the City of New Orleans are applicable under this agreement between the City and Sub-Recipient and all third-party contractors.

Section 2. Exclusive Jurisdiction and Venue. For all claims arising out of or related to this Agreement, Sub-Recipient hereby consents and yields to the exclusive jurisdiction and venue of the Civil District Court for the Parish of Orleans and expressly waives any (A) pleas of jurisdiction based upon Sub-Recipient's residence and (B) right of removal to federal court based upon diversity of citizenship.

ARTICLE X – INSURANCE

Hope shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by Hope, its agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by Hope and included in any bids.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage “occurrence” form CG 00 01 (04 13). **“Claims Made” form is unacceptable.** Policy will include coverage for:

- a. Premises – Operations
- b. Broad Form Contractual Liability
- c. Products and Completed Operations
- d. Personal Injury
- e. Broad Form Property Damage

NOTE: The aggregate loss limit applies to each project.

2. Automobile Liability – as required by the State of Louisiana, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.
3. Workers’ Compensation insurance as required by the Labor Code of the State of Louisiana, including Employers’ Liability Insurance.
4. Professional Liability Insurance.
5. Commercial Crime
6. Fiduciary Liability
7. Cyber Liability

B. MINIMUM LIMITS OF INSURANCE

Sub-recipient shall maintain throughout contract limits not less than:

Insurance Type	Limit
Commercial General Liability	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
Automobile Liability	\$500,000 Combined Single Limit
Workers’ Compensation	Statutory Employers’ Liability - \$500,000
Professional Liability	\$2,000,000 Per Occurrence \$4,000,000 Aggregate
Commercial Crime	\$1,000,000 Per Occurrence
Fiduciary Liability	Equal to the value of the account funds
Cyber Liability	\$1,000,000 Per Occurrence

Limits can only be reduced if approved by the Risk Manager or designee.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the City.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages:

- a. The CITY, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the CITY.
- b. The vendor's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the CITY, its officers, officials, employees, Boards and Commissions or volunteers.
- d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the CITY.

3. Professional Liability

"Claims made" policy is acceptable coverage which must be maintained during the course of the project and up to two (2) years after completion and acceptance of the project by the CITY.

4. Cyber Liability Coverage

Contractor will provide coverage with the minimum limits of \$1,000,000 for third party losses including, but not limited to: Crisis Management; Unauthorized Access/use; Computer Virus; Denial of Service Attack; Denial of Access; Mistake in administration of network; Improper Transmission of Data Losses, including Contingent BI; Personal Injury for Insured's Network Communications; Libel, Cyber-

Libel, Slander; Product Disparagement; Violation of right of privacy; Misappropriation and plagiarism; Intellectual Property Losses; Regulatory Costs; Privacy Costs - Privacy Injury and Identity Theft; Programming Errors & Omissions Liability; Replacement or Restoration of Electronic Data; Extortion Threats; Business Income and Extra Expense; Public Relations Expense; and Security Breach Expense.

5. Fiduciary Liability – Coverage for first party claims and regulatory agency penalties or violations.

6. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City.

E. ACCESS TO NETWORKS/DATA

If Sub-recipient has access to City networks or personal data, then it must carry cyber liability coverage for damages arising from a failure of computer security, or wrongful release of private information including expenses for notification as required by local, state or federal guidelines.

F. ACCEPTABILITY OF INSURERS

All insurance shall be issued by responsible insurance companies eligible to do business in the State of Louisiana and having an A.M. Best Financial rating of A- VI or better.

G. VERIFICATION OF COVERAGE

Sub-recipient shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be submitted on a form approved by the Louisiana Department of Insurance. Certificates of Insurance similar to the ACCORD form are acceptable. CITY will not accept Memorandums of Insurance or Binders as proof of insurance. The CITY reserves the right to require complete, certified copies of all required insurance policies at any time.

ARTICLE XI – NOTICE

Any notice, demand, communication or request required or permitted hereunder shall be in writing and delivered in person or by certified mail, return receipt requested as follows:

If to City: Tyra Johnson Brown
Director of Housing Policy and Office of Community Development
City of New Orleans
1340 Poydras St. 1000
New Orleans, Louisiana 70112

and
Donesia Turner
City Attorney
City of New Orleans
1300 Perdido St. 5E03
New Orleans, LA 70112

If to Sub-recipient: William Bynum
Chief Executive Officer
Hope Enterprise Corporation
P.O. Box 22886
Jackson, MS 39225

Notices shall be effective when received by each of the above-referenced individuals at the addresses specified above. Each party shall be responsible for notifying the other in writing that references this Agreement of any changes in the respective addresses set forth above.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of City and Sub-Recipient.

ARTICLE XII -- LIVING WAGE

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Sub-recipient agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. Living Wage. In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023;
and
4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Sub-recipient, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. Reporting. On or before January 31st and upon request by the City, the Sub-recipient shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

G. Compliance Monitoring. Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Sub-recipient will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Sub-recipient agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Sub-recipient, payroll records and employee paychecks; and (ii) that the City may audit such records of the Sub-recipient as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. Remedies. If the Sub-recipient fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE XIII -- NON-DISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY

Section 1. Sub-Recipient Shall Not Discriminate. In the performance of this Agreement, Sub-Recipient agrees not to discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status against (A) any employee of or any City employee working with Sub-Recipient in any of Sub-Recipient's operations within Orleans Parish or (B) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Sub-Recipient. Sub-Recipient agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

Section 2. Equal Employment Opportunity. Sub-Recipient further agrees not to discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status against any applicant for employment with Sub-Recipient. Further, Sub-Recipient agrees to take affirmative action to ensure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to such person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status. Such action shall include, without limitation, the following areas: employment, promotion, demotion, transfer or layoff; recruitment or recruitment compensation; and selection for training. Sub-Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Further, Sub-Recipient agrees all solicitations or advertisements for employees placed by or on behalf of Sub-Recipient shall state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

Section 3. Subcontracts. Sub-Recipient shall incorporate by reference in all subcontracts the provisions of this Article and shall require all contractors to comply with such provisions. Sub-Recipient's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

Section 4. Termination for Breach. The City may terminate this Agreement for cause if the Sub-recipient fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE XIV – DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM

A. In General. The Sub-recipient agrees to abide by the City Code Sections 70-456, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity (“OSD”) oversees the DBE Program and assigns a DBE Compliance Officer (“DBECO”) to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this

Agreement, the DBECO will monitor the Sub-recipient' use of DBE subcontractors/suppliers ("DBE Entities") through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Sub-recipient or DBE Entities.

C. Cooperation. The Sub-recipient shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Sub-recipient's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Sub-recipient shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Sub-recipient.
 - b. The Sub-recipient shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;
 - b. Documentation of payments and other transactions with DBE Entities;
 - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Sub-recipient does not use in accordance with the approved DBE participation submission;
 - d. Any other records required by the OSD.

The Sub-recipient is required to maintain such records for 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.
 - a. The Sub-recipient shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Sub-recipient. Thereafter, "DBE Utilization"

reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.

- b. Reports are required even when no activity has occurred in a monthly period.
 - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - d. The Sub-recipient may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee, and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.
- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

- a. for a reason beyond the Sub-recipient's control, the Sub-recipient is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Sub-recipient must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Sub-recipient shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subSub-recipients during the performance of the Agreement; or
- b. the Sub-recipient reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Sub-recipient shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

ARTICLE XV – FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including

tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Sub-recipient stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
 - a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Sub-recipient must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
 - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Sub-recipient and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XVI – GENERAL PROVISIONS

Section 1. No Assignment Without Consent. This Agreement is personal to each of the parties hereto, and neither party may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other party.

Section 2. Conflict of Interest. Sub-Recipient agrees to decline any offer of work, whether as an independent contractor or employee, if such work would (a) affect Sub-Recipient's independent professional judgment with respect to its performance of the Services or (b) in any way interfere with Sub-Recipient's ability to discharge any of its obligations under this Agreement. The initial determination of whether any offer of work would present such a conflict of interest shall rest with

Sub-Recipient. However, Sub-Recipient shall be obligated to notify City and provide full disclosure as to any possible adverse effects of such work as it relates to Sub-Recipient's independent professional judgment or the discharge of any of its obligations under this Agreement. Final decision as to whether any such work proposes a prohibited conflict of interest shall rest with City.

Section 3. Audit and Other Oversight. It is agreed that the contractor will abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which requires the contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. In signing this contract, the contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

Section 4. Non-waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect, nor constitute a waiver of, any party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior, contemporaneous or subsequent default or breach.

Section 5. Severability. The parties hereto intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, should a court of competent jurisdiction find any provision to be unenforceable as written, the parties intend and desire that the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If, however, the court should find such provision to be illegal and not subject to reformation, such provision shall be fully severable. In such event, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision was never a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect.

Section 6. Exhibits. The following Exhibits shall be and hereby are incorporated into this Agreement as if fully rewritten herein:

Exhibit A	Schedule
Exhibit B (B.1)	Budgets
Exhibit C	FFRI Program Guidelines
Exhibit D	Scope of Work
Exhibit E	CDBG Program Administration and Compliance
Exhibit F	HUD Compliance Provisions for Sub-Recipient Construction and Professional Service Contracts
Exhibit G	Grantee Statement of Assurances

Section 7. Rules of Construction. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Whenever herein the singular number is used, the same shall include the plural, where appropriate, and neutral words and words of any gender shall include the neutral and other gender, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of or against City or Sub-Recipient on the basis of which party

drafted the uncertain or ambiguous language. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

Section 8. Contracts Under This Agreement. The Sub-recipient shall ensure that every subcontract includes any clauses required by the contract agreement, federal statutes and implementing regulations. Additionally, all contracts for services will be developed in accordance with applicable procurement requirements for competition and/or private sector participation as referenced in the guidance contained in 2 CFR Part 200.317 through 200.326 in addition to any other applicable requirements by 2 CFR Part 200. The purchase of all project equipment and/or real property financed in whole or in part pursuant to this contract agreement shall be in accordance with the applicable state and federal laws and procurement regulations, including state competitive bidding procedures and laws and specifications approved by the City, and will be consistent where applicable with 2 CFR Part 200.317 through 200.326 in addition to any other applicable requirements by 2 CFR Part 200. All new contracts entered into by the Sub-recipient for activities directly related to the delivery and implementation (i.e. professional services, equipment, loan agreements, acquisition/disposition, etc.) of the approved D-CDBG projects listed in this agreement, must be approved by the City **prior to** execution.

Section 9. Funding Recognition. The Sub-Recipient shall insure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled, "Funded with Disaster Recovery Community Development Block Grant funds made available through the U.S. Department of Housing and Urban Development, State of Louisiana and the City of New Orleans." In addition, the Sub-Recipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

Section 10. Duplication of Benefits. The Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5155). HUD issued guidance for how to ensure sub-recipients are not providing an ineligible duplication of benefits; that guidance was published in the Federal Register on November 16, 2011 (76 Fed. Reg. 71060).

In the event that alternate sources become available to Sub-Recipient for funding the costs which the City is providing under this Agreement, including but not limited to insurance proceeds, FEMA funding, or other sources, Sub-Recipient agrees to pursue recovery and/or funding through such sources with due diligence and, to the extent of recovery of such alternate funding sources, reimburse the City for funding under this Agreement. If funding from alternate sources becomes available to Sub-Recipient, which City agrees applies to both eligible expenses and expenses that are not eligible under this Agreement, Sub-Recipient may apply such funds first, to expenses that are not eligible under this Agreement, and second, to eligible expenses that are in excess of amounts paid under this agreement.

Section 11. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

Section 12. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties, and the parties expressly disclaim any intent to benefit anyone not a party hereto.

Section 13. Time is of the Essence. City and Sub-Recipient each acknowledge and agree that time is of the essence in the performance of this Agreement.

Section 14. Non-Exclusive. This Agreement shall be non-exclusive. Accordingly, Sub-Recipient shall be free to provide services to other clients, and City shall be free to engage the services of other Sub-recipients for the provision of some or all of the Services set forth in this Agreement.

Section 15. Prohibition Against Financial Interest in Agreement. No elected official or employee of City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this Section, a financial interest held by the spouse, child or parent of any elected official or employee of City shall be deemed to be a financial interest of such elected official or employee of City. Any willful violation of this provision, with the expressed or implied knowledge of Sub-Recipient, shall render this Agreement voidable by City and shall entitle City to recover, in addition to any other rights and remedies available to City, all monies paid by City to Sub-Recipient pursuant to this Agreement without regard to Sub-Recipient's satisfactory performance of such Services.

Section 16. Church/State Provision. In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of public services with CDBG funds, pursuant to Title I of the Housing and Community Development Act of 1974, as amended, the Sub- Recipient:

- A. Represents that it is not a religious or denominational institution or organization or an organization operated for religious purposes which is supervised by a denominational institution or organization.
- B. Agrees that, in connection with such public services:
 - 1. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
 - 2. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
 - 3. Provide no religious instruction or counseling, conduct no religious workshop or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;
 - 4. The portion of a facility used to provide public services assisted in whole or in part under this Agreement shall contain no sectarian or religious symbols or decorations; and

5. The funds received under the Agreement shall not be used to construct, rehabilitate, or restore any facility which is owned by the Provider and in which the public services are to be provided, provided that, minor repairs may be made if such repairs (1) are directly related to the public services, (2) are located in a structure used exclusively for non-religious purposes, and (3) constitute in dollar terms only a minor portion of the CDBG expenditure for the public services.

Section 17. Close-Out/Notice of Termination. The Sub-Recipient shall notify the City through the City of New Orleans OCD, sixty (60) days prior to the scheduled date for termination of this agreement to engage in accomplishing the close-out. The responsibility for notification resides with the Sub-Recipient with the assistance from the City of New Orleans OCD. This procedure is also applicable to extend contracts, with the notification requirement date defined as sixty (60) days prior to the extended termination date. The Sub-Recipient shall comply with the following:

- A. No additional supplies and materials, contractual services, and equipment shall be ordered or purchased sixty (60) days prior to termination of this agreement unless authorized by the City of New Orleans OCD.
- B. The City of New Orleans OCD shall be given a complete inventory of movable property thirty (30) days prior to termination of the project. A reconciliation is required at least ten (10) days prior to the termination of the inventory changes during the period, for example: if property is damaged, lost, or stolen. The Sub-Recipient shall list and identify any equipment and furniture to be turned over to the City of New Orleans.
- C. The City of New Orleans will take possession of the movable property and dispose of it in accordance with the appropriate federal regulations. When contractual requirements are in conflict with the City charter requirements, the City of New Orleans OCD with the Chief Administrative Office will coordinate disposition.
- D. A complete payroll documentation of employment termination is required by the City of New Orleans COD not less than fifteen (15) working days prior to the close of the contract.
- E. The Sub-Recipient shall review all employees annual and sick leave, insurance coverage and etc., ninety (90) days before termination in order to initiate steps for employees to schedule accumulated time and to cancel or adjust insurance to reflect any changes in coverage.
- F. Prior to the Project close-out, all staff personnel funded under this agreement should be notified of the scheduled date of termination sixty (60) days before the termination of the contract.
- G. If applicable, City advance funds are to be returned to the City not less than fifteen (15) working days prior to the close of the contract.
- H. Bank account(s) pertaining to the CDBG program are to be completely closed-out to ensure that no additional bank charges are incurred.
- I. If the Sub-Recipient will cease to operate with the termination of this agreement, the Sub-Recipient shall have all records pertaining to this project packed and turned over to the City of New Orleans OCD on the termination date of the contract.

- J. Report of the project performance as described in its contract should be submitted fifteen (15) days before the termination of the project. The data included in the report should be the most current and accurate available information covering the latest contract period through the termination date.

Section 18. Remedies Cumulative. No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

Section 19. Complete Agreement. Sub-Recipient specifically acknowledges that in entering into and accepting this Agreement, Sub-Recipient relies solely upon the representations and agreements contained in this Agreement and no others. This Agreement supersedes and replaces any and all prior agreements, negotiations and discussions between the parties hereto with regard to the terms, obligations and conditions herein.

Section 20. Convicted Felon Statement. Sub-Recipient swears that it complies with Section 2-8 (c) of the Code of the City of New Orleans. No Contractor, principal, member, or officer of SUB-RECIPIENT has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

Section 21. Non-Solicitation Statement. Sub-Recipient swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure the Agreement. Sub-Recipient has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the Agreement.

Section 22. Ownership Interest Disclosure. Sub-Recipient shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in Sub-Recipient and stating that no other person holds an ownership interest in Sub-Recipient via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If Sub-Recipient fails to submit the required affidavits, the City may, after thirty (30) days' written notice to Sub-Recipient, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

Section 23. Subcontractor Reporting. Sub-Recipient shall provide a list of all persons, natural or artificial, who are retained by Sub-Recipient at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with Sub-Recipient's work for the City. In regard to any subcontractor proposed to be retained by Sub-Recipient to perform work on the Agreement with the City, Sub-Recipient must provide notice to the City within thirty (30) days of retaining said subcontractor. If Sub-Recipient fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to Sub-Recipient, take such action as may be necessary to cause the suspension of any further payments until such the required lists and notices are submitted.

Section 24. Compliance with City's Hiring Requirements – Ban the Box.

1. The Sub-recipient agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Sub-recipient must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.
2. Failure to maintain compliance with the City's hiring requirements through the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Sub-recipient notice of noncompliance and allow the Sub-recipient thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Sub-recipient remains noncompliant, the City may move to suspend payments to the Sub-recipient, void the Agreement, or take any such legal action permitted by law or this Agreement.
3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect.
4. The Sub-recipient will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

Section 25. Cost Recovery.

In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Sub-recipient shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Sub-recipient fails to meet its contractual obligations.

Section 26. Special Conditions for HUD Contracts The "Special Conditions for HUD Contracts," attached as Exhibit F to this Agreement, are expressly incorporated into the Agreement.

The remainder of this page intentionally left blank.

Signatures to follow on subsequent page.

IN WITNESS WHEREOF, the Parties, through their duly authorized representatives, execute this Agreement to be effective as of the Effective Date.

CITY OF NEW ORLEANS

BY: [Signature] FOR

LATOYA CANTRELL, MAYOR

Executed on this 25th of May, 2023

FORM AND LEGALITY APPROVED:

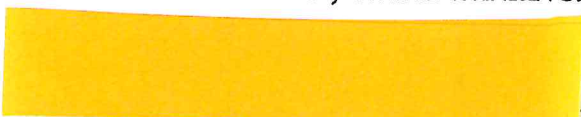
Law Department

By: [Signature]

Printed Name: Andrew Gregorian

HOPE ENTERPRISE CORPORATION OF THE MID SOUTH

DocuSigned by:
By: Alan Branson
69897189F7064FB...
ALAN BRANSON, CHIEF FINANCIAL OFFICER


FEDERAL TAX I.D.

[EXHIBITS A - G CONTAINED ON NEXT PAGES]

**EXHIBIT A
SCHEDULE**

TASKS/ACTIVITY	SCHEDULE/DEADLINES
	YEAR 11
Task 1: Program Outreach	
Open Program to the Public	On-going
Task 2: Evaluation of Fresh Food Retail Applicant	
Sub-Recipient receive and review preliminary eligibility applications	On-going
Sub-Recipient present results of screening and a recommendation of eligibility to the City	
Sub-Recipient notify applicants of preliminary eligibility and instruct applicants to move on to financing application	Within fourteen (14) business days of application receipt on a rolling basis
Task 3: Provision of Financing	
Sub-Recipient receives and reviews financing applications	On a rolling basis
Sub-Recipient determines which applicants will receive awards and compile draft financing packages*	On a rolling basis
Sub-Recipient shares award and financing recommendations with the City	On a rolling basis
Sub-Recipient notify award recipients	On a rolling basis
Task 4: Technical Assistance	On-going, as-needed
Task 5: CDBG Compliance	On-going
Task 6: Monitoring and Reporting	
Financial Reports	Monthly
Progress Reports	Monthly
Final Report	Upon Program Completion
Final Financial Status Report	Upon Program Completion
DBE Compliance Report	Quarterly

*See EXHIBIT C, Section D

**EXHIBIT B
BUDGET**

YEAR 11 BUDGET	
Total D-CDBG Funds Remaining	\$1,126,000.00
Administrative Costs	\$0
Programmatic costs	\$0
Loans	\$1,126,000.00

EXHIBIT C

FFRI PROGRAM GUIDELINES

A. Eligibility Criteria for Applicants: As delineated in Task 1 of the Agreement, the Sub-recipient will include the evaluation criteria below in a program manual. Sub-recipient shall not amend the language but include it as presented below.

1. To be eligible for forgivable loans and low-interest loans under the FFRI program, the Applicant and the Applicant's business must meet the following requirements.

a. At least one of the following:

- i. Applicant plans to open or restore a supermarket or other grocery retail outlet that operates on a self-service basis, primarily selling affordable fresh produce, seafood, meat, dairy products, and other groceries.
- ii. Applicant currently owns a grocery retail outlet that carries limited to no fresh produce and applicant plans to substantially improve the store's ability to stock and sell a variety of fresh fruits and vegetables.
- iii. Applicant plans to develop a real estate project which will lease space to a grocery retail tenant. In this case, the applicant must have a signed lease with a fresh food retail operator. Projects which have multi-tenant uses may be eligible if the development project is funded proportionately to grocery retailer square footage, allowing the FFRI award to focus only on the grocery retail tenant portion.

b. Applicant will locate business in an underserved area of Orleans Parish and meet the LMI criterion – 1) locate within a census tract or service area where at least 51% of persons or households are low to moderate income; 2) or create or retain permanent jobs at least 51% of which will be made available to or held by LMI persons.

c. Applicant will demonstrate that significant shelf space (suggested minimum of either 15% of the current or future store shelf space or 24 linear feet of shelf space, whichever is greater) is dedicated to the sale of fresh fruit and vegetables. This standard establishes a meaningful commitment to sell fresh produce and other healthy foods.

d. Applicant proposes to use the award for one of the following designated activities:

- i. Predevelopment: to pay for the early costs associated with project feasibility including professional fees (e.g. architectural, engineering, etc.), market studies, appraisals, and deposits on land and buildings.
- ii. Site Assembly and Improvement: funds may be used to pay for acquisition, demolition, environmental remediation, unstable foundations and soil conditions, and other costs associated with site and infrastructure improvement.
- iii. Construction and Rehabilitation: funds may be used to construct, rehabilitate, or expand the interior and/or exterior of the retail space.
- iv. Equipment: funds may be used to install or upgrade equipment (anything over \$1000 will be tracked), machinery, furnishings or interior fit-out, especially as necessary to increase the inventory and sale of fresh fruit and vegetables.
- v. Staff Training: funds may be used to pay for training new or existing staff, especially in such areas as safe food handling techniques, sanitation, and management of fresh fruits and vegetables.
- vi. Security: funds may be used to pay for security staff, security training, and security related equipment and site design features to create a safe environment

in a neighborhood setting.

- vii. Inventory and Working Capital: funds may be used to cover first-time inventory or other working capital expenses necessary to the sale of fresh fruit and vegetables and the initial operations of the business.

2. Other eligibility guidelines:

- a. Eligible entities include but are not limited to national chains, regional grocery chains, singular grocery retail outlets, and smaller neighborhood food stores.
- b. The business can have for-profit or non-profit status.
- c. The Applicant can also participate in other loan, grant, or incentive programs offered by federal, state, or local governments. The Applicant shall disclose that they seek and/or plan to leverage other local government loans, grants, or incentive programs for any activities funded on the Project Site and receive the City's approval.
- d. Common ownership of different businesses will be subject to the guidelines on the maximum loan per operator.
- e. The Applicant must meet the CDBG guidelines for evaluating and selecting economic development projects (24 CFR 570.209):
 - i. That project costs are reasonable;
 - ii. That all other sources of project financing are committed;
 - iii. Documentation of need and that CDBG funds are not substituted for non-Federal financial funding or support;
 - iv. That the project is financially feasible;
 - v. That to the extent practicable, the return on the applicant's equity investment will not be unreasonably high.

3. Ineligible applicants:

- a. Applicants that fail to demonstrate a commitment to offer fresh healthy foods, in the judgment of the City, HOPE, and the Food Trust.
- b. Large department stores that specialize in many different types of goods, of which groceries are only one department.
- c. Restaurants, cafes, or bakeries.
- d. Pharmacies with grocery sections.
- e. Businesses with alcohol or tobacco retail sales as the primary source of revenue.
- f. Public entities.

4. Ineligible uses of funds:

- a. Refinancing if not in conjunction with one of the designated activities outlined in this EXHIBIT under Section A.1.d and in compliance with other FFRI program goals. In no case shall one hundred percent (100%) of D-CDBG funds be used for refinancing.
- b. Payment of any tax arrearages, government fines or penalties.
- c. Political or religious activities.
- d. Buying out any stockholder or equity holder in a business.
- e. Buying out or reimbursing any family member.
- f. Purchase of instruments or investments for the sole purpose of a return on investment.
- g. All other activities prohibited in the CDBG regulations in Part 570.

B. Evaluation of Selecting Applicants: As delineated in Task 1 of the Agreement, the Sub-recipient will build on and further develop the evaluation criteria described below.

- 1. *Degree of benefit to underserved populations:* The project will have a demonstrable impact on

the level of affordable fresh foods provided to low- and moderate-income residents of the area that the project serves. The project's results must be measurable and the methodology for measurement must be described.

2. *Promotion of fresh fruits and vegetables*: The Applicant demonstrates a commitment to promoting the sale of fresh fruits and vegetables, e.g. the project details strategies to promote fresh produce sales beyond simple availability, such as product placement, marketing, providing recipes and demonstrations, and outreach.
3. *Organizational experience and capacity*: The Applicant demonstrates the capacity to implement and sustain the project, e.g. through a sound financial/business plan and relevant experience in fresh food retail.
4. *Project Need*: The project requires an investment of public funding to move forward, to create impact, or to be competitive with similar projects in the region.
5. *Community Support*: The project demonstrates community support and/or partnerships as evaluated by Letters of Support from community-based organizations and community groups.
6. *Consistency with "Green Community" Objectives*: Points may be awarded to qualified projects that incorporate environmentally responsible practices into the project plan, such as integrated design, site improvements, water conservation, energy efficiency, and use of materials beneficial to the environment.
7. *Market and Demographic Evaluation*: Examine the quality and accessibility of any local competition, site geography, and demographic profile of the Census tract in which the site is located.
8. *Consistency with Plans*: Coordination with the City of New Orleans Master Plans, local community plans and community development programs.
9. *Land Use and Urban Design*: Adherence to sound land use and urban design principles.

C. Provision of Financing for approved FFRI Projects: As delineated in Task 1 of the Agreement, the Sub-recipient will build upon and further develop the evaluation criteria described below.

1. To receive a forgivable loan and/or a low-interest loan under the FFRI Program, the Applicant and the Applicant's business must satisfy the following minimum standard underwriting criteria, unless mitigating circumstances are present and noted in the file.
 - a. Basic Standard Underwriting Criteria:
 - i. Determination that the project meets general program eligibility criteria
 - ii. Beacon credit score ≥ 550
 - iii. Projected debt coverage ratio of $1.2x^1$
 - iv. Personal guarantee, where applicable
2. Forgivable Loan Information: Forgivable Loans of up to \$500,000 per store may be awarded for designated project activities pursuant to the criteria established under Task 1 of the Agreement. Applicants will be required to submit a narrative that demonstrates the need for a Forgivable Loan. Forgivable Loans will be provided at a 0% rate of interest and forgiven over a period of five years, in an amount of one-fifth (1/5) of the Forgivable Loan Amount per year.
3. Low-Interest Loan Information: Loan rate shall be established and approved by the City during **Task 1 Program Development**. Loan terms and interest rates are to be set below market interest rates.

¹ Debt coverage ratio defined as EBITDA / (interest payments + current maturities)

4. The total amount of CDBG funds awarded for forgivable loans and low-interest loans combined may not exceed \$1,000,000 per store.
5. To the extent practicable, Sub-recipient shall spread funding to a diverse mix of operators.
6. To the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project being spent first or before CDBG funds.
7. Borrowers will be required to provide a minimum of 10% cash equity.
8. Default covenants are required for selling the business, selling or diluting majority ownership, or selling assets purchased with CDBG funds.
9. Borrowers can only be charged fees for legal and assessor fees. All other loan fees need approval by the City to ensure no duplication of reimbursement cost to administer the program.

D. Application Process Methodology

Step 1: Applicants submit a preliminary eligibility application, developed in accordance with FFRI Program Guidelines outlined in this exhibit on a rolling basis.

- A. Upon receipt of applications, The Food Trust will notify the City of application receipt and applicant information. The City will conduct a review of the applicant's lending history with the City within 14 business days of notification. The City reserves the right to deny applicants from proceeding to Step 2 if they are found to have an unsatisfactory lending history with the City. After 14 business days, if the City has not communicated an approval or denial to the Sub-recipient, the Sub-recipient may proceed with application processing.
- B. The Food Trust will evaluate applicants through a screening process developed in accordance with Exhibit C to determine if applicants meet eligibility guidelines.
- C. The Food Trust will present results of comprehensive screening process and a recommendation of eligibility to HOPE and to the City within 14 business days of receiving the application, barring unforeseen circumstances and/or a lack of complete information regarding the application. Notwithstanding the foregoing, additional time to screen an application may be allowed if additional information is needed or the applicant is not in an eligible census tract and extensive additional due diligence is required.
- D. HOPE will notify recipients of their preliminary eligibility determination based on (i) above via a letter, and will copy The Food Trust and City on this letter. Eligible applicants will be requested to move on to Step 2 of the application process, including the completion of attached application and document checklist to be developed.

Step 2: Applicants will be asked to submit a financing application directly to HOPE, on a rolling basis.

- A. HOPE will evaluate applicants based on evaluation methodology developed in Task 3. HOPE will complete evaluation as expeditiously as possible, barring unforeseen circumstances and/or a lack of complete information regarding the application.
- B. HOPE will determine which applicants are eligible to receive FFRI awards and the appropriate combination of forgivable and low interest loans for each project.
- C. HOPE will share award and financing recommendations with The Food Trust and City.
- D. The City will review and approve or deny the use of D-CDBG funds in the loan package within 10 business days. If the City determines that a longer review period will be needed, the City will notify HOPE in writing within the initial 10 business days of receiving the loan package from HOPE and will have an additional 15 business days to approve or deny the use of D-CDBG funds in the loan package. **Sub-recipient** shall not proceed with

applicant award notification and execution until the City has provided written approval or denial to HOPE. **If the City has not communicated an approval or denial to the sub-recipient within the above described timeframes, HOPE may proceed with applicant award notification and execution.**

- E. HOPE will notify award recipients via a letter, and will copy The Food Trust and City on this letter.
- F. HOPE will execute loan awards and closings.

EXHIBIT D
SCOPE OF WORK (LIMITED TO TASKS 4-7)

Task 1: Program Development. Task 1 includes activities associated with developing 1) application process, 2) program documents and manual, 3) methodology for evaluating applicants, 4) a comprehensive outreach plan 5) a low interest loan rate, and 6) program targets. These items will be submitted to the City for review and approval and a written notice to proceed will be issued when the City finds that the program is ready to be operational. Responsibilities for this Task are delineated as follows:

- HOPE shall be responsible for Tasks 1.2.d, 1.2.e, 1.2.i through 1.2.s, 1.5, and 1.6
- The Food Trust shall be responsible for Tasks 1.2.a and 1.4
- HOPE and Food Trust shall be responsible for Tasks 1.1, 1.2.b, 1.2.c, 1.2.f through 1.2.h, 1.2.t through 1.2.x and 1.3

Task 1.1 Application Process. Formalize a two-step application process based on the schedule included as **EXHIBIT A** and methodology as explained in **EXHIBIT C**.

Task 1.2 Program Documents and Manual. Design the program documents described below and compile these documents into a program manual.

- a. Program outreach materials
- b. Process Flow Charts: application submission, CDBG environmental review, loan dispersal, and others as deemed necessary by HOPE, Food Trust and the City
- c. Eligibility criteria and documentation checklist. See eligibility criteria outlined in **EXHIBIT C**.
- d. Loan underwriting criteria. Further develop and build upon the underwriting criteria in **EXHIBIT C**.
- e. CDBG Environmental checklist
- f. Exceptions Request from Eligibility Criteria Policy
- g. Applications
- h. Forgivable Loan Criteria. Develop eligibility requirements for when applicants will be recommended to receive forgivable loans. Develop maximum proportion of financial packages to be permitted as forgivable loan. Develop additional performance criteria for achieving loan forgiveness at the end of the five-year term.
- i. Acceptable uses of loan funds. See **EXHIBIT C**.
- j. Guidelines for Loan Awards. Further develop and build upon the guidelines for loan awards in **EXHIBIT C**.
- k. Guidelines for acceptable receipts
- l. Procedures for loan disbursal
- m. Award agreement
- n. Loan agreements
- o. Guaranty agreements
- p. Covenants
- q. Intermediary agreements
- r. Default procedures.

- s. Policies and procedures to ensure all program activities are carried out in accordance with CDBG regulations
 - t. Develop performance, financial, CDBG monitoring and reporting plans that demonstrate effective reporting mechanisms to track each project funded by the FFRI program from point of first contact to project completion in compliance with criteria for monitoring, management and reporting on grants and loans detailed in TASKS 6 and 7 and **Article 1, Section 1.3 Reporting.**
 - u. Frequently Asked Questions
 - v. Glossary of Terms
 - w. Top ten tips for applicants
 - x. Other documents as deemed necessary by the Sub-recipient and the City.
- Task 1.3 Methodology for Evaluating Applicants. Build upon and further develop the evaluation criteria described in **EXHIBIT C.**
- Task 1.4 Comprehensive Outreach Plan. Create a Comprehensive Outreach Plan that includes the following:
- a. FFRI program outreach materials
 - b. Strategies and schedules for:
 - i. holding public information sessions with community partners and residents;
 - ii. marketing and promoting FFRI program throughout New Orleans and Louisiana to cultivate appropriate applications from supermarket operators and other fresh food retailers;
 - iii. convening industry meetings to discuss FFRI program to build interest;
 - iv. attending and presenting at relevant conferences, trade shows and other events;
 - v. developing a database of economic and community development contacts;
 - vi. marketing and promoting the FFRI program through various media outlets and publications, both mainstream and industry; and
 - vii. other activities as deemed necessary by the Sub-recipient and the City.
- Task 1.5 Interest Rate Policy. Establish a policy for determining the interest rate for loans to be made through the FFRI program.
- Task 1.6 Develop program targets for indicators listed in **Article 1, Section 3.2.a.**

Task 2: Program Outreach: Task 2 includes activities associated with implementing the Comprehensive Program Outreach Plan developed in Task 1. Specific activities are detailed below. Responsibilities for this Task are delineated as follows:

- HOPE shall be responsible for Task 2.7
- The Food Trust shall be responsible for Tasks 2.1 through 2.6 and 2.8
- Together, HOPE and Food Trust shall be responsible for Tasks 2.9, 2.10 and 2.11

Task 2.1 Implement comprehensive outreach plan designed in Task 1;

Task 2.2 Market the FFRI Program throughout New Orleans and elsewhere in Louisiana to cultivate appropriate applications from supermarket operators and other fresh

- food realtors;
- Task 2.3 Serve as the initial point of contact for inquiries and applications;
- Task 2.4 Conduct public information sessions with community groups and convene industry meetings when appropriate to promote and field questions about the FFRI Program;
- Task 2.5 Cultivate strong relationships with wholesalers, operators, and industry associations in an effort to leverage robust and diverse applications for FFRI.
- Task 2.6 Conduct site visits as appropriate to the proposed project location;
- Task 2.7 Examine the developer and/or operator's degree of management experience;
- Task 2.8 Assess the track record of the applicant by visiting other stores owned and operated by the applicant to examine the quality and accessibility of local competition when appropriate;
- Task 2.9 Compile a database of economic and community development contacts with potential interest in the FFRI program;
- Task 2.10 Act as a liaison between underserved communities with development opportunities and the supermarket industry by helping to identify potential sites, and inform the supermarket industry about opportunities for development; and
- Task 2.11 Other activities as deemed necessary by the Sub-recipient and the City.

Task 3: Evaluation of Fresh Food Retail Applicants: Task 3 includes activities associated with evaluating applicants and proposals based on the criteria and methodology developed in addition to formulating recommendations to the City. Specific activities are detailed below. Responsibilities for this Task are delineated as follows:

- HOPE shall be responsible for Task 3.4
- The Food Trust shall be responsible for Tasks 3.1 and 3.2
- Together, the Sub-recipients shall be responsible for Tasks 3.3, 3.5 and 3.6

- Task 3.1 Evaluate FFRI program applicants to determine if proposed projects are located in an underserved area and meet eligibility guidelines.
- Task 3.2 Conduct in depth analyses of the proposals to assess:
 - a. project scope,
 - b. potential for community impact,
 - c. accessibility of the site location to disadvantaged populations,
 - d. site geography
 - e. local support for the proposed project,
 - f. conduct interviews with applicants, community leaders, economic development authorities, and other key stakeholders as necessary,
 - g. review all available project materials, and
 - h. other methods as deemed necessary by the Sub-recipients and the City.
- Task 3.3 Conduct market research to
 - a. examine of the quality and accessibility of local competition,
 - b. create a demographic profile of the Census tract in which the site is located, and
 - c. other methods as deemed necessary by the Sub-recipients and the City.
- Task 3.4 Evaluate financial readiness of applicants assessing whether or not they will be able to:

- a. service their debt,
 - b. implement their business plan,
 - c. repay the loan in accordance with program requirements, and
 - d. other methods as deemed necessary by the Sub-recipients and the City.
- Task 3.5 Utilize the evaluation criteria and the methodology for evaluating applicants created in Task 1 to evaluate applicants.
- Task 3.6 Prepare and submit to the City a written evaluation based on the evaluation criteria for proposals developed and contained in **EXHIBIT C**.

Task 4: Provision of Financing: Task 4 includes activities associated with awarding forgivable and low-interest loans, underwriting loans, executing loan awards and closings and otherwise administering financial assistance. HOPE shall provide a funding match equivalent to \$7,000,000 to supplement the use of D-CDBG funds in loan packages as further set forth in the CEA between HOPE, Food Trust and the City effective as of December 15, 2013, the Settlement Agreement, and this Agreement. Specific activities are detailed below. Responsibilities for this Task are delineated as follows:

- HOPE shall be responsible for Task 4
 - Together, Sub-recipients shall be responsible for Task 4.3 and 4.5
- Task 4.1 Determine the appropriate combination of forgivable loans and low interest loans to be made available for each project approved;
- Task 4.2 Underwrite all loans in accordance the underwriting criteria established in Task 1.2.d;
- Task 4.3 Re-confirm eligibility with program requirements prior to each loan closing;
- Task 4.4 Submit a narrative evaluation of approved applicants and draft financial packages to the City;
- Task 4.5 Execute loan awards and closings following completion of environmental review detailed in **Article 1, Section 5**;
- Task 4.6 Work with financial institution(s) providing permanent financing to provide a single closing for all finances; and
- Task 4.7 Others as deemed necessary by the Sub-recipients and the City.

Task 5: Technical Assistance: Task 5 includes activities associated with making available technical assistance when appropriate to operating quality fresh food retail outlets in underserved communities, whether through direct provision or referral. When applicants have been approved to proceed to Step 2 in the application process and a request is made by applicant for technical assistance, then the Sub-recipients will use funds from the technical assistance line items in their program administration budgets included as EXHIBIT B to cover the costs associated with technical assistance where services are not offered free of charge by outside service providers, subject to the availability of technical assistance line items as provided in EXHIBIT B. Best efforts shall be used to accommodate requests for technical assistance. Specific activities are detailed below:

Responsibilities for this Task are delineated as follows:

- HOPE shall be responsible for Task 5.2: HOPE will ensure that any technical assistance which it provides is not in conflict with its fiduciary responsibility.
- The Food Trust shall be responsible for Tasks 5.1, 5.3, 5.4, and 5.6

- Together, Sub-recipients shall be responsible for Task 5.5

- Task 5.1 Refer applicants to outside sources to obtain assistance in developing and updating business plans and proposals;
- Task 5.2 Refer applicants to outside sources to obtain assistance in budgeting, developing pro formas, and other financial assistance;
- Task 5.3 Developing and implementing marketing strategies;
- Task 5.4 Developing skills to manage fresh produce;
- Task 5.5 Refer applicants to outside sources for assistance acquiring Electronic Benefit Transfer (EBT) technology to accept Food Stamps and WIC;
- Task 5.6 Referrals to suppliers, including local farmers markets; and
- Task 5.7 Others as deemed necessary by the Sub-recipients and the City.

Task 6: CDBG Compliance: Task 6 includes activities associated with ensuring and documenting that program delivery activities and project activities of the FFRI program awardees meet all standards of CDBG compliance. Specific activities are detailed below. Responsibilities for this Task are delineated as follows:

- HOPE shall be responsible for Task 6

- Task 6.1 Ensure compliance with all CDBG requirements as listed in **EXHIBITS E, F and G** of the contract;
- Task 6.2 Document how each award benefits low and moderate income persons (24 CFR 570.483);
- Task 6.3 Maintain financial records in accordance with uniform administrative requirements (24 CFR 570-502 and 24 CFR 84.21);
- Task 6.4 Ensure that each awardee has cleared environmental review (24 CFR 570.604) and the Uniform Relocation and Real Properties Acquisition Policies Act (24 CFR 570.606) and Section 104(d) of the Housing and Community Development Act of 1974, as relevant, prior to the disbursement of funds to that awardee;
- Task 6.5 Ensure that awardees are compliant with labor standards (24 CFR 570.603);
- Task 6.6 Assign a project manager to the FFRI Program who will be responsible for ongoing monitoring of the project to ensure compliance;
- Task 6.7 Require all contractors and grant recipients to have policies and procedures to ensure affirmative marketing, program compliance, efficiency and timeliness;
- Task 6.8 Conduct quarterly site visits to all funded stores to monitor compliance with CDBG regulations, both during construction (if applicable) and after occupancy; and
- Task 6.9 Others as deemed necessary by the Sub-recipients and the City.

Task 7: Monitoring and Reporting: Task 7 includes activities associated with monitoring FFRI program effectiveness and impact and award recipients per standard loan protocol and CDBG regulations. Activities shall include but are not limited to the list below. Responsibilities for this Task are delineated as follows:

- HOPE shall be responsible for Tasks 7.1 through 7.4, 7.6, and Tasks 7.11.a and 7.11.d

- The Food Trust shall be responsible for Tasks 7.7 through 7.10 and shall monitor all projects but only through contract termination date, and beyond provided that there is available funding
- Together, the Sub-recipients shall be responsible for Tasks 7.5 and 7.11.b through 7.11.c

Task 7.1 Monitor loans in accordance with monitoring plans developed in Task 1. Coordinate with the City's monitoring activities.

Task 7.2 Make customary and reasonable efforts to collect on loans as prescribed in default procedures developed in Task 1.

Task 7.3 Furnish all FFRI award recipients with an award agreement developed in Task 1 detailing joint responsibilities, including but not limited to:

- a. Ensuring that award funds are used only for the purposes stated in the approved project application in accordance with all CDBG requirements. Any significant changes to an approved project should be reported to the City, HOPE and The Food Trust immediately. Funding may be revoked for failure to report changes or where changes made to a project are determined to reduce its effectiveness or adherence to the program objectives.
- b. Monitoring the performance of all project activities and ensuring that the work is completed within the established time frame.

Task 7.4 Send the City a copy of any contract or secondary agreement related to the project.

- a. Award recipient shall retain documents providing evidence of the use of the award fund for five years from the date of disbursement of the initial award payment.
- b. Award recipient shall retain documents providing evidence of compliance with CDBG provisions for construction (**EXHIBIT G**).

Task 7.5 If Sub-recipients contract any other partners during the course of administration of the FFRI Program, it is the Sub-recipients' responsibility to ensure all partners are in full compliance with their contract with the City and the FFRI program rules.

Task 7.6 Cooperate with any audits performed by City or the State.

Task 7.7 Monitor all projects to ensure that awarded funds are used only for the purposes stated in the approved project application and that each project meets established benchmarks and timeframes.

Task 7.8 Evaluate the FFRI Program's ongoing impact in the community.

Task 7.9 Conduct subsequent follow-up with fresh food providers and community contacts as necessary to evaluate community impact through contract period.

Task 7.10 Demonstrate that awarded projects are geographically diverse throughout underserved areas of the parish through contract period.

Task 7.11 Provide the following reports in compliance with **Article 1, Section 3 Reporting:**

- a. financial reports,
- b. progress reports,
- c. A final report that includes case studies of funded project, and
- d. A final financial status report.

EXHIBIT E

CDBG PROGRAM ADMINISTRATION AND COMPLIANCE

1. General Compliance

The Sub-recipient agrees to comply with the requirements of title 24 of the Code of Regulations Part 570 (<http://www.gpoaccess.gov/cfr/index.html>); 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and with all other applicable Federal, state, and local laws and all applicable Office of Management and Budget Circulars. (<http://www.whitehouse.gov/omb/circulars/>). Sub-recipients further agree to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

2. Performance Monitoring

Sub-recipient's performance will be monitored by the City against the Performance Measures as stated in **Article 1, Section 3 of the Agreement**. Substandard performance as determined by the City will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-recipients within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.

3. Financial Management

A. Accounting Standard

The Sub-recipient agrees to comply with 2 CFR 200.302 in addition to any other applicable requirements by 2 CFR Part 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles

The Sub-recipients shall administer its program in conformance with 2 CFR Part 200 Subpart E, "Cost Principles" in addition to any other applicable requirements by 2 CFR Part 200.

4. Documentation and Record Keeping

A. Records to be Maintained

The Sub-recipients shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a.** Records providing a full description of each activity taken;
- b.** Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c.** Records required to determine the eligibility of services;
- d.** Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 2 CFR 200.333 through 200.337 in addition to any other applicable requirements by 2 CFR Part 200;
- a. Personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the OCD to assure proper accounting for all project funds; and
- h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570, regarding environmental requirements.

B. Retention

The Sub-recipients shall retain all required financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years from the date of final approval of closeout of each loan. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

C. Confidentiality of Information

The Sub-recipient acknowledges that due to the nature of the information obtained through the programs, all financial, statistical, personal, technical, and other data and information relating to applicants shall be protected by the Sub-recipient from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the City. The Sub-recipient shall implement monitoring plans to detect unauthorized access to or use of Applicant Information or any attempts to gain unauthorized access to Applicant Information. The Sub-recipient shall provide the City with immediate notification (not more than 24 hours) of the Sub-recipient's awareness of any security incident ("Security Incident") involving Applicant information. The reference to Security Incident herein may include, but not be limited to the following: successful attempts at gaining unauthorized access to Applicant Information, or the unauthorized use of a system for the processing or storage of Applicant Information, or the unauthorized use or disclosure, whether intentional or otherwise, of Applicant Information. In the event of unauthorized access to or disclosure of information, The Sub-recipient shall consult with the City regarding the necessary steps to address the factors giving rise to the Security Incident and to address the consequences of such Security Incident.

5. Close-outs

The Sub-recipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials,

equipment, unspent cash advances, program income balances, and accounts receivable to the City, and determining the custodianship of records). Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Sub-recipient has control over CDBG funds, including program income.

6. Procurement

A. Compliance

The Sub-recipient shall conduct all procurement transactions in a manner providing for full and open competition and comply with the applicable procurement regulations. SUB-RECIPIENT shall provide the City with executed copies of all subcontracts along with documentation concerning the selection process. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

B. Procurement Standards

Unless specified otherwise within this agreement, SUB-RECIPIENT shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 200.317 through 200.326 in addition to any other applicable requirements by 2 CFR Part 200.

C. Travel

Travel expenses, which must be included in the approved Budget (**EXHIBIT B**), constitute part of the total maximum payable under the contract and will only be reimbursed in accordance with Louisiana Division of Administration Policy and Procedures Memorandum 49 (the State General Travel Regulations). All out of State travel that will be charged to the CDBG program must be approved in writing by the City of New Orleans in advance.

D. Sole Source Procurement

Sub-recipient shall specifically identify all awards of sole source contracts and the rationale for making the award on a sole source basis in reports to the City and must be approved by the City in advance. All sole-source procurements will be reported to the U.S. Congress as per PL 109-148.

7. Program Income

Program income is defined in 24 CFR 570.500(a) as gross income from the use or rental of real property, owned by the recipient or by a Sub-Recipient that was constructed or improved with CDBG funds, less costs incidental to generation of the income.

Sub-Recipient HOPE is authorized by the State as a Section 105(a)(15) non-profit entity for the purpose of retaining program income not subject to CDBG rules and regulations in accordance with 24 CFR 570.489(e)(2) for use in a revolving loan fund. The City will work with HOPE to develop an intended use plan for how the revolving loan fund shall be used and HOPE will be subject to comply with the terms of the City's intended use plan. At a minimum, the revolving loan fund shall only be used for projects in the City of New Orleans.

All program income shall be reported to the City on a **monthly** basis.

8. Other Prohibited Activities

Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, inherently religious activities, lobbying, political patronage; and nepotism activities.

9. Section 3 Compliance

Sub-recipient agrees to comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3) insofar as this act applies to the performance of this Agreement. 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. HUD-assisted projects covered by Section 3 are those defined in 24 CFR 135.3 (a) (2) and (a)(3).

10. Labor Standards

The Sub-recipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended (<http://www.wdol.gov/index.html>), the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, State and Local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

11. Debarment or Suspension

No funds provided under this award may be used to pay salaries of employees or costs of consultants, contractors, or other service providers where such individuals are currently under suspension or debarment by a Federal agency. The Sub-recipient is responsible for verifying that its contractors, and each tier of subcontractors, are not on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

12. Environmental Conditions

The Sub-recipient agrees to comply, insofar as they apply to the performance of this agreement, with all applicable standards, or regulations issued pursuant to: HUD Environmental Review Procedures 24 CFR Part 58, the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B; and the National Historic Preservation Act of 1966; as amended (16 U.S.G.470). In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), Sub-recipients shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition and construction purposes. To the extent that the City has agreed to perform activities for compliance with such provisions, Sub-recipients is nonetheless responsible to ensure that

issuance or funding of a loan or forgivable loan does not occur in the absence of compliance with these provisions.

13. Conflict of Interest

The Sub-recipient agrees to abide by the provisions of 2 CFR 200.11 and 570.611, which include (but are not limited to) the following:

- a) The Sub-recipients shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- a) No employee, officer or agent of the Sub-recipients shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- b) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Sub-recipients, or any designated public agency.

14. Subcontract Provisions

Sub-recipients will include the provisions of all of the provisions of this exhibit, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

EXHIBIT F
HUD COMPLIANCE PROVISIONS
FOR SUB-RECEPIENT
CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

CONTENTS

1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)
2. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
4. CERTIFICATION OF NONSEGREGATED FACILITIES
5. CIVIL RIGHTS
6. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF
1974
7. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 -
COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND
BUSINESS OPPORTUNITIES (Section 3 Clause)
8. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
9. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED
10. AGE DISCRIMINATION ACT OF 1975
11. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS
12. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS
AND ACCIDENT PREVENTION
13. FLOOD DISASTER PROTECTION
14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS
15. INSPECTION
16. REPORTING REQUIREMENTS
17. CONFLICT OF INTEREST
18. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246,
AS AMENDED
19. PATENTS
20. COPYRIGHT
21. TERMINATION FOR CAUSE
22. TERMINATION FOR CONVENIENCE
23. ENERGY EFFICIENCY
24. SUBCONTRACTS
25. DEBARMENT, SUSPENSION, AND INELIGIBILITY
26. PROTECTION OF LIVES AND HEALTH
27. BREACH OF CONTRACT TERMS
28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED
29. CHANGES
30. PERSONNEL
31. ANTI-KICKBACK RULES
32. ASSIGNABILITY
33. INTEREST OF CONTRACTOR
34. POLITICAL ACITIVITY
35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET
36. DISCRIMINATION DUE TO BELIEFS
37. CONFIDENTIAL FINDINGS
38. LOBBYING

- 39. FEDERAL LABOR STANDARDS PROVISIONS
- 40. SOLID WASTE DISPOSAL ACT
- 41. CONFIDENTIALITY
- 42. REPAYMENT OF FUNDS
- 43. DUPLICATION OF BENEFITS
- 44. LIMITED ENGLISH PROFICIENCY (LEP)

- 1. **EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**
(applicable to contracts and subcontracts exceeding \$10,000)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- C. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Contractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS**
(applicable to contracts and subcontracts exceeding \$10,000)

A. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

(4) "Minority" includes:

- (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);
- (c) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

- B. When the Contractor, or any contractor, at any time, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60 4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Contractor or Contractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or contractors toward a goal in an approved Plan does not excuse any covered Contractor's or contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G(1) through G(16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal

Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason

therefore, along with whatever additional actions the Contractor may have taken.

- (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G(2) above.
- (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on a bulletin board accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Contractors with whom the Contractor does or anticipates doing business.
- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female

students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60 3.
- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitation to minority and female Contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G (1) through G (16)). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Contractor actively participates in the group, makes every

effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.

- I. A single goal for minorities and a separate single goal for women has been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to E.O. 11246.
- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to E.O. 11246, as amended.
- M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60 4.8.
- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprenticeship trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

3. **NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION**
(applicable to contracts and subcontracts exceeding \$10,000)

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed.

With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60 4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60 4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60 4. Compliance with the goals will be measured against the total work hours performed.

- C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.

- D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, parish, and city, if any):

4. **CERTIFICATION OF NONSEGREGATED FACILITIES**
(applicable to contracts and subcontracts exceeding \$10,000)

By the submission of this bid, the bidder, offeror, applicant or Contractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed contractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed contractors (except where proposed contractors have submitted identical certifications for specific time periods).

5. **CIVIL RIGHTS**

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

6. **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the

grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

7. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - (Section 3 Clause)** (applicable to contracts and subcontracts exceeding \$100,000 funded by Section 3 covered assistance)

During the performance of this contract, the Contractor agrees as follows:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (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 contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment 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 understanding, 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 Contractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any Contractor where the Contractor has notice or knowledge that the Contractor 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 contract 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 contract 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 contract. 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 contract 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).
8. **SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**
(applicable to contracts and subcontracts exceeding \$10,000)
- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

9. **SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

10. **AGE DISCRIMINATION ACT OF 1975**

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

11. **CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**
(applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all contractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt Contractors and contractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or contractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c 8) and Section 308 of the

Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.

- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

12. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION

A. Lead-Based Paint Hazards

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and contractors shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

B. Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals and Safety Devices (Modify as Required)

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may

have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

13. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93 234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The State of Louisiana, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of three (3) years from the official date of the State's final closeout of the grant.

15. INSPECTION

The authorized representative and agents of the State of Louisiana and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

16. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

17. CONFLICT OF INTEREST

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

18. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED

(applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

19. PATENTS

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

20. **COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copy-right purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

21. **TERMINATION FOR CAUSE**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to

the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

22. TERMINATION FOR CONVENIENCE

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

23. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

24. SUBCONTRACTS

- A. The Contractor shall not enter into any subcontract with any contractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of Louisiana.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's contractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind contractor to the Contractor by the terms of the contract documents insofar as applicable to the work of contractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any Contractor and the Owner.

25. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its contractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 CFR 200.213 (government debarment and suspension regulations).

26. PROTECTION OF LIVES AND HEALTH

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Owner may determine to be reasonably necessary.

27. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

29. CHANGES

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

30. PERSONNEL

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

31. ANTI-KICKBACK RULES

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the contractors with such regulations, and shall be responsible for the submission of affidavits required of contractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

32. ASSIGNABILITY

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

33. INTEREST OF CONTRACTOR

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

34. POLITICAL ACTIVITY

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars 2 CFR 200, as they relate to the use of Federal funds under this contract.

36. DISCRIMINATION DUE TO BELIEFS

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

37. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

38. LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

39. FEDERAL LABOR STANDARDS PROVISIONS

The Contractor shall abide by the requirements of the Federal Labor Standards Provisions (form HUD-4010) as follows.

**Federal Labor Standards Provisions
U.S. Department of Housing and Urban Development
Office of Labor Relations**

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its contractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Contractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all contractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the Contractor or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or contractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Contractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The Contractor or Contractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Contractor or lower tier Contractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a Contractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its contractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No Contractor or Contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or

permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Contractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or contractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or contractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The Contractor or contractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Contractor or lower tier contractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each contractor. The Contractor shall take such action with

respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

40. SOLID WASTE DISPOSAL ACT

The Grantee shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements listed below include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) AT 40 CFR part 247 containing the highest percentage of recovered materials, practicable, consistent with maintaining a satisfactory level of competition.

Applicability.(a)(1) This guideline applies to all procurement actions using federal funding and involving items designated by EPA in this part, where the purchase price of the item exceeds \$10,000, the value of the quantity acquired by the preceding fiscal year exceeds \$10,000. This guideline shall require that all solid waste management services procurements are conducted in a manner that maximizes energy and resource recovery. (2) This guideline applies to any public agency using appropriated Federal funds to procure designated items, and to persons contracting with any such agencies with respect to work performed under such contracts. (3) The \$10,000 threshold applies to public agencies as a whole rather than to agency subgroups such as regional offices or sub-agencies of a larger department or agency.

(b) The term *procurement actions* includes:

(1) Purchases made directly by a procuring agency or purchases made directly by any person (e.g., a contractor) in support of work being performed for a procuring agency using federal funds

(2) Any purchases of designated items made "indirectly" by a procuring agency, as in the case of procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.

(c)(1) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds disbursement to, a procuring agency.

41. CONFIDENTIALITY

The Contractor shall comply with the Confidentiality regulations, per 24 CFR 574.440. Per 24 CFR 574.440, "the grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance." The Contractor shall ensure all documentation and written agreements protect the confidentiality of all individuals/agencies funded or receiving any assistance under this grant.

42. REPAYMENT OF FUNDS

The Contractor acknowledges that funds provided through this Agreement are Federal funds administered by HUD and that all funds provided by this Agreement are subject to audit, disallowance, and repayment. Any disagreement with adverse findings by HUD may be challenged pursuant to Federal regulations, however, the Contractor shall promptly return to Grantee any and all funds that are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compliance, no matter the cause. This clause shall survive indefinitely the termination of this Agreement for any reason.

43. DUPLICATION OF BENEFITS

The Contractor shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5155). HUD has published guidance in the Federal Register on November 16, 2011 (76 Fed. Reg. 71060) regarding compliance with duplication of benefits requirements.

44. LIMITED ENGLISH PROFICIENCY (LEP)

Assistance to Those with Limited English Proficiency. The Contractor agrees to take all reasonable actions to communicate with persons who have Limited English Proficiency (LEP) to ensure that such persons have meaningful access and an equal opportunity to participate in the program(s) and/or services funded under this Agreement.

GRANTEE STATEMENT OF ASSURANCES
REVISED 6/17/10

This Applicant/Grantee/Subrecipient hereby assures and certifies that:

1. It possesses legal authority to apply for a Community Development Block Grant ("CDBG") and to execute the proposed CDBG program.
2. Its governing body has duly adopted, or passed as an official act, a resolution, motion, or similar action authorizing the filing of the CDBG application and directing and authorizing the person identified as the official representative of the Applicant/Grantee/Subrecipient to act in connection with the application, sign all understandings and assurances contained therein, and to provide such additional information as may be required.
3. It has facilitated citizen participation by providing adequate notices containing the information specified in the program instructions and by providing citizens an opportunity to review and submit comments on the proposed application.
4. Its chief executive officer, or other officer or representative of Applicant/Grantee/Subrecipient approved by the State:
 - a. Consents to assume the status of a responsible federal official under the National Environmental Policy Act of 1969 (42 U.S.C.A. §4331, et seq.) insofar as the provisions of such Act apply to the proposed CDBG Program; and
 - b. Is authorized and consents, on behalf of the Applicant/Grantee/Subrecipient and himself, to submit to the jurisdiction of the federal courts for the purpose of enforcement of Applicant/Grantee/Subrecipient's responsibilities and his or her responsibilities as an official.
5. It will develop the CDBG program and use CDBG funds so as to give maximum feasible priority to activities that will benefit low and moderate income families, low and moderate income employment, and/or aid in the prevention or elimination of slums or blight, or meet other community development needs having a particular urgency.
6. It will comply with the following applicable federal grant management regulations, policies, guidelines, and/or requirements as they relate to the application, acceptance, and use of federal funds: OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments) as amended and made part of State regulations; A-102 (Grants and Cooperative Agreements with State and Local Governments), as amended and made part of State regulations; OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), revised; OMB Circular A-21 (Cost Principles for Educational Institutions); A-122 (Cost Principles for Non-Profit Organizations); 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).
7. It will administer and enforce the labor standards requirements set forth in 24 CFR §570.603 and any other regulations issued to implement such requirements.
8. It will comply with the provisions of Executive Order 11988, as amended by Executive Order 12148, relating to evaluation of flood hazards, and Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution.

9. It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided to Applicant/Grantee/Subrecipient to comply with any accessibility requirements, as required by Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.). The Applicant/Grantee/Subrecipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.

10. It will comply with:

- a. Title VI of the Civil Rights Acts of 1964, 42 U.S.C. §2000d et seq., as amended, and the regulations issued pursuant thereto (24 CFR Part 1), which provide that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant/Grantee/Subrecipient receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the Applicant/Grantee/Subrecipient, this assurance shall obligate the Applicant/Grantee/Subrecipient, or in the case of any transfer of such property, any transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.
- b. Section 104 (b) (2) of Title VIII of the Civil Rights Act of 1968 (42 U.S.C.A. §3601, et seq.), as amended, which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.
- c. Section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §5309), and the regulations issued pursuant thereto (24 CFR Part §570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.
- d. Executive Order 11063, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertains to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
- e. Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in

all phases of employment during the performance of federal or federally assisted construction contracts. Further, contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training and apprenticeship.

- f. Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall, solely, by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.
11. The work to be performed by Grantee is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (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.

Grantee agrees to comply with HUD's regulations in 24 CFR part 135, which implement section 3. Grantee also certifies that there are under no contractual or other impediment that would prevent it from complying with the part 135 regulations.

Grantee agrees to send to each labor organization or representative of workers with which the Grantee has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Grantee'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.

Grantee agrees to include this section 3 clause in every subrecipient agreement and contract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of such contract or in this section 3 clause, upon a finding that the subrecipient or contractor is in violation of the regulations in 24 CFR part 135. Grantee will not contract with any subrecipient or contractor where the contractor has notice or knowledge that the subrecipient or contractor has been found in violation of the regulations in 24 CFR part 135.

The Grantee will certify that any vacant employment positions, including training positions, that are filled (1) after the Grantee is selected but before the contract 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 Grantee's obligations under 24 CFR part 135.

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.

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).

12. It will minimize displacement of persons as a result of activities assisted with CDBG funds. In addition, it will:
 - a. Comply with Title II (Uniform Relocation Assistance) and Sections 301-304 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Chapter 61), and HUD implementing instructions at 24 CFR Part 42 and 24 CFR §570.606; and
 - b. Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42; and
 - c. Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all persons displaced as a result of acquisition of real property for an activity assisted under the CDBG Program. Such payments and assistance shall be provided in a fair, consistent and equitable manner that ensures that the relocation process does not result in different or separate treatment of such persons on account of race, color, religion, national origin, sex or source of income; and
 - d. Assure that, within a reasonable period of time prior to displacement, comparable decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex, or source of income; and
 - e. Assure that if displacement is precipitated by CDBG funded activities that require the acquisition (either in whole or in part) of real property, all appropriate benefits required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq., Pub. L. 91-646) and amendments thereto shall be provided to the displaced person(s). Persons displaced by rehabilitation of "Non-Uniform Act" acquisition financed (in whole or in part) with CDBG funds shall be provided relocation assistance in accordance with one of the following: (1) the acquisition and relocation requirements of the Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970, as required under 24 CFR Section 570.606 (a) and HUD implementing regulations at 24 CFR Part 42; (2) the requirements in 24 CFR Section 570.606 (b) governing the Residential Antidisplacement and Relocation Assistance Plan under Section 104 (d) of the Housing and Community Development Act of 1974; (3) the relocation requirements of Section 104 (k) of the Act; (4) the relocation requirements of 24 CFR Section 570.606 (d) governing optional relocation assistance under Section 105 (a) (11) of the Act; and (5) the provisions of 24 CFR Part 511.10 (h) (2) (iii) rental Rehabilitation Program.

13. It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties, in accordance with CDBG regulations.
14. It will comply with the provisions of the Hatch Act that limit the political activity of employees and the HUD regulations governing political activity at 24 CFR §570.207.
15. It will give the State and HUD, and any of their representatives or agents, access to and the right to examine all records, books, papers, or documents related to the grant.
16. It will ensure that the facilities under Applicant/Grantee/Subrecipient's ownership, lease or supervision utilized in the accomplishment of the CDBG Program are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and that it will notify HUD of the receipt of any communication from the EPA Office of Federal Activities indicating that a facility to be used in the CDBG Program is being considered for listing by the EPA as a violating facility.
17. With regard to environmental impact, it will comply with the National Environmental Policy Act of 1969 (42 U.S.C. §4321-4347), and Section 104(f) of the Housing and Community Development Act of 1974 (42 U.S.C. §5304(d)).
18. It will comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), as amended, Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. §469a-1 et. seq.), as amended, by:
 - a. Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800) by the proposed activity; and
 - b. Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
19. It will comply with the provisions in 24 CFR §570.200(c) regarding special assessments to recover capital costs.
20. It will adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individual engaged in non-violent Civil Rights demonstrations and will enforce applicable state and local laws against physically barring

entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

21. It certifies that no federally appropriated funds will be used for any lobbying purposes regardless of the level of government.
22. It will abide by and enforce the conflict of interest requirement set forth in 24 CFR §570.611, 24 CFR §85.36 and 24 CFR §84.42.
23. It will comply with HUD rules prohibiting the use of CDBG funds for inherently religious activities, as set forth in 24 CFR §570.200(j).
24. Activities involving new building construction, alterations, or rehabilitation will comply with the Louisiana State Building Code.
25. In relation to labor standards, it will comply with:
 - a. Section 110 of the Housing and Community Development Act of 1974, as amended and as set forth in 24 CFR §570.603.
 - b. Davis-Bacon Act, as amended (40 U.S.C. §3141 et seq.).
 - c. Contract Work Hours and Safety Standards Act (40 U.S.C. §327 et seq.).
 - d. Federal Fair Labor Standards Act (29 U.S.C. §201 et seq.).
26. It will comply with the flood insurance purchase requirement of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. §4001 et seq., which requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of HUD as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal funding.
27. It will comply with the Farmland Protection Policy Act, 7 U.S.C.A. §4201 et seq., which requires recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses.
28. It will comply with Sections 1012 and 1013 of Title X of the Housing and Community Development Act of 1992 (Public Law 102-550, as amended). The regulation appears within Title 24 of the Code of Federal Regulations as part 35 (codified in 24 CFR 35). The purpose of this regulation is to protect young children from lead-based paint hazards in housing that is financially assisted by the Federal government or sold by the government. This regulation applies only to structures built prior to 1978.
29. It will comply with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et seq.).

30. It will comply with the Clean Air Act (42 U.S.C. §7401, et seq.), which prohibits engaging in, supporting in any way, or providing financial assistance for, licensing or permitting, or approving any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards.
31. In relation to water quality, it will comply with:
- a. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) et seq. and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal draining water source for an area; and
 - b. The Federal Water Pollution Control Act of 1972, as amended, including the Clear Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.
32. It will comply with HUD Environmental Standards (24 CFR, Part 51 and 44 F.R. 40860-40866).
33. With regard to wildlife, it will comply with:
- a. The Endangered Species Act of 1973, as amended (16 U.S.C. §1531 et seq.). Federally authorized and funded projects must not jeopardize the continued existence of endangered and threatened species or result in the destruction of or modification of habitat of such species which is determined by the U.S. Department of the Interior, after consultation with the state, to be critical; and
 - b. The Fish and Wildlife Coordination Act of 1958, as amended, (16 U.S.C. §661 et seq.) which requires that wildlife conservation receives equal consideration and is coordinated with other features of water resource development programs.

Signing these assurances means that Applicant/Grantee/Sub recipient agrees to implement its program in accordance with these provisions. Failure to comply can result in serious audit and/or monitoring findings that require repayment of funds to the State or expending Applicant/Grantee/Sub recipient funds to correct deficiencies.

GRANTEE

DocuSigned by:
By: Alan Branson
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Title: CFO

This 17th day of January, 2023.