

CELESTE LANDING AFFORDABLE HOUSING RENTALS

RECITALS

WHEREAS, funds allocated to the City under the HOME Program are to be used to strengthen the relationship between the City and organizations which serve the housing needs of

1 low-income persons within the community,

2 **WHEREAS**, the City of New Orleans will follow the federal rules and regulations that
3 governs the HOME Program Grant from the U.S. Department of Housing and Urban Development
4 (“**HUD**”) (CFDA#14.239) as provided under the provisions of HOME Program which is listed in
5 the Catalog of Federal Domestic Assistance (“**CFDA**”) and is assigned CFDA number 14.239;

6 **WHEREAS**, funds used for repayment of HOME funds provided to the City shall be subject
7 to HOME requirements;

8 **WHEREAS**, the City desires to address the priority requirement of the HOME Program,
9 which is the provision of decent, safe, and sanitary housing that is affordable to low-income
10 households;

11 **WHEREAS**, the Developer is a Louisiana limited liability company serving the housing
12 needs of the community, and it has demonstrated the desire and ability to provide decent, safe, and
13 sanitary housing, which is affordable to low-income households;

14 **WHEREAS**, the Developer and the City, through the Office of Community Development
15 (“**OCD**”), have agreed to implement specific HOME-funded activities in accordance with the
16 HOME Program regulations;

17 **WHEREAS**, the Developer understands that any funding the City provides under this
18 Agreement is conditional upon the completion of an environmental review; and

19 **WHEREAS**, this Agreement shall serve as a binding agreement and commitment to fund
20 between the City and the Developer.

21 **NOW, THEREFORE**, the City and the Developer, for the considerations and under the
22 conditions set forth herein do hereby agree as follows:

23 **ARTICLE I – DEFINITIONS**

24 As used in this Agreement, the following terms have the meanings defined below:

25 *A. Program Income* - means gross income received by the participating jurisdiction, State recipient,
26 or Owner directly generated from the use of HOME funds or matching contributions. When
27 program income is generated by housing that is only partially assisted with HOME funds or matching
28 funds, the income shall be prorated to reflect the percentage of HOME funds used. Program income
29 includes, but is not limited to, the following:

1 (1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated,
2 or constructed with HOME funds or matching contributions;

3 (2) Gross income from the use or rental of real property, owned by the participating jurisdiction,
4 State recipient, or Owner, that was acquired, rehabilitated, or constructed, with HOME funds or
5 matching contributions, less costs incidental to generation of the income (*Program income* does not
6 include gross income from the use, rental or sale of real property received by the project owner,
7 developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the
8 participating jurisdiction, Owner or State recipient);

9 (3) Payments of principal and interest on loans made using HOME funds or matching contributions;

10 (4) Proceeds from the sale of loans made with HOME funds or matching contributions;

11 (5) Proceeds from the sale of obligations secured by loans made with HOME funds or matching
12 contributions;

13 (6) Interest earned on program income pending its disposition; and

14 (7) Any other interest or return on the investment permitted under §92.205(b) of HOME funds or
15 matching contributions.

16 B. "Senior Lender" means Capital One, National Association.

17 C. "Senior Loan" means the Construction Loan financing provided by the Senior Lender.

18 D. "Senior Loan Mortgage" means that certain Multiple Indebtedness Mortgage, Assignment of
19 Leases and Security Agreement dated on or around the date hereof made by Developer to Capital
20 One, National Association which Senior Loan Mortgage shall constitute a mortgage lien on the
21 Property senior to the Leasehold Mortgage.

22 23 ARTICLE II - DEVELOPER'S OBLIGATIONS

24 The Developer agrees to take on the following obligations:

25 **A. NOFA Application.** Developer agrees to comply with the terms and conditions of the
26 Developer's response to the Notice of Funding Availability ("NOFA") application and the
27 application itself. The responses to the NOFA application and the application itself are
28 incorporated herein by reference and made a part hereof, including the Project Description
29 and the Sources and Uses.

1 **B. Provision of Housing Development Services.** Developer agrees to use the HOME provided
2 hereunder to develop **20 rental units** for persons or families who meet income eligibility
3 standards.

4 **C. Compliance with HOME Regulations and HUD Notices.** The Subrecipient, as well as
5 any of its sub-Sub-recipients, shall:

6 **1. In general.** Comply with the federal regulations published in Volume 24, Part
7 92, of the *Code of Federal Regulations* (24 CFR 92), as well as all federal
8 regulations and requirements incorporated therein by reference, whether specifically
9 discussed herein or not.

10 **2. Uniform Administrative Requirements.** Comply with the applicable Uniform
11 Administrative Requirements as described in 2 CFR 200.

12 **3. Procurement.** Comply with the procurement standards in 2 CFR §200.318 -
13 §200.326 when procuring property and services under this Agreement.

14 **4. Notices.** Comply with all applicable Notices and directives promulgated by the
15 U.S. Department of Housing and Urban Development.

16
17 **D. Affordable Housing Units.** Developer agrees to ensure that all housing units acquired,
18 developed, produced, or otherwise assisted with HOME funds provided under this
19 Agreement are “affordable” to low-income households, as defined in §92.252 and
20 §92.254, for the applicable “Period of Affordability.” The Developer understands that
21 repayment of funds is required for the period of time that the housing does not the
22 aforementioned affordability requirements. Developer hereby acknowledges that the
23 affordability requirements must be enforced by deed restrictions recorded against
24 HOME-assisted properties, and undertakes the responsibility for ensuring all required
25 deed restrictions are properly executed and recorded. The deed restrictions are provided
26 by the City in the form of a Regulatory Agreement, Secured Promissory Note, and the
27 Act of Mortgage for projects with rental units. (Collectively, these three contracts and
28 this Agreement constitute the “**Loan Documents.**”)

29 **E. Rental Projects.** The following requirements apply to tenant-occupied projects:

- 1 1. HOME Rents. For rental units in a HOME-assisted project, the Developer agrees to
2 obtain the City's approval of a Rent Schedule, which includes applicable utility
3 allowances. Said Rent Schedule must demonstrate the compliance of each project
4 with HOME Regulations as they relate to the "affordability" of HOME-assisted rental
5 housing for low and very-low income persons, as per §92.252. The currently
6 applicable HOME rents, as well as the procedures for rent increases, are available
7 from OCD.
- 8 2. Leases. The Contactor shall ensure that leases are executed with all tenants residing
9 in HOME-assisted units. A Section 8 Program lease may be used when renting to a
10 Section 8 tenant.
- 11 3. Tenant Selection. In accordance with §92.253(d), the Developer agrees to adopt and
12 maintain written tenant selection policies.
- 13 4. Periodic Monitoring:
 - 14 a. Income Re-certification. The Developer shall re-certify the incomes of all
15 tenants not less than annually, and provide the City with copies of the Re-
16 certification Application and related documentation, or other income
17 determination method authorized under §92.203 and approved for use by
18 OCD.
 - 19 b. Site Inspections. The Developer shall make arrangements with tenants for
20 inspections of a sample of HOME-assisted units by OCD, in accordance with
21 the timetable found in §92.504(d).
 - 22 c. Rent Review. The Developer agrees to submit to OCD, not less than annually,
23 an Occupancy List, which includes the rents being charged for each HOME-
24 assisted unit. A report format for this requirement is available from OCD.

25 **F. Income Targeting.** The Developer agrees to comply with the HOME income targeting
26 requirements as outlined in §92.216 and §92.217, by ensuring that units assisted with
27 HOME funds will only be occupied by HOME income eligible households, whose

income does not exceed 80 percent of the median family income for the New Orleans Metropolitan Statistical Area (“MSA”):

1. In the case of homeownership assistance, all households must have incomes at or below 80 percent of the MSA median family income;
2. In the case of tenants, a lower income eligibility threshold applies, and the household income generally must not exceed 60 percent of the MSA median family income, unless approved by OCD.

When requested, but at least annually, the Developer must provide the City with demographic information on all HOME Program applicants, which demonstrates their compliance with the above income limitations. The determination of income eligibility is based upon the procedures found in the *Technical Guide for Determining Income and Allowances for the HOME Program* (HUD-1780-CPD).

G. Eligible Costs. The Developer shall use HOME funds only for the payment of costs associated with eligible HOME activities as identified in §92.205 and §92.206, and budgeted in accordance with the provisions of Section I, below.

H. Prohibited Activities. The Developer shall ensure that none of the funds that will be provided to Developer to implement a HOME-assisted project, will be used to fund any activity prohibited by HOME regulations, as outlined in §92.214.

I. Project Selection and Set-up. The Developer agrees to the following:

1. Site and Neighborhood Standards. The Developer will comply with the site and neighborhood standards described in §92.202 when choosing a project location.

2. Compliance with Consolidated Plan. The Developer shall ensure that the proposed project complies with the housing strategies outlined in the City's current Consolidated Plan (CP).

3. Environmental Review. The Developer shall request from OCD and obtain a written determination that the project has been subjected to an "environmental review," in accordance with §92.352 and 24 CFR 58, and that there are no environmental issues that would prohibit implementation of the project as proposed.

1 **The Developer shall not proceed with any physical development without first**
2 **receiving an environmental clearance notice and a Notice to Proceed from OCD.**

3 4. Income Eligibility. The Developer will determine income eligibility for all
4 households to be assisted with HOME funds as outlined in §92.203, prior to such
5 household's occupancy of completed HOME-assisted units.

6 5. Subsidy Layering. The Developer further agrees to provide necessary
7 documentation and information to the City to perform any required Subsidy Layering
8 Reviews.

9 6. Uniform Relocation and Real Properties Acquisition Act (URA). The Developer
10 agrees to comply with the requirements of the URA.

11 **J. Projects Involving Faith-Based Organizations.** Developer shall abide by §92.257 of the
12 HOME regulations which incorporates HUD requirements for faith-based organizations found
13 at 24 CFR 5.109.

14 **K. Property Standards.** The Developer acknowledges that the structures constructed or
15 rehabilitated under HOME-funded housing programs must meet all applicable local codes,
16 ordinances, and zoning requirements before occupancy can be approved. Developer hereby
17 agrees to comply with the property standards requirements outlined in §92.251.

18 **L. Lead-Based Paint Testing and Abatement.** The Developer acknowledges that housing
19 assisted with HOME funds constitutes "HUD-associated housing" for the purpose of the Lead-
20 Based Paint Poisoning Prevention Act and agrees to meet all requirements of that Act and 24
21 CFR 92.355.

22 **M. Insurance Requirements.** The Developer shall be responsible for maintaining complete
23 insurance coverage on all projects which it is undertaking under this Agreement. Insurance
24 coverage includes, but is not limited to, property, liability, flood, builder's risk, crime, and
25 workers' compensation. Developer also understands its responsibility to hold the City harmless
26 from all liability that might result from Developer's implementation of housing projects under
27 this Agreement. See Articles XVII and XVIII for the specific indemnity and insurance
28 requirements, respectively.

1 **N. Maximum Per-Unit Subsidy Amount.** The Developer acknowledges the "per-unit subsidy"
2 limitations placed on HOME-assisted properties and hereby agrees to limit the use of HOME
3 funds to the "per unit subsidy" limitations found in §92.250 when implementing HOME-assisted
4 projects.

5 **O. Affirmative Marketing Requirements.** The Developer acknowledges its responsibility to
6 employ affirmative marketing procedures and requirements in all HOME-assisted housing
7 containing 5 or more housing units. Affirmative marketing steps consist of actions to provide
8 information and otherwise attract eligible persons from all racial, ethnic, and gender groups in
9 the housing market area identified with available housing assisted with HOME-funds and are
10 outlined below. [See §92.351]. For Rental Projects of 5 or more units, the Developer shall inform
11 the general rental public about the availability of housing units rehabilitated and comply with
12 the affirmative marketing of vacant units under a HOME funded program as follows:

- 13 1. Developer shall inform the City of any units that become vacant throughout the
14 duration of the affordability period associated with the property.
- 15 2. The owner may use commercial media and other community organizations to solicit
16 tenants. If the general circulation print medium is used to advertise rental unit
17 vacancies, at least one advertisement must also be placed in the Louisiana Weekly,
18 which has a significant circulation in the minority community.
- 19 3. Copies of placed ads or other types of documentation outlining activities that increase
20 general public awareness of the availability of rental housing units are to be
21 forwarded to OCD within 30 days after such activities are undertaken. If violations
22 of the City's Affirmative Marketing Policies are discovered, corrective actions will
23 be required immediately.
- 24 4. Developer is to complete A Notice of Rental Unit Vacancy with a copy forwarded to
25 OCD at least 30 days in advance of anticipated vacancy or as soon as the vacancy is
26 known.
- 27 5. A Tenant Survey Form is to be completed for each existing and each new tenant and
28 a copy forwarded to OCD. For new tenants the form should be transmitted within 30
29 days after occupancy. For existing tenants, the form must be submitted with the
30 Application for Financial Assistance. OCD will in turn inform existing tenants of

1 relocation benefits available to them in the event that they are temporarily relocated
2 or permanently displaced.

- 3 6. The Fair Housing Equal Opportunity (FHEO) logo is to be used in all advertisements
4 for solicitation of tenants.
- 5 7. The FHEO sign is to be posted conspicuously on properties during the rehabilitation
6 phase of a HOME funded project and remain in place until all required rehabilitation
7 is completed and for a period of 30 days thereafter.

8 **P. Project Completion.** The Developer shall notify the City in writing of the substantial
9 completion of each project. This notification must also document all HOME Match
10 contributions, if not previously documented at the time of project set-up or any time prior to
11 completion. Upon receipt of a notice of substantial completion, the City will conduct an
12 inspection of the property and provide the Developer with any conditions to receipt of final
13 payment of HOME funds.

14 **Q. Maintenance of Records.** Developer agrees to maintain records of all expenditures of
15 HOME funds provided to it by the City in accordance with §92.508, for the time periods
16 specifically enumerated in §92.508(c). Records are to be maintained separately for each project
17 undertaken by Developer, and the records for each project will be maintained by Developer in
18 such a manner so that the funding sources used in each project will be accounted for separately
19 [e.g. HOME, CDBG, NHIF, etc.] The aforementioned classification of funds expended will be
20 further itemized by the "funding year" associated with the funds. Developer hereby agrees to
21 maintain, for the City's review, all records relating to the creation, development and set-up of
22 HOME projects, and the expenditure of HOME funds, itemized for each HOME-funded project
23 undertaken.

24 **R. Monitoring of Records and Developer's Performance.** The Developer acknowledges the
25 responsibility of the City to monitor its performance and all records relating to projects
26 implemented by Developer with HOME funds. Developer hereby acknowledges its
27 responsibility to provide the City, upon reasonable demand, with all records relating to HOME-
28 funded projects implemented by Developer, and hereby agrees to assist the City in reviewing
29 projects undertaken by Developer with HOME funds. The aforementioned records will be made
30 available at times reasonable to both Developer and the City, and Developer's records will be

1 reviewed by the City no less than annually.

2 **S. Duration of Developer's Obligations.** The Developer acknowledge its obligation to ensure
3 the continued compliance with Federal regulations related to HOME-funded projects for a period
4 of no less than the "period of affordability" assigned to each HOME-funded project implemented
5 by Developer. The Developer therefore agrees to continually monitor each of its HOME-funded
6 projects for a period of no less than the project's assigned affordability period. Monitoring
7 responsibilities include, but are not limited to, on-site inspections of HOME-assisted properties
8 as well as certifications and recertification of the incomes of occupants of the HOME-assisted
9 properties.

10 **T. Breach of Contract.** In the event the Developer, or a Program Beneficiary who benefits from
11 a HOME-assisted project, does not comply with Federal Regulations governing HOME-assisted
12 projects, or the terms of this Agreement, Developer acknowledges its obligation to repay the City
13 HOME funds that are identified with the period of noncompliance. Developer further
14 acknowledges its obligation to maintain compliance by Project Beneficiaries of HOME
15 regulations as they relate to income limitations and HOME rents. Developer agrees to protect
16 the integrity of the HOME funds provided to it for housing programs by ensuring that all
17 contracts between Developer and Program Beneficiaries include applicable provisions relating
18 to the requirements imposed on the expenditure of HOME funds. All of the aforementioned
19 contracts will also contain provisions for penalties associated with breaches of contracts.

20 **U. Other Responsibilities.** Developer hereby acknowledges its responsibility to comply with all
21 of the Federal Regulations governing the development of HOME projects, as outlined in
22 §92.504, which include:

- 23 1. Guaranteeing the affordability of housing assisted with HOME
24 funds and the responsibility to see that HOME funds are repaid in the event that
25 HOME assisted housing does not meet the affordability requirements for the
26 specified time period.
- 27 2. Repaying HOME funds to the City in the event that Developer
28 does not implement approved HOME-funded housing programs in accordance with

1 the requirements of this Agreement and the HOME regulations, or does not complete
2 HOME-funded projects [see §92.205(e)].

3 3. Complying with applicable "Uniform Administrative Requirements" as
4 described in §92.505.

5 4. For each HOME-funded project, set up a system of record keeping that
6 conforms to the financial accountability standards required by the Federal
7 Government, such as the requirements of 2 CFR 200 and the financial accountability
8 standards found at 24 CFR 84.21 [See §92.505].

9 5. Complying with the project requirements outlined in 24 CFR 92, Subpart
10 H as they apply to:

11 a. The "Equal Opportunity" for all persons to participate in programs or
12 activities assisted with HOME funds, except for the income restrictions
13 placed on participants by Federal Regulations governing HOME-assisted
14 projects.

15 b. The prohibitions against discrimination on the basis of age under the Age
16 Discrimination Act.

17 c. The responsibility to employ "Fair Housing" strategies that will
18 affirmatively further fair housing practices with the City.

19 d. The responsibility to comply with other program implementation
20 requirements outlined in §92.350 and §92.351.

21 e. Complying with the Federal Regulations found at §92.354 as they relate
22 to labor practices employed by Developer during the implementation of
23 HOME-funded projects.

24 f. Complying with the Federal Regulations found at §92.356 as they relate
25 to "Conflict of Interest" practices during the implementation of HOME-
26 funded projects.

27 g. Complying with Federal Regulations governing insurance requirements,

1 as they relate to properties assisted with federal funds.

2 h. Complying with federal regulations on any displacement, relocation, and
3 acquisition requirements required by the City consistent with §92.353.
4

5 **V. Prohibited Fees.** The Developer is prohibited from charging fees that are not customarily
6 charged in rental housing in the neighborhood such as laundry room access fees and other similar
7 type fees. However, Developer may charge reasonable application fees to prospective tenants;
8 may charge parking fees to tenants only if such fees are customary for rental housing projects in
9 the neighborhood; and may charge fees for services such as bus transportation or meals, as long
10 as such services are voluntary.

11 **W. Invoices.**

12 1. The Developer must submit invoices monthly (unless agreed otherwise between the
13 parties to this Agreement) to the City electronically, via its supplier portal, for goods or
14 services provided under this Agreement no later than 10 calendar days following the end of the
15 period covered by the invoice. Untimely invoices may result in delayed payment for which the
16 City is not liable. Each invoice must include, at a minimum, the following information:

- 17 a. Name of Developer;
18 b. Date of Invoice;
19 c. Invoice Number;
20 d. Contract or BRASS Number issued by the City (i.e. K#);
21 e. Name of the City Department to be invoiced (e.g. Office of Community
22 Development);
23 f. Description of the Services completed;

24 2. Invoices will be processed in accordance with the Agreement.

25 3. All invoices must be signed by an authorized representative of the Developer under
26 penalty of perjury attesting to the validity and accuracy of the invoice.

27 4. The City may require changes to the form of the invoice and may require additional
28 supporting documentation to be submitted with invoices.
29

30 **ARTICLE III - REPRESENTATIONS AND WARRANTIES**

31 **A.** The Developer represents and warrants to the City that:

32 1. The Developer, through its duly authorized representative, has the full power and
33 authority to enter into and execute this Agreement;

1 2. The Developer has and will maintain the requisite expertise, qualifications, staff,
2 materials, equipment, licenses, permits, consents, registrations, and certifications in place and
3 available for the performance of all work required under this Agreement;

4 3. The Developer is bonded, if required by law, and fully and adequately insured for any
5 injury or loss to its employees and any other person resulting from the actions or omissions of
6 the Developer, its employees, or its sub-Developers in the performance of this Agreement;

7 4. The Developer is not under any obligation to any other person that is inconsistent or in
8 conflict with this Agreement, or that could prevent, limit, or impair the Developer's
9 performance of this Agreement;

10 5. The Developer has no knowledge of any facts that could prevent, limit, or impair the
11 performance of this Agreement, except as otherwise disclosed to the City and incorporated into
12 this Agreement;

13 6. The Developer is not in breach of any federal, state, or local statute, regulation, or code
14 applicable to the Developer or its operations;

15 7. Any rate of compensation charged for the performance of services under this
16 Agreement are no higher than those charged to the Developer's most favored customer for the
17 same or substantially similar services;

18 8. The Developer has read and fully understands this Agreement, and is executing this
19 Agreement willingly and voluntarily; and

20 9. All of the representations and warranties in this Article and elsewhere in this
21 Agreement are true and correct as of the date of execution of this Agreement by the Developer,
22 and the execution of this Agreement by the Developer's representative constitutes a sworn
23 statement, under penalty of perjury, by the Developer as to the truth of the foregoing
24 representations and warranties.

25 **B. Senior Loan Covenants.** Developer warrants, and represents and covenants as follows:

26 1. Developer shall comply with all of the terms, covenants and conditions contained in
27 the Senior Loan documents.

1 **2.** Developer shall obtain an agreement from the Senior Lender to give the City written
2 notice of any default by Developer under the Senior Loan documents, and an opportunity (but not
3 the obligation) to cure such default on behalf of the Developer before foreclosing on the Project
4 under the Senior Loan documents.

5 **3.** To the extent the Senior Loan documents require deposits by Developer into a reserve
6 account(s) for the payment of taxes and insurance, or for repair and replacement of the Project units,
7 City acknowledges and agrees that Developer's compliance with the reserve requirements under the
8 Senior Loan documents shall satisfy any similar reserve requirements contained in the Loan
9 Documents.

10
11 **ARTICLE IV – THE CITY'S OBLIGATIONS**

12 The City agrees to take on the following obligations:

13 **A. Project Funding.** The City will provide up to \$3,500,000.00 to the Developer for eligible
14 project costs in the form of a loan, subject to repayment terms detailed in Article V below. The
15 Developer must own the Property for the duration of the HOME affordability period and the
16 subsequent City of New Orleans affordability period. The HOME affordability period is 20 years.
17 The City of New Orleans affordability period is 30 years and begins immediately once the HOME
18 affordability period ends. Therefore, the total Period of Affordability is 50 years. Should the property
19 transfer ownership to an entity that does not assume the rights, responsibilities, and obligations in
20 this Agreement, the entire Loan must be repaid immediately to the City. Except with respect to the
21 option to purchase granted to the Developer's managing member in connection with the Developer's
22 Amended and Restated Operating Agreement (the "Operating Agreement") and the right of first
23 refusal granted to a qualified nonprofit organization(s) in connection with the Operating Agreement
24 in compliance with Internal Revenue Code Section 42(i)(7), in which case the transferee shall
25 assume the rights, responsibilities, and obligations in this Agreement, the property cannot be sold
26 for less than the appraisal value as of the date of sale unless the Loan is paid in full. The funds will
27 be allocated to a rental housing activity project. The full anticipated budget breakdown is
28 incorporated into this Agreement as the **Contract Analysis Document** and marked as *Attachment*
29 *1*.

30 **B. Monitoring of Projects.** The City will undertake continuous monitoring of the HOME-
31 funded projects being implemented by Developer during the development phases, to ensure
32 compliance with HOME Regulations governing the expenditure of HOME funds and the income

1 eligibility of persons who will reside in HOME-assisted housing units. Monitoring by the City will
2 also include Developer's compliance with the organizational and operational requirements. The City
3 will also conduct periodic monitoring in accordance with §92.504(d).

4 **C. Provision of Technical Assistance.** The City agrees to provide technical assistance or assist
5 Developer to obtain technical assistance, as requested and necessary, which will aid Developer in
6 performing its functions under this Agreement.

7 **D. Provision of Forms and Documents.** The City will provide forms and documents for use in
8 carrying out activities under this Agreement as well as review and certify, as applicable, all
9 documents regarding program assistance that shall be provided by the Developer.

10 **E. Facilitate Payment Requests.** The City will process payment requests for eligible costs for
11 all HOME-funded projects approved under the terms of this Agreement as per the individual project
12 budgets set up in accordance with this Article IV.

13 **F. Payment.** Unless otherwise agreed by the City, payment terms are NET 30 days upon
14 providing that goods and/or services described under this Agreement have been delivered, installed
15 (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice
16 via the City's supplier portal.

18 ARTICLE V – REPAYMENT TERMS

19 **A. Repayment Terms.**

20 **1. Annual Installments; Place of Payment.** The Loan shall be repaid in annual installments
21 (each, an "**Annual Installment**") on or before April 1st (the "**Payment Date**") of each calendar year
22 of the Term (the "**Payment Date**") and such annual installments shall terminate at such time as the
23 lesser of 15 years or the principal and interest amounts due on the Note are paid in full.
24 Notwithstanding Section 3 below, Loans will become due upon the earlier of (a) the Maturity Date;
25 (b) sale or refinancing of the property; or (c) acceleration as the result of material noncompliance
26 with the terms of the Loan. Payments shall be made in immediately available US funds to the order
27 to the City, as detailed in the Agreement, or such other place as may be designated by written notice
28 to Developers from or on behalf of the City.

1 **2. Payment from Surplus Cash.** Each Annual Installment shall be paid solely from Surplus
2 Cash to the extent Surplus Cash is generated from the operation of the Project. The amount of each
3 Annual Installment shall be equal to 50% of Surplus Cash. Notwithstanding the requirement of
4 repayment from Surplus Cash, the Loan shall not be construed as a joint venture, partnership, or
5 other association between the Developer and the City, other than a debtor/creditor relationship. The
6 City's right to be paid from Surplus Cash shall terminate at such time as the lesser of 15 years or the
7 principal and interest amounts due on the Note are paid in full. If Surplus Cash is negative or zero
8 in any year during the Term of the Loan, no Annual Installment shall be due for that year, but interest,
9 if any, shall continue to accrue at the Interest Rate on the principal balance of the Note.

10 **B. Audit of Surplus Cash.**

11 **1. Determination of Surplus Cash.** Annually, within one hundred twenty (120) days after the
12 end of Developer's fiscal year, the Developer shall provide the City with an audited schedule of
13 Surplus Cash for the previous fiscal year, certified to be true and correct by Developer's chief
14 financial officer. The City will review Developer's schedule and will notify the Developer whether
15 it agrees with the Developer's determination or whether it has calculated a different Surplus Cash
16 value, which determination shall be made in the City's sole but reasonable discretion. The City shall
17 conduct its determination of Surplus Cash based solely on the Loan Documents without regards to
18 the determination by any other entity.

19 **2. Operating Account and Accounting Requirements.** The Developer shall establish an
20 Operating Account. During the term of the Loan:

21 a. All cash received by the Developer shall be deposited to the Operating Account,
22 except for (1) proceeds of the Senior Loan and all other development period sources of funds
23 (limited, however, to the amounts included in the Developer's final Cost Certification
24 provided for City's subsidy layering review); and (2) tenant security deposits.

25 b. All discounts, rebates, commissions, or other payments in connection with the Project
26 shall be credited to the Project and shall be deposited to the Operating Account even if such
27 payments are made to the management agent, the Developer or any Affiliate.

28 c. Prior to the calculation of Surplus Cash, the only expenditures that may be made from
29 the Operating Account are (1) Project Operating Expenses; (2) deposits to any reserves and

escrows that are specifically permitted by City, including, without limitation, reserves required by the Operating Agreement; (3) debt service payments on the Senior Loan; (4) Deferred Developer Fee; (4) any credit deficiency paid and any amount of the Developer's investor member's federal income tax on taxable income allocated to the investor member paid to the investor member under the Operating Agreement; and (5) Investor Services Fee (company administration fee).

d. Expenditures that may not be made from the Operating Account prior to the calculation of Surplus Cash include, without limitation, Non-Operating Expenses. Non-Operating Expenses may be paid from Surplus Cash remaining in the operating account after determination of the Annual Installment.

e. The Developer agrees that these Operational and Accounting Requirements shall be binding on the Developer, and that the Developer has provided these Operational and Accounting Requirements to all other parties providing funds to the Project. The provisions of these Operational and Accounting Requirements shall apply, notwithstanding any provision to the contrary in the Developer's Organizational Documents and notwithstanding any provision to the contrary in the Developer's agreements with any investor or with any other City.

C. Other Terms.

1. Maturity. The Loan shall mature on the Maturity Date (as defined in the Note).

2. Discretion to Extend Compliance Period. It is specifically understood, agreed, and acknowledged by the Developer that if the Developer or the Project at any time falls out of compliance with the requirements stipulated in the Regulatory Agreement, and/or other Loan Documents, the City has the right and option in addition to, and not to the exclusion of any of its other remedies provided for herein or in the other Loan Documents (including the right to accelerate the Maturity Date of the Loan), to extend the Period of Affordability by a period of time equal to or greater than any period of non-compliance. It is further understood and agreed that the burden of proving compliance with (and providing documentation and evidence of compliance with) the requirements stipulated in the Regulatory Agreement and other Loan Documents is on Developers.

1 **3. Security.** Repayment of the Loan and Developers' other obligations under this Agreement
2 and the Regulatory Agreement shall be secured by the mortgage lien on and security interest in the
3 Mortgaged Property described in the Act of Mortgage.

4 **4. Note.** The Loan shall be evidenced by the Note.
5

6 **ARTICLE VI - SOURCES OF FUNDS**

7 **A. Contract Amount.** The funds provided to Developer under this Agreement are
8 contingent upon HUD approval and are for the implementation of the HOME-funded housing
9 program or project described above in Article II and elsewhere herein. **No payments, however, will**
10 **be made prior to the completion of an Environmental Review.** The Developer understands that
11 the Sources and Uses is a generalized estimate of the cost(s) of one or more projects to be
12 subsequently set-up in accordance with this Agreement. The Developer understands that the cost of
13 all individually set-up projects shall not exceed the above contract amount, and that each project
14 shall not exceed the HOME subsidy limits discussed in Section I(N), above, and that the individual
15 project cost line items on each set-up may not be in complete Agreement with the allocation of line
16 item costs indicated on the **Sources and Uses Statement**, marked as *Attachment II*.

17 **1. Request for Disbursement of Funds.** In accordance with §92.504(c)(3)(viii), Developer
18 will not request disbursement of funds in connection with the implementation of a HOME-funded
19 project until the funds are needed for payment of eligible costs. Furthermore, the amount of each
20 request must be limited to the amount needed for the actual eligible project cost expended or
21 anticipated. All pay requests must be submitted on the OCD Payment Request Invoice form available
22 from OCD, and properly supported with documentation. The proceeds of the Loan shall be disbursed
23 at the direction of the City during the construction of the Project, on a pari passu basis with
24 Borrower's other construction financing, limited to not more than one (1) draw per month
25 commencing the month following financial closing (no Loan funds will be available at closing). The
26 City's pari passu share will be based on the City's share of funds having been advanced over the
27 construction period, which percentage shall be [_____]%. The Developer may elect to request less
28 than City's pari passu amount for any given draw, and may request a higher amount in subsequent
29 draws to "catch up" to the aggregate pari passu disbursement.

1 2. **Extension.** This Agreement may be extended with additional funding for the activities
2 described in the NOFA provided that the Developer has met or exceeded the requirements of this
3 Agreement.

4 3. **Reversion of Funds.** Developer agrees that the funding provided hereunder must be
5 committed to specific projects and expended within the time periods established by the HOME
6 regulations or said funding may be withdrawn by the City.

7 8 **ARTICLE VII – USES OF HOME FUNDS**

9 **A. Address.** See *Attachment III* for a **Legal Description** and Municipal Addresses of the
10 Properties, which is attached herein and incorporated into the Agreement.

11 **B. Schedule of Work.** The **Schedule of Work** for the completion of obligations is
12 incorporated into this Agreement and attached as *Attachment IV*.

13 14 **ARTICLE VIII - DURATION**

15 **A. Initial Term.** The term of this Agreement shall begin on the Effective Date and expire after
16 fifty years, notwithstanding Section C below.

17 **B. Extensions.** The City shall have the option to extend the term of this Agreement by giving
18 written notification to the Developer stating such intentions at least thirty calendar days prior to the
19 termination of the Agreement.

20 **C. Requirement to Remain in Effect.** This Agreement must be extended as necessary to expire
21 concurrently with the Regulatory Agreement executed by and among the Parties associated with the
22 Project.

23 24 **ARTICLE IX - TERMINATION**

25 **A. Termination for Convenience.** [Intentionally omitted.]

26 **B. Termination for Cause.** The City may terminate this Agreement immediately for cause by
27 sending written notice to the Developer. “Cause” includes without limitation any failure to perform
28 any obligation or abide by any condition of this Agreement or the failure of any representation or
29 warranty in this Agreement, including without limitation any failure to comply with any provision

1 of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is
2 subsequently challenged in a court of law and the challenging party prevails, the termination will be
3 deemed to be a termination for convenience effective 30 days from the date of the original written
4 notice of termination for cause was sent to the challenging party; no further notice will be required.

5 **C. Termination for Non-Appropriation.** This Agreement will terminate immediately in the
6 event of non-appropriation of funds sufficient to maintain this Agreement without the requirement
7 of notice and the City will not be liable for any amounts beyond the funds appropriated and
8 encumbered for this Agreement.

9 **D. Notice.** The City shall promptly notify the Developer, in writing, of its determination and the
10 reasons for the termination together with the date on which the termination shall take effect. Upon
11 termination, the City retains the right to recover any improper expenditures from the Developer and
12 the Developer shall return to the City any improper expenditures no later than thirty (30) days after
13 the date of termination. The City may, at its sole discretion, allow Developer to retain or be
14 reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of
15 termination and cannot be canceled provided that said costs meet the provisions of this agreement,
16 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes,
17 regulations or requirements.

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

23 1. Temporarily withhold cash payments pending correction of the deficiency by the non-
24 Federal entity or more severe enforcement action by the Federal awarding agency or pass-
25 through entity.

26 2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or
27 part of the cost of the activity or action not in compliance.

28 3. Wholly or partly suspend or terminate the Federal award.

- 1 4. Initiate suspension or debarment proceedings as authorized under 2 CFR part
2 180 and Federal awarding agency regulations (or in the case of a pass-through entity,
3 recommend such a proceeding be initiated by a Federal awarding agency).
- 4 5. Withhold further Federal awards for the project or program.
- 5 6. Take other remedies that may be legally available.

6

7 **ARTICLE X - AGREEMENT IS BINDING**

8 This Agreement shall serve as a binding agreement and commitment to fund between the
9 City and the Developer.

10

11 **ARTICLE XI - PROGRAM INCOME PROVISIONS**

12 The Developer understands that any funds derived from the sale of HOME-assisted property,
13 shall be considered program income. Determination of program income shall be made in accordance
14 with §92.503, and with HUD CPD Notice 97-09. No Program income shall be spent without the
15 City's prior approval and must be placed in a segregated account and not be comingled with any
16 other funds. Upon receipt of the funds a report shall be submitted to the City setting forth the source
17 of the income, the amounts collected and the balance on hand. The Developer shall remit the
18 Program Income to the City immediately upon request.

19

20 **ARTICLE XII - RECOGNITION OF MATCHING REQUIREMENTS**

21 In accordance with §92.218 through §92.222, Developer hereby acknowledges that the City's
22 obligation to match HOME funds with permanently-contributed, non-federal funds at a specific ratio
23 (12.5 percent, in accordance with CPD Notice 98-08), as outlined in §92.218 and CPD Notice 97-
24 03 issued March 27, 1997, and in accordance with matching contribution guidelines found at
25 §92.219. This program obligation, in turn, requires that the Developer make every effort to develop,
26 acquire, and provide eligible HOME Matching Contributions consistent with the funding amount
27 provided hereunder. For each project set-up submitted to the City for funding approval, Developer
28 agrees to submit written documentation of all Match Contributions.

29

1 **ARTICLE XIII – ACCOUNTING AND FINANCIAL TERMS AND CONDITIONS**

2 The Developer agrees to comply with the **Accounting and Financial Conditions of**
3 **Agreement**, marked *Attachment V*.

4
5 **ARTICLE XIV - REPORTING REQUIREMENTS**

6 The Developer agrees to provide to OCD Affordable Housing Bureau by the fifth working
7 day of each month, two copies of the **Monthly Reporting Requirements**, marked *Attachment VI*.
8 The Developer also agrees to comply with the **Compliance Unit Reporting Requirements**, as
9 applicable, marked *Attachment VII*, in accordance with the processes, procedures and schedules set
10 forth by the OCD Compliance Unit.

11
12 **ARTICLE XV - JURISDICTION**

13 The undersigned Developer does further hereby consent and yield to jurisdiction of the State
14 Civil Courts of the Parish of Orleans and does hereby formally waive any pleas of jurisdiction on
15 account of the residence elsewhere of the undersigned Developer.

16
17 **ARTICLE XVI - AUDIT AND OTHER OVERSIGHT**

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

24
25 **ARTICLE XVII - INDEMNITY**

26 **A.** To the fullest extent permitted by law, the Developer will indemnify, defend, and
27 hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and
28 assigns (collectively, the **“Indemnified Parties”**) from and against any and all claims,
29 demands, suits, and judgments of sums of money accruing against the Indemnified Parties:

1 for loss of life or injury or damage to persons or property arising from or relating to any act
2 or omission or the operation of the Developer, its agents or employees while engaged in or
3 in connection with the discharge or performance of any Services under this Agreement; and
4 for any and all claims and/or liens for labor, services, or materials furnished to the Developer
5 in connection with the performance of work under this Agreement.

6 **B. Limitation.** The Developer's indemnity does not extend to any loss arising from the
7 gross negligence or willful misconduct of any of the Indemnified Parties, provided that
8 neither the Developer nor any of its agents or employees contributed to such gross negligence
9 or willful misconduct.

10 **C. Independent Duty.** The Developer has an immediate and independent obligation to,
11 at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred
12 in the defense of any claim that actually or potentially falls within this indemnity, even if:
13 (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Developer is
14 ultimately absolved from liability.

15 **D. Expenses.** Notwithstanding any provision to the contrary, the Developer shall bear
16 the expenses including, but not limited to, the City's reasonable attorney fees and expenses,
17 incurred by the City in enforcing this indemnity.

18 19 **ARTICLE XVIII - INSURANCE**

20 **A. In general.** Except as otherwise noted, at all times during this Contract or the performance of
21 work required by this Contract, the Developer will maintain the following insurance in full force
22 and effect for the duration of the work under this Contract. Evidence of coverage shall be provided
23 prior to the start of any activities/work, in conjunction with the Developer's obligations and/or
24 scope of work under the Contract. If the Developer maintains broader coverage and/or higher
25 limits than the minimums shown below, the City requires and shall be entitled to the broader
26 coverage and/or the higher limits maintained by the Developer. Any available insurance proceeds
27 in excess of the specified minimum limits of insurance and coverage shall be available to the City.
28

29 **B. Minimum Requirements.**

30 31 **1. Workers' Compensation & Employers Liability**

- 32 a. Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and
33 Employers Liability Insurance with limits of not less than \$1,000,000.

34 **2. Commercial General Liability**

- a. Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, products/completed operations and any other type of liability for which this Contract applies with limits of liability of not less than \$2,000,000 each occurrence / \$4,000,000 policy aggregate.

3. Automobile Liability

- a. Insurance with a combined single limit of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles. If transporting any pollutants, as defined by the policy, the policy is to include applicable Pollution coverage.

4. Professional (Errors & Omission) Liability (Where applicable)

As professional services are required under the contract, insurance appropriate to the Developers profession with limits of liability of not less than \$2,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Developer in this agreement. Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Developer must procure and evidence full extended reporting period (ERP) coverage.

5. Developers' Pollution Liability (where applicable)

- a. If the construction project involves environmental hazards and/or pollutants of any kind, Developer shall maintain Developers' Pollution Liability Insurance (or equivalent coverage) applicable to the work being performed with limits of not less than \$2,000,000 per occurrence or claim / \$4,000,000 policy aggregate, covering losses caused by pollution conditions that arise from the operations of the Developer.
- b. Insurance shall apply to bodily injury, property damage, including loss of use of damaged property that has not been physical impacted and defense, including cost and expenses incurred in the investigation, defense or settlement of claims.
- c. Coverage shall include but not be limited to Fines, Penalties, Punitive Damages and Clean-up cost.
- d. Asbestos Coverage – (where applicable) Whereas the project involves contact with and/or removal/abatement of asbestos, Developer shall maintain an Asbestos Liability Insurance policy (or equivalent Developers' pollution coverage) that shall include or be endorsed to include coverage for bodily injury and property damage arising out of asbestos abatement or removal operations by or on behalf of Developer with limits of not less than \$5,000,000 per occurrence or claim / \$10,000,000 policy aggregate.

6. Property Insurance

- a. Property insurance shall be maintained in compliance with all laws, regulations or ordinances affecting such property or properties associated with this agreement for the duration of the agreement. Coverage must be written on an "all risks" replacement cost basis (including flood and named storm) in such amounts as City may require, but in any event, for not less than 100 percent of the full replacement cost value of the property.
- b. Such coverage shall name the City of New Orleans as Loss Payee as their interest may

appear.

7. Umbrella Liability

- a. Umbrella/Excess policies must “Follow form” of the underlying policies and scheduling.

8. Builders Risk

- a. Builder’s Risk (Course of Construction) Insurance utilizing an “All Risk” (Special Perils) coverage form, on a replacement cost basis, including coverage on the entire Work, to include but not limited to **coverage for Flood and Named Storm**, Fire, Theft, Mysterious Disappearance (if available), Damages due to Changes or Extremes of Temperature, Property of others in the care, custody or control, Debris Removal, Vandalism and Soft Cost (i.e. professional services, permits, etc.), with limits equal to the completed value of the project and no coinsurance penalty provisions.
- b. Policy shall include coverage during transit, installation and while materials are being stored off site. Such coverage shall name the City of New Orleans as a Loss Payee as their interest may appear.
- c. If not covered under the “all-risk” insurance or otherwise provided in the Contract, the Developer shall affect and maintain similar insurance on portions of the work stored off the site when such portions of the work are to be included in any applications for payment and such procedures have been approved by the City.
- d. Builders’ Risk Insurance shall be written and provide such that any portions of a building or site vacated by the City to accommodate the work are protected and covered by the terms of the policy. The insurance shall not be cancelled or permitted to lapse due to such vacancy.
- e. Developer shall obtain consent of the insurance carrier that no action will be taken with respect to partial occupancy or use that would cause cancellation, lapse of reduction of insurance.

9. Crime Insurance (Fidelity Bond)

- To include but not limited to employee dishonesty, computer crime, misappropriation of funds, forgery, or alteration with limits of not less than the maximum amount funded by the City under the Loan Agreement.

10. General Provision and Requirements

- a. Developer shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.
- b. The obligations for the Developer to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Developer from any liability incurred as a result of their activities/operations in conjunction with the Developer’s obligations and/or Scope of Work. Developer shall be responsible for any losses, expenses, damages, claims and/or suits and cost of any kind which exceed the Developer’s limits of liability that arise from the performance of work under the Contract.

Certificates of Insurance Additional Insured Status:

- i. *The Developer and all its contractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers as “Additional Insureds” on the CGL and AL policies with respect to liability arising out of the performance of this Contract.*
- ii. Additional Insured status can be provided in the form of an endorsement to the Developers insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
- iii. Developer shall require and verify that all its contractors maintain insurance and coverage limits meeting all the requirements stated herein or its contractors’ liability shall be covered by the Developer. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans - Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.
- iv. The Additional Insured box shall be marked “Y” or Commercial General Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers and Liability.

C. Miscellaneous Requirements.

1. Primary Coverage: For any claims, liability, demands and/or suits related to this contract or Developer’s performance and furnishing or the work, whether it is performed by the Developer, its contractor, partner, supplier or by anyone directly or indirectly employed by any of them to perform or furnish any of the work. Developer’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Developer’s coverage. At no time shall the Developer allow any if its contractors to perform work without the required types and limits of required insurance coverage.
2. The carriers/companies issuing the policies of insurance shall not have any recourse against the City for payment of any premiums, deductibles, and retentions or for assessments under any form of policy. These shall be borne by and be the sole responsibility of the Developer.
3. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the Contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Developer must

1 purchase "extended reporting" coverage for minimum of 3 years after the termination
2 of this Contract.

3
4 4. Waiver of Subrogation: The Developer and its insurers agree to waive any right of
5 subrogation which any insurer may acquire against the City by virtue of the payment of
6 any loss under insurance required by this Contract.

7
8 5. Notice of Cancellation: Each insurance policy shall not be canceled, expire or altered
9 except without prior notice to the City of no less than 30 days.

10
11 6. Acceptability of Insurers: Insurance is to be placed with insurers licensed and
12 authorized to do business in the State of Louisiana with a current A.M. Best's rating of
13 no less than A: VII, unless otherwise acceptable to the City.

14
15 7. If the City has any objection to the coverage afforded by or any other provisions of the
16 insurance required to be purchased and maintained by the Developer in accordance
17 with the insurance requirements, the City shall notify the Developer in writing within
18 thirty (30) days after receipt of the Certificates. The Developer shall provide a written
19 response to the objection within ten (10) days from the date of the notice.

20
21 8. Upon failure of the Developer or its Developer to purchase, furnish, deliver or maintain
22 such insurance as provided herein, the Contract, at the discretion of the City may be
23 forthwith declared suspended, discontinued, or terminated. Failure of the Developer to
24 purchase and maintain insurance shall not relieve the Developer from any liability
25 under the Contract, nor shall the insurance requirements be constructed to conflict with
26 the obligations of the Developer concerning indemnification.

27
28 9. Notice: The Developer will provide the City's Risk Manager (at City of New Orleans
29 Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.:
30 CEA) the following documents, within 10 calendar days of the City's request - Copies
31 of all policies of insurance, including all policies, forms, and endorsements.

32
33 10. Without notice from the City, the Developer will:

- 34 a) Replenish any policy aggregate limit that is impaired before commencement of any
35 work or continuation of any work under this Contract.
- 36 b) Substitute insurance coverage acceptable to the City within 30 calendar days if any
37 insurance company providing any insurance with respect to this Contract is declared
38 bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases
39 to meet the requirements of this Contract.

1
2 11. Special Risks or Circumstances.

- 3 a) The City of New Orleans shall reserve the right to modify these requirements, including
4 limits, based on the nature of the risk, prior experience, insurer coverage, or other
5 circumstances.
6

7 **ARTICLE XIX - NON-DISCRIMINATION**

8 **A. Equal Employment Opportunity.** In all hiring or employment made possible by, or
9 resulting from this Agreement, the Developer (1) will not be discriminate against any employee or
10 applicant for employment because of race, color, religion, sex, gender, age, physical or mental
11 disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable,
12 will take affirmative action to ensure that the Developer's employees are treated during employment
13 without regard to their race, color, religion, sex, gender, age, physical or mental disability, national
14 origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be
15 limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment
16 advertising, layoff or termination, rates of pay or other forms of compensation, and selection for
17 training, including apprenticeship. All solicitations or advertisements for employees shall state that
18 all qualified applicants will receive consideration for employment without regard to race, color,
19 religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed,
20 culture, or ancestry.

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

31 **C. Incorporation into Subcontracts.** The Developer will incorporate the terms and conditions

of this Article into all subcontracts, by reference or otherwise, and will require all sub-Developers to comply with those provisions.

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

ARTICLE XX – LIVING WAGES

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 Developer 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. \$13.25 per hour for any work performed on or before December 31, 2022;
2. \$15.00 per hour for any work performed on or before December 31, 2023; and
3. \$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. Sub-Developer Requirements. As required by Section 70-804 of the City Code, the Developer, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify sub-Developers in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). The Developer and its beneficiaries shall be deemed responsible for violations of this Article by their sub-Developers.

F. Reporting. On or before January 31st and upon request by the City, the Developer shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of

1 days of compensated leave received by Covered Employees earning less than 130% of the then-
2 prevailing wage during the current term of the Agreement, and provide the identified information to
3 the following:

4 Office of Workforce Development
5 Living Wage – Compliance
6 1340 Poydras Street – Suite 1800
7 New Orleans, Louisiana 70112

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

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

25
26 **ARTICLE XXI - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM**

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

32 **B. Monitoring.** To ensure compliance with DBE requirements during the term of this
33 Agreement, the DBECO will monitor the Developer’s use of DBE sub-Developers (“**DBE Entities**”)
34 through the following actions:

- 35 1. Job site visits;
- 36 2. Electronic payment tracking via the Contract Compliance Monitoring System or
37 other means as approved by the OSD;
- 38 3. Routine audits of contract payments to all sub-Developers;
- 39 4. Reviewing of records and reports; and/or

1 **5.** Interviews of selected personnel.

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

4 **C. Cooperation.** The Developer shall:

5 1. Designate an individual as the “DBE Liaison” who will monitor the Developer’s DBE
6 participation as well as document and maintain records of “Good Faith Efforts” with
7 DBE Entities.

8 2. Execute written contracts with DBE Entities that meet the applicable DBE goals.

9 a. The Developer shall provide the DBECO with copies of said contracts within
10 30 days from the date this Agreement is fully executed between the City and
11 the Developer.

12 b. The Developer shall agree to promptly pay sub-Developers, including DBE
13 Entities, in accordance with law.

14 3. Establish and maintain the following records for review upon request by the OSD:

15 a. Copies of written contracts with DBE Entities and purchase orders;

16 b. Documentation of payments and other transactions with DBE Entities;

17 c. Appropriate explanations of any changes or replacements of DBE Entities,
18 which may include a record of “Post-Award Good Faith Efforts” for each
19 certified firm that the Developer does not use in accordance with the approved
20 DBE participation submission;

21 d. Any other records required by the OSD.

22 The Developer is required to maintain such records for 5 years after completion or closeout
23 of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

24 4. Post monthly payments and submit regular reports to the DBECO as required via the
25 online “Contract Compliance Monitoring System” or other means approved by the
26 OSD.

27 a. The Developer shall submit the initial report outlining DBE participation
28 within 30 days from the date of notice to proceed (or equivalent document)
29 issued by the City to the Developer. Thereafter, “DBE Utilization” reports
30 shall be due on or before the fifteenth day of each month until all DBE
31 subcontracting work is completed.

32 b. Reports are required even when no activity has occurred in a monthly period.

33 c. If the established percentage is not being met, the monthly report shall include
34 a narrative description of the progress being made in DBE participation.

35 d. The Developer may also be required to attach or upload copies of canceled
36 checks or bank statements that identify payer, payee, and amount of transfer
37 to verify payment information as indicated on the form.

1 5. Conform to the established percentage as approved by the OSD.

2 a. The total dollar amount of the Agreement shall include approved change
3 orders and amendments. For a requirements contract, the total dollar amount
4 shall be based in actual quantities ordered.

5 b. No changes to the established percentage and DBE Entities submitted on DBE
6 Compliance Form-1 shall be allowed without approval by the OSD.

7 c. The City will not adjust the contract for any increase in cost due to
8 replacement of DBE Entities.

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

10 a. for a reason beyond the Developer's control, the Developer is unable to use
11 the certified DBE entity submitted on DBE Compliance Form-1 to perform
12 the specified work. The Developer must notify the OSD of the intent for
13 removal and substitution of a certified DBE immediately upon determination
14 of that the DBE submitted on Compliance Form -1 is unable to perform the
15 specified work. In such case, the Developer shall use and document "Good
16 Faith Efforts" to find a similarly qualified and certified DBE entity to perform
17 such specified work. The same criteria used for establishing "Good Faith
18 Efforts" in maximizing the participation of DBE Entities prior to awarding
19 the Agreement will also apply to the substitution of DBE sub-Developers
20 during the performance of the Agreement; or

21 b. the Developer reasonably believes that, due to a change of scope, execution
22 of the work in accordance with the directions from the City is unlikely to meet
23 the established percentage or terms. In such case, the Developer shall use and
24 document "Good Faith Efforts" to achieve a reasonable amount of DBE
25 participation on the remaining work on the Agreement.

26 27 **ARTICLE XXII – FORCE MAJEURE**

28 **A. Event.** An event of Force Majeure will include any event or occurrence not reasonably
29 foreseeable by the City at the execution of this Agreement, which will include, but not be limited
30 to, abnormally severe and unusual weather conditions or other acts of God (including tropical
31 weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor
32 or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-
33 attacks, threats, or incidents; epidemics or pandemics; court or governmental order; any event
34 which causes substantial harm to the Project; or any other cause whatsoever beyond the reasonable
35 control of City, provided such event was not caused by the negligence or misconduct of City, by
36 the failure of City to comply with applicable laws, or by the breach of this Agreement.

37 **B. Notice.** To seek the benefit of this Article, the City must provide notice in writing to the
38 Developer stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the
39 Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement

1 is being suspended

2 **C. Effect.**

- 3 1. Upon the occurrence of a Force Majeure event, for which the City has provided required
4 notice, the City may, at its sole discretion:
- 5 a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days.
6 During such time of suspension, the Parties will not be liable or responsible for
7 performance of their respective obligations under this Agreement, and there will be
8 excluded from the computation of such period of time any delays directly due to the
9 occurrence of the Force Majeure event. During any such period of suspension, the
10 Developer must take all commercially reasonable actions to mitigate against the
11 effects of the Force Majeure event and to ensure the prompt resumption of
12 performance when so instructed by the City; or
- 13 b. Terminate this Agreement, either immediately or after one or more periods of
14 suspension, effective on notice to Developer and without any further compensation
15 due.
- 16 2. Notwithstanding Section C(1) above, the obligations relating to making payments when
17 due (for services or materials already provided) and those obligations specified to survive
18 in the Agreement will be unaffected by any suspension or termination.
19

20 **ARTICLE XXIII - INDEPENDENT ENTITY**

21 **A. Independent Entity Status.** The Developer is an independent entity and shall not be
22 deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or
23 any of its employees, sub-entities, or agents to be an employee, partner, or agent of the City.

24 **B. Exclusion of Worker's Compensation Coverage.** The City will not be liable to the
25 Developer, as an independent entity as defined in La. R.S. 23:1021(6), for any benefits or coverage
26 as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions
27 of La. R.S. 23:1034, any person employed by the Developer will not be considered an employee of
28 the City for the purpose of Worker's Compensation coverage.

29 **C. Exclusion of Unemployment Compensation Coverage.** The Developer, as an independent
30 Entity, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E)
31 and neither the Developer nor anyone employed by it will be considered an employee of the City for
32 the purpose of unemployment compensation coverage, which coverage same being hereby expressly
33 waived and excluded by the parties, because: (a) the Developer has been and will be free from any
34 control or direction by the City over the performance of the services covered by this contract; (b) the

1 services to be performed by the Developer are outside the normal course and scope of the City's
2 usual business; and (c) the Developer has been independently engaged in performing the services
3 required under this Agreement prior to the date of this Agreement.

4 **D. Waiver of Benefits.** The Developer, as an independent entity, will not receive from the City
5 any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays,
6 sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

7
8 **ARTICLE XXIV - NOTICE**

9 **A. In General.** Except for any routine communication, any notice, demand, communication,
10 or request required or permitted under this Agreement will be given in writing and delivered in
11 person or by certified mail, return receipt requested as follows:

12 To the City: Director of Housing Policy and Community Development
13 c/o Tyra Johnson Brown
14 City of New Orleans
15 1340 Poydras Street, Suite 1000
16 New Orleans, LA 70112

17 And: City Attorney
18 City of New Orleans
19 1300 Perdido Street, 5E03
20 New Orleans, LA 70112

21 To the Developer: Celeste Landing, L.L.C.
22 Vanessa Levine
23 4152 Canal Street
24 New Orleans, LA 70119
25

26 With a copy to: Wincopin Circle LLLP
27 c/o Enterprise Community Asset Management, Inc.
28 70 Corporate Center
29 11000 Broken Land Parkway, Suite 700
30 Columbia, Maryland 21044
31 Telephone: (410) 964-0552
32 Facsimile: (410) 772-2630
33 Attention: Asset Management
34

35 With a copy to:
36 Kenneth S. Gross, Esq.

Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Telephone: (410) 727-7702
Facsimile: (410) 468-2786

With a copy to:

Capital One, National Association
299 Park Avenue, 14th Floor
New York, New York 10171

With a copy to:

Dwyer, Cambre & Suffern, APLC
3000 W. Esplanade Avenue, Suite 200
Metairie, LA 70002, Attention
Edward T. Suffern, Jr.

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XXV - ADDITIONAL PROVISIONS

A. Assignment. This Agreement and any part of the Developer's interest in it are not assignable or transferable without the City's prior written consent.

B. 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.

C. Audit and Other Oversight. The Developer will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the Developer to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, DEVELOPER agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

D. Choice of Law. This Agreement will be construed and enforced in accordance with the laws

1 of the State of Louisiana, without regard to its conflict of laws provisions.

2 **E. Compliance with City's Hiring Requirements – Ban the Box.**

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

23 **F. Conflicting Employment.** To ensure that the Developer's efforts do not conflict with the
24 City's interests, and in recognition of the Developer's obligations to the City, the Developer will
25 decline any offer of other employment if its performance of this Agreement is likely to be adversely
26 affected by the acceptance of the other employment. The Developer will promptly notify the City in
27 writing of its intention to accept the other employment and will disclose all possible effects of the
28 other employment on the Developer's performance of this Agreement. The City will make the final
29 determination whether the Developer may accept the other employment.

30 **G. Construction of Agreement.** Neither party will be deemed to have drafted this Agreement.

1 This Agreement has been reviewed by the Parties and shall be construed and interpreted according
2 to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of
3 the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City
4 or the Developer on the basis of which party drafted the uncertain or ambiguous language. The
5 headings and captions of this Agreement are provided for convenience only and are not intended to
6 have effect in the construction or interpretation of this Agreement. Where appropriate, the singular
7 includes the plural and neutral words and words of any gender shall include the neutral and other
8 gender.

9 **H. Convicted Felon Statement.** The Developer complies with City Code § 2-8(c) and no
10 principal, member, or officer of the Developer has, within the preceding 5 years, been convicted of,
11 or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds,
12 bribery, or falsification or destruction of public records.

13 **I. Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled “Cost
14 recovery in contracts, cooperative endeavor agreements, and grants,” to the maximum extent
15 permitted by law, the Developer shall reimburse the City or disgorge anything of value or economic
16 benefit received from the City if the Developer fails to meet its contractual obligations.

17 **J. Reserved.**

18 **K. Entire Agreement.** This Agreement, including all incorporated documents, constitutes the
19 final and complete agreement and understanding between the parties. All prior and contemporaneous
20 agreements and understandings, whether oral or written, are superseded by this Agreement and are
21 without effect to vary or alter any terms or conditions of this Agreement.

22 **L. Limitations of the City’s Obligations.** The City has no obligations not explicitly set forth
23 in this Agreement or any incorporated documents or expressly imposed by law.

24 **M. No Third-Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of
25 the parties and the parties expressly disclaim any intent to benefit anyone not a party to this
26 Agreement.

27 **N. Non-Exclusivity.** This Agreement is non-exclusive and the Developer may provide services
28 to other clients. The City may engage the services of others for the provision of some or all of the
29 work to be performed under this Agreement.

30 **O. Non-Solicitation Statement.** The Developer has not employed or retained any company or

1 person, other than a bona fide employee working solely for it, to solicit or secure this Agreement.
2 The Developer has not paid or agreed to pay any person, other than a bona fide employee working
3 for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting
4 from this Agreement.

5 **P. Ownership Interest Disclosure.** The Developer shall provide a sworn affidavit listing all
6 persons, natural or artificial, with an ownership interest in the Developer and stating that no other
7 person holds an ownership interest in the Developer via a counter letter. For the purposes hereof, an
8 "ownership interest" shall not be deemed to include ownership of stock in a publicly traded
9 corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly
10 traded corporation. If the Developer fails to submit the required affidavits, the City may, after 30
11 days' written notice to the prime Developer, take such action as may be necessary to cause the
12 suspension of any further payments until such the required affidavits are submitted.

13 **Q. Ownership of Records.** The Developer shall maintain ownership of all data collected and
14 all products of work prepared, created or modified by the Developer in the performance of this
15 Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer
16 programs, source code, documents, records, disks, original drawings or other such material,
17 regardless of form and whether finished or unfinished, but excluding the Developer's personnel and
18 administrative records and any tools, systems, and information used by the Developer to perform
19 the services under this Agreement, including computer software (object code and source code),
20 know-how, methodologies, equipment, and processes and any related intellectual property
21 (collectively, "Work Product"). The Developer shall also maintain all right, title and interest in any
22 Work Product, including without limitation the right to secure and maintain any copyright,
23 trademark, or patent of Work Product in the Developer's name. However, the Developer
24 acknowledges that the purpose of the Project is for the benefit of the City of New Orleans, and
25 therefore the Developer shall grant the City a no-cost perpetual license to utilize all Work Product
26 in a manner to further the purpose of the Project, provided that the City takes all reasonable
27 precautions to protect the Developer's intellectual property and proprietary interests of the the
28 Developer, subject to all applicable public records laws. The Developer shall also be able present
29 or publish materials deriving from its Work Product at its sole discretion, provided that the
30 Developer provide the City with an advance copy for review and feedback at least seven (7) days

1 prior to presentation or publication.

2 **R. Prohibition of Financial Interest in Agreement.** No elected official or employee of the
3 City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this
4 provision, a financial interest held by the spouse, child, or parent of any elected official or employee
5 of the City shall be deemed to be a financial interest of such elected official or employee of the City.
6 Any willful violation of this provision, with the expressed or implied knowledge of the Developer,
7 shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to
8 any other rights and remedies available to the City, all monies paid by the City to the Developer
9 pursuant to this Agreement without regard to the Developer's otherwise satisfactory performance of
10 the Agreement.

11 **S. Prohibition on Political Activity.** None of the funds, materials, property, or services
12 provided directly or indirectly under the terms of this Agreement shall be used in the performance
13 of this Agreement for any partisan political activity, or to further the election or defeat of any
14 candidate for public office.

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

19 **U. Severability.** Should a court of competent jurisdiction find any provision of this Agreement
20 to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that
21 it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the
22 unenforceable provision shall be fully severable and the remaining provisions of the Agreement
23 remain in full force and effect and shall be construed and enforced as if the unenforceable provision
24 was never a part the Agreement.

25 **V. Sub-Developer Reporting.** The Developer will provide a list of all natural or artificial
26 persons who are retained by the Developer at the time of the Agreement's execution and who are
27 expected to perform work as sub-Developers in connection with the Developer's work for the City.
28 For any sub-Developer proposed to be retained by the Developer to perform work on the Agreement
29 with the City, the Developer must provide notice to the City within 30 days of retaining that sub-
30 Developer. If the Developer fails to submit the required lists and notices, the City may, after thirty

30 days’ written notice to the Developer, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

W. 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 or constitute a waiver of either 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.

X. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

Y. Special Conditions for HUD Contracts. The **HUD Compliance Provisions**, marked as *Attachment VIII* to this Agreement, are expressly incorporated into the Agreement.

Z. Recordation of Regulatory Agreement. The Regulatory Agreement shall be provided by the City, and it shall be recorded as a deed restriction for the “Period of Affordability” applicable to each project.

AA. Additional Attachments. [Reserved.]

BB. Assistance to Those with Limited English Proficiency. The Developer 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 the program(s) and/or services funded under this Agreement.

ARTICLE XXVI – INCORPORATED DOCUMENTS

A. *In general.* The following documents are incorporated into this Agreement:

1. Contract Analysis Document – Attachment I
2. Sources and Uses Statement – Attachment II
3. Legal Description / List of Properties – Attachment III
4. Schedule of Work – Attachment IV
5. Accounting and Financial Conditions of Agreement – Attachment V
6. Monthly Reporting Requirements – Attachment VI

1 7. Compliance Unit Reporting Requirements – Attachment VII

2 8. HUD Compliance Provisions – Attachment VIII

3
4 **B. Direct Conflict.** If any Attachment directly conflicts, in whole or in part, with this
5 Agreement, the terms and conditions of the Attachment will control except as provided by
6 law.

7 **C. Difference in Standard.** If any Attachment differs, in whole or in part, with this Agreement
8 in terms of requirements, standards, timelines, etc., then the more stringent requirement, the
9 higher standard, and the longer timeline, etc., shall prevail, unless the Parties mutually agree
10 otherwise.
11

12 **ARTICLE XXVII - ELECTRONIC SIGNATURE AND DELIVERY**

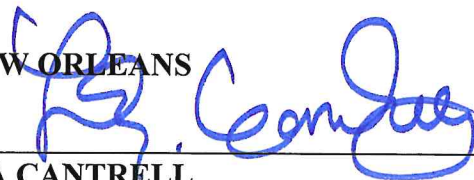
13 The Parties agree that a manually signed copy of this Agreement and any other document(s)
14 attached to this Agreement delivered by email shall be deemed to have the same legal effect as
15 delivery of an original signed copy of this Agreement. No legally binding obligation shall be created
16 with respect to a party until such party has delivered or caused to be delivered a manually signed
17 copy of this Agreement.
18

19
20 **[The remainder of this page is intentionally left blank]**

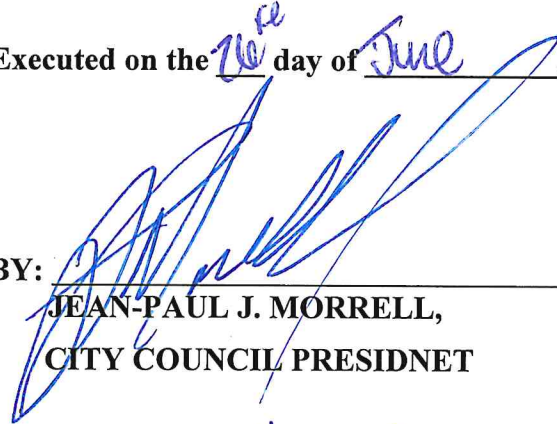
21
22 **[SIGNATURES CONTAINED ON NEXT PAGE]**
23

1 **IN WITNESS WHEREOF**, the Parties hereto, through duly authorized representatives,
2 have executed this Agreement to be effective as of the Effective Date.

3
4 **CITY OF NEW ORLEANS**

5 BY: 
6 LATOYA CANTRELL,
7 MAYOR

8
9 Executed on the 16th day of June, 2023.

10
11
12
13 BY: 
14 JEAN-PAUL J. MORRELL,
15 CITY COUNCIL PRESIDNET

16
17 Executed on the 22nd day of June, 2023.

18
19
20
21 **FORM AND LEGALITY APPROVED:**

22 **Law Department**

23 By: 

24 Printed Name: Tracy L. [Signature]

1 **IN WITNESS WHEREOF**, the Parties hereto, through duly authorized representatives,
2 have executed this Agreement to be effective as of the Effective Date.

3
4
5 **CELESTE LANDING, L.L.C.**

6
7 **By: Celeste Landing MM, L.L.C.,**
8 **a Louisiana limited liability company**
9 **Its: Managing Member**

10
11 **By: Renaissance Neighborhood**
12 **Development Corporation,**
13 **a Louisiana nonprofit corporation**
14 **Its: Manager**

15
16
17
18 **By: _____**
19 **Vanessa Levine, its Executive Director**

20
21 _____
22 **CORPORATE TAX I.D.**

23
24
25 **Executed on the ____ day of _____, 2023.**

TABLE OF ATTACHMENTS

Attachment I	Contract Analysis Document
Attachment II	Sources and Uses Statement
Attachment III	Legal Description / List of Properties
Attachment IV	Schedule of Work
Attachment V	Accounting and Financial Conditions of Agreement
Attachment VI	Monthly Reporting Requirements with Direct Benefit Profile
Attachment VII	Compliance Unit Reporting Requirements
Attachment VIII	HUD Compliance Provisions

CONTRACT ANALYSIS DOCUMENT
PROJECT DESCRIPTION
AND
BUDGET FORMS
FOR
HOME RENTAL PROJECTS



FOR OCD USE ONLY:

DATE: _____

CONTRACT NAME: _____

CONTRACT NUMBER: _____

PROJECT INFORMATION SHEET

1. Project

Name: Celeste Landing
Program Category: HOME
Type of Service: Rental Housing Development

2. Awarded Agency

Name: *Celeste Landing, LLC*
Address: 4152 Canal St
City, State, Zip: New Orleans, LA 70119
Telephone: (504) 486-8660 Fax: (504) 486-0475

3. Contact Person

Name: Jeanette D ~~Canocaccia~~
Address: 4152 Canal St
City, State, Zip: New Orleans, LA 70119
Telephone: (504) 603-0670 Fax: (504) 603-0670
Email address: jdcapocaccia@voasela.org

4. Executive Officer Name(s)

Name: Vanessa Levine
Address: 4152 Canal St
City, State, Zip: New Orleans, LA 70119
Telephone: (504)486-8660 Fax: (504)486-0475
Email address: vlevine@voasela.org

5. Bookkeeper or Accountant

Name/Firm: Maddox & Associates
Address: 5627 Bankers Ave, Ste 2
City, State, Zip: Baton Rouge, LA 70808
Telephone: (225) 926-3360 Fax: (225) 926-3361
Email address: dberg@maddoxassociates.com

6. Agency Type (Check One)

Non-Profit Corporation _____
For Profit Corporation _____
Public Agency _____
City of New Orleans Department _____
Other (please specify) X_____

Celeste Landing, L.L.C. is a single asset entity Louisiana Limited Liability Corporation which is managed by Celeste Landing MM, L.L.C., which is 51% owned by RNDC, a Louisiana nonprofit, and 49% by Atrium, a Louisiana nonprofit.

7. Address(es) of Project:

Address	Number of Units
1717 Religious St, New Orleans, LA 70130	46

8. Program Funding

a. Program Income:

*Identify and list amounts of projected/current program income (if applicable):
(As a result of HUD/Office of Community Development funds)*

SOURCE	AMOUNT	TIME PERIOD
1. NA		

*Program Income: Please note that funds generated by a Developer and not returned to the City are not considered PI. Examples of PI for a Developer would include loan interest or loan repayments made to the City.

b. Recommended/Anticipated Funding:

(Includes all other federal, state, and private funding to be used in the Development. If the funding is a loan, please provide us with the interest rate, loan type, and loan period.)

SOURCE	AMOUNT	LOAN/GRANT
City of New Orleans	3,500,000	Loan
State HTC Equity	840,984	Sponsor Loan, payable from available surplus cash
Enterprise – Capital One	14,517,893	Tax Credit Equity
Deferred Development Fee	191,163	Payable from available surplus cash

1

2

3

PROFESSIONAL/CONTRACTUAL SERVICES

Fill in the table below listing the following:

- name of person/firm providing professional/contractual services through this grant
- type of service rendered (e.g., accounting, legal, evaluation, etc.)
- the cost of the service to be provided.

NAME/FIRM	TYPE OF SERVICE	COST
Gibbs Construction, LLC	Negotiated Stipulated Sum Contract for Construction	\$2,403,438
Holly & Smith Architects	Architectural	\$262,388
City of New Orleans	Permits/Fee	\$122,616
First Phase Strategies	Relocation Costs	\$23,400
Novogradac	LHC Appraisal	\$7,900
Gandolfo Kuhn	Survey	\$10,000
Fricker Historic Preservation Services	Historic Consultant	\$8,071
Southern Earth Sciences	Geotechnical Report and Construction Material Testing	\$26,519
CA Partners	Lender Construction Inspections	\$10,000
McGriff Insurance	Builders Risk and GL	\$130,000
Environmental Auditors of America	Environmental	\$20,000
City of New Orleans Legal Closing Costs	Lender Legal	\$50,000
Longwell Reiss	Developer Legal	\$50,000
RNDC and Atrium	Developer Fee	\$425,668

Please refer to the Bureau of Purchasing's Website

1
2
3

<http://www.nola.gov/purchasing/> which outline all required procedures for compliance with the City of New Orleans's Federal Grant Procurement Policy for the formal procurement of any federally-funded goods, services, non-professional services, professional services or public works for the City of New Orleans. All procurements in which federal funds are contemplated or used must be conducted in accordance with federal procurement requirements.

PROJECT DESCRIPTION AND HISTORY

In the space provided below, describe the project to be implemented with HOME funds. Describe the entire project and identify the specific component/components funded through HOME.

Low Income Housing Tax Credit, Historic Tax Credits and HOME funding through the City of New Orleans Office of Community Development make up the development sources for Celeste Landing allowing for the creation of 46 new affordable rental apartments in the highly sought after Lower Garden District neighborhood.

This development is comprised of both the rehabilitation of an existing 18,000 sf historic building and the construction of a new 22,000 sf addition along with off street parking and site amenity space, community facilities and onsite management office. The existing building is a historic 3-story brick building that is designated as a Historic Landmark. All of the apartments will be rent and income restricted to households earning up to 60% AMI for long term affordability of at least 40 years. Ten percent will be additionally set aside as very low income (up to 30% AMI) and 35% up to 50% AMI. 20 units will qualify as HOME units.

ATTACHMENT II

CITY OF NEW ORLEANS OFFICE OF COMMUNITY DEVELOPMENT

SOURCES AND USES STATEMENT

Date: 4/14/2023

Project Name: Celeste Landing

Project Address: 1717 Religious St, New Orleans, LA 70130

Line Item & Number	TOTALS	HOMES	Tax Credit Equity	Sponsor Loan + Deferred
A1 Acquisition Cost (Land & Improvements) (§206(c))	4,295,000.00	0.00	4,295,000.00	0.00
A2 Appraisal (§206(d)(2))	4,617.00	0.00	4,617.00	0.00
A3 Legal, Recordation, Title Examination, etc. (§206(d)(2))	475,376.00	395,376.00	\$0,000.00	0.00
A4 Total Acquisition Costs (A1 - A4)	4,774,993.00	395,376.00	4,379,617.00	0.00
B Construction (sq.ft. @ \$) (§206(a))	10,104,675.00	2,681,204.00	7,423,471.00	0.00
C1 Architect Fee (§206(d)(1))	426,610.00	316,977.00	109,633.00	0.00
C2 Financing Fees (i.e. Commitments) (§206(d)(2))	218,956.00	0.00	218,956.00	0.00
C3 Related Finance (Closing) Costs (= A5) (§206(d)(2))	\$46,242.00	0.00	\$46,242.00	0.00
C4 Building Permits (§206(d)(2))	100,000.00	\$8,543.00	11,457.00	0.00
C5 Audit (§206(d)(3))	18,700.00	0.00	18,700.00	0.00
C6 Affirmative Marketing Fair Housing (§206(d)(4))	0.00	0.00	0.00	0.00
C7 Initial Operating Deficit Reserve (§206(d)(5))	\$45,564.00	0.00	0.00	\$45,564.00
C8 Work Write-up Preparation (§206(d)(6))	0.00	0.00	0.00	0.00
C9 Rehab Inspection (§206(d)(6))	38,000.00	10,000.00	28,000.00	0.00
C10 Housing Counseling (§206(d)(6))	0.00	0.00	0.00	0.00
C11 CHDO Project-Specific Costs (Loan Only) (§301)	0.00	0.00	0.00	0.00
C12 Relocation Costs (§206(f))	23,400.00	0.00	23,400.00	0.00
C13 Interim Financing Costs Appraisal (§206(g))	7,900.00	7,900.00	0.00	0.00
C14 Other: Attach Complete Explanation & Justification	335,000.00	0.00	335,000.00	0.00
C15 Total Soft Costs	2,560,372.00	423,420.00	1,591,388.00	\$45,564.00
D TOTAL DEVELOPMENT COST (A4+B-C15)	17,440,040.00	3,500,000.00	13,394,476.00	\$45,564.00
E Developer's Fee (§206(d)(2))	1,610,000.00	0.00	1,123,417.00	486,583.00
F Homebuyer Assistance (§205(a))	0.00	0.00	0.00	0.00
G GRAND TOTAL PROJECT COST (D+E-F)	19,050,040.00	3,500,000.00	14,517,893.00	1,032,147.00

OCD Form XXX

ATTACHMENT III

1

Q-1A

A CERTAIN PORTION OF GROUND, situated in the First District of the City of New Orleans, State of Louisiana, in Square 87 bounded by Celeste Street, Felicity Street, St. Thomas Street, St. James Street and Religious Steet designated as Lot Q-1A and shown on a survey and resubdivision by the Office of Gandolfo Kuhn LLC, dated August 19, 2022; Drawing No. CC-26-2 and is more particularly described as follows:

Begin at the intersection of the westerly line of Religious Street and the northerly line of Celeste Street, thence go along said line of Celeste Street in a westerly direction a distance of 127 feet 10 inches 5 eighths to a point on the division line of Lot P and Lot Q-1A; thence along said line at in interior angle to the left of $89^{\circ}55'40''$ a distance of 191 feet 11 inches 0 eighths to the division line of Lot Q-1A and Lot 4; thence along said line in an easterly direction and parallel to Celeste Street at an interior angle to the left of $90^{\circ}04'20''$ a distance of 127 feet 10 inches 5 eighths to a point on the westerly line of Religious Street; thence along said line in a southerly direction at an interior angle to the left of $89^{\circ}55'40''$ a distance of 191 feet 11 inches 0 eighths to the Point of Beginning.

2

ATTACHMENT IV

Schedule of Work

Project Schedule

Enter Project Schedule

Activity	Scheduled Date (mm/dd/yyyy)
A. SITE	
Option/Contract	23-Nov-21
Site Acquisition	1-May-23
Zoning Approval	13-Oct-22
Site Analysis	22-Feb-23
Environmental Clearance	19-Apr-23
B. FINANCING	
1. Construction Loan/Interim Financing	
Loan Application	15-Jul-22
Conditional Commitment	20-Jan-23
Firm Commitment	15-Jun-23
2. Other Loans and Grants	
Type & Source	State and Federal Historic Tax Credits
Application	13-Jul-22
Award	27-Feb-23
3. Other Loans and Grants	
Type & Source	LIIITC Award
Application	6-Dec-21
Award	13-Apr-22
4. Other Loans and Grants	
Type & Source	City of New Orleans NOFA Award
Application	3-Nov-21
Award	16-May-22
C. PLANS AND SPECIFICATIONS, WORKING DRAWINGS	23-Feb-23
D. CLOSING AND TRANSFER OF PROPERTY	15-Jun-23
E. CONSTRUCTION START	19-June-23
10% Construction complete	1-Sep-23
50% Construction complete	1-Apr-24
90% Construction complete	1-Dec-24
F. COMPLETION DATE	19-Feb-25
G. CERTIFICATE OF OCCUPANCY DATE	19-Feb-25
H. DATE FIRST UNIT RENTED	1-Mar-25
I. DATE LAST ASSISTED UNIT RENTED IN SERVICE	1-Aug-25
J. 100% OF UNIT OCCUPANCY ACHIEVED	1-Aug-25

ATTACHMENT V

PART III TERMS AND CONDITIONS

ACCOUNTING AND FINANCIAL MANAGEMENT PROCEDURES

SECTION 1 - SYSTEM EVALUATION

It is agreed and understood between the parties that prior to the disbursement of funds, the City will determine that the Contractor's fidelity bonding coverage, accounting, reporting and internal control systems meet the minimum Department of HUD and City requirements. It is further agreed and understood that the City shall monitor the operations and accounting of the Contractor to assure that it is maintaining adequate systems and that the funds furnished are being used effectively and efficiently to accomplish the purposes for which the funds were made available.

SECTION 2 - CASH ADVANCE

Any advance made to the Contractor shall be amortized as the City shall order. Payments to the City from the Contractor shall be made as scheduled by the City. In any event, the balance of advance payments shall become due and payable to the City of New Orleans upon termination of this agreement.

SECTION 3 - RECEIPTS AND DISBURSEMENTS

- A. **Receipts** - Prior to any funding the Contractor shall designate a commercial bank as the depository and establish a separate checking account for the receipt of funds under this contract and give the City the Official Title and Number of the account. Furthermore, Title of the account is to be consistent with the name of the project. It is also agreed that should the Contractor decide to change the depository to another commercial bank after funds are received, the Contractor shall provide the City the name of the new depository at least five (5) days before such change occurs. The Contractor is encouraged, but not required, to use a minority owned and/or operated depository.
- B. **Disbursements** - Disbursements for goods and services of persons and/or firms not payrolled by the Contractor shall be supported by executed purchase orders or contracts. Purchase and contract procedures shall follow the City of New Orleans practices and policies, and shall be approved by the City of New Orleans prior to implementation. Disbursements must be supported by invoices or requisitions, and made by pre-numbered checks countersigned by two authorized officials other than the accountant or bookkeeper.

SECTION 4 - BOOKS OF ACCOUNTS

The Contractor shall establish and maintain on a current basis an adequate accounting system on an accrual basis, in accordance with generally accepted accounting principles and practices. This system must be adequate to enable the monthly preparation of a Cost Control Statement of the sources and applications of funds prepared in accordance with the provisions set forth in the HUD guidelines, and any other guidelines provided by the City, to be submitted to the City on the fifth (5th) working day of each calendar month.

SECTION 5 - DESCRIPTION OF ACCOUNTS

- A. **Accounts** - The accounting system shall follow the suggested general ledger account title consistent with the name of the project, or the City may provide titles at its discretion. The Contractor shall also maintain an "Ineligible Costs" ledger to record any cost incurred which is not eligible for reimbursement for program funds.
- B. **Special Account** - Contractor agrees to establish, within its present accounting system, a special numbered cost account for identification of all funds received and disbursed under this contract. This special numbered account shall be used solely for the purpose of making payments for items of allowable cost pursuant to this agreement.

SECTION 6 - RECORDS

Records shall identify adequately the source, program year, and application of funds received under this agreement. Said records shall contain information pertaining to the funding award, authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income. Records shall include the minutes of meetings of all Contractor (corporation) board meetings, pertaining to the funding received and its application.

SECTION 7 - ELIGIBLE AND INELIGIBLE COSTS

Contractor agrees that all costs incurred by it will be reasonable and of a nature which clearly relates to the specific purposes and end products of the contract. Contractor further agrees that it will exercise due care in incurring costs and will assure that expenditures conform to the general standards and criteria for cost eligibility as set forth in the Office of Management and Budget Super Circular 2 CFR part 200 Subpart E, and HUD regulations and guidelines and others as may be imposed by the City. Contractor agrees to refund to the City any payments or portions of payments which the City and/or Department of HUD determine are not properly due to the Contractor under the terms of this agreement.

SECTION 8 - FIDELITY BONDING

Prior to initial disbursement of funds to the Contractor, the Contractor shall obtain fidelity/surety bonds on all persons handling funds received or disbursed under the contract in an amount and manner consistent with the coverage deemed necessary and reasonable, or as the City may require. If the bond is canceled or reduced, the Contractor shall immediately notify the City. In that event, the City shall not make any further disbursements to the Contractor until it is assured that bonding coverage has been obtained.

SECTION 9 - AUDITS AND INTERNAL CONTROL SYSTEMS

At any time during normal business hours and as often as the City may deem necessary, the Contractor shall make available to the City or its agent all records for examination and will permit the City or its agent to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of improvements and other data relating to all matters covered by the contract. The Contractor shall maintain a written description of its systematic method to assure timely and appropriate resolution of audit findings and recommendations which shall include review of all audit findings by the Board of Directors of the Contractor's corporation.

The Contractor shall perform an audit of all funds including Program Income (if applicable) received under this agreement in accordance with the requirements of the Office of Management and Budget (OMB) Super Circular 2 CFR part 200 Subpart F. The Contractor shall upon execution of this agreement provide the City with two (2) copies of all organizational audit reports inclusive of the period of time twenty-four months prior to the date of this agreement. In the event that no organizational audit meeting the minimum requirements of OMB Super Circular 2 CFR part 200 Subpart (A-133 Audit) has been conducted within the last twenty-four months preceding the execution of this contract, the agency shall take the necessary steps to direct an organizational audit to be implemented within 120 days of the execution date of this agreement, and upon completion shall provide two (2) copies of said audit to the City. Failure to implement said audit shall constitute cause for the City to withhold any and all compensation due under this agreement.

Any agency expending \$750,000 or more in total federal dollars is required to have an audit performed on the funds that are allocated for the services of its specific agreement. The City shall, at the request of the Contractor, reimburse the Contractor for the City's eligible portion of the audit cost, provided the contractor satisfies the audit requirements of the City.

Any agency that expends less than \$750,000 of total federal dollars may be required by the City, at its option, to have an audit performed on funds allocated for the services conducted under this agreement. This determination will be based on "high risk" and "low risk" classification.

The Contractor further understands and agrees to maintain an internal control system in accordance with the Office of Management and Budget (OMB) Circular No. A-123 Revised, Internal Control Systems.

SECTION 10 - TECHNICAL ASSISTANCE

The City agrees to make guidance and assistance available to the Contractor on request in establishing a suitable accounting system. The provision of such assistance shall not relieve the Contractor of his responsibility to provide an adequate accounting system as required by this agreement and as required by federal rules and regulations.

SECTION 11 - PROPERTY RECORDS

The Contractor shall maintain, and provide the City a copy of a record card of each item of non-expendable property acquired for the project. Non-expendable property which will not be consumed or lose its identity by being incorporated into another item of property, which cost \$100.00 or more per unit and is expected to have a useful life of one (1) year or more. Grouping of like items, such as chairs with an aggregate cost in excess of \$100.00 shall also be controlled and accounted for as non-expendable property even though the cost of a single item is less than \$100.00. The record shall include (a) description of the item of property, including model and serial number, if applicable, (b) date of acquisition, and (c) the acquisition cost of assigned value to the property.

Said record shall also include information as to whether the item of property was new or used at time of acquisition. The aggregate of the individual costs shown on the record cards shall equal the balance in the subsidiary cost account for non-expendable property.

A physical inventory shall be taken and reconciled with the record semi-annually, or more frequently if necessary, by the Contractor. The reconciliations are to be submitted to the City within ten (10) days after completion. Any and all non-expendable property purchased shall immediately upon delivery be tagged with standard City of New Orleans I.D. tags, "Property of the City of New Orleans". The title to all non-expendable property acquired under the terms of this contract, or any amendments thereto, including acquisition through lease-purchase agreement, shall immediately vest in the City upon delivery of such property by the vendor. At the conclusion of a project or activity, all non-expendable property acquired for the project shall be returned to the City of New Orleans.

SECTION 12 - SUSPENSION OF FUNDS

If at any time the Contractor is found to be in violation of any parts or sub-parts of this contract, or should the City find that the Contractor is negligent in the administration or recording of funds made available through this contract, the City shall have the authority to suspend any further funding and the ability to seize such Credit Balance in any depository which consists of these funds.

SECTION 13 - INSURANCE ON DEPOSITS

The Contractor understands that all program funds shall be placed only in institutions covered by the Federal Deposit Insurance Corporation (FDIC) organization or other appropriately Federal insured institution or depository. The Contractor also understands that any portion of program funds, in excess of \$100,000, in any one institution, must be fully (100%) and continuously collateralized with specific and identifiable U. S. Government or Agency securities. The securities used as collateral must be owned by the Depository and the manner of collateralization must provide the Contractor with a continuing perfected security interest in the collateral in accordance with applicable law and Federal regulations. The Contractor shall have the option of placing program funds in excess of \$100,000 in another properly insured institution instead of providing collateral for any additional funds in excess of \$10

ATTACHMENT VI

Compliance Unit Reporting Requirements

Community Development Block Grant (CDBG) funding *requires* the following compliance monitoring:

- Adherence to Davis-Bacon monitoring for all Public Facility construction projects in excess of \$2,000 and all Residential construction projects involving 8 or more units
- Utilization of LCPtracker, electronic online system of entering certified payrolls
 - Weekly submissions of certified payrolls include affidavits of prime contractor, statements of compliance, and payroll spreadsheets
- Timely completion of Contract and Subcontract Activity Reports (CSAR) if any portion of funding was used for construction
- Equal Employment Opportunity and Affirmative Action monitoring for all subrecipients
- Section 3 monitoring for all recipients of federal assistance exceeding \$200,000 in any one year that is expended in part for housing construction, rehabilitation, or other public construction; and for construction contracts in excess of \$100,000 (clause included if applicable)
- Total Federal Funding Inquiry report to be completed by all subrecipients to determine if an A-133 Single Audit is required
- A-133 Single Audit to be performed by any subrecipient that expends \$750,000 or more in one fiscal year, effective for fiscal years beginning on or after January 1, 2015. For fiscal years starting prior to January 1, 2015, the threshold is \$500,000.

HOME funding *requires* the following compliance monitoring:

- Adherence to Davis-Bacon monitoring for all Residential construction projects involving 12 or more units
- Utilization of LCPtracker, electronic online system of entering certified payrolls
 - Weekly submissions of certified payrolls include affidavits of prime contractor, statements of compliance, and payroll spreadsheets
- Equal Employment Opportunity and Affirmative Action monitoring for all subrecipients
- Section 3 monitoring for all recipients of federal assistance exceeding \$200,000 in any one year that is expended in part for housing construction, rehabilitation, or other public construction; and for construction contracts in excess of \$100,000 (clause included if applicable)
- Total Federal Funding Inquiry report to be completed by all sub-recipients to determine if an A-133 Single Audit is required
- A-133 Single Audit to be performed by any subrecipient that expends \$750,000 or more in one fiscal year, effective for fiscal years beginning on or after January 1, 2015. For fiscal years starting prior to January 1, 2015, the threshold is \$500,000.

SECTION 3 CLAUSE

All bid packages and contracts of \$100, 000 or greater stimulating construction through the use of federal funds shall include the required "Section 3 clause" (below):

- 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 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 the contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract

1 certify that they are under no contractual or other impediment that would prevent them from
2 complying with the Part 135 regulations.

- 3 C. The contractor agrees to send to each labor organization or representative of workers with which
4 the contractor has a collective bargaining agreement or other understanding, if any, a notice
5 advising the labor organization or worker's representative of the contractor's commitments under
6 this Section 3 clause, and will post copies of the notice in conspicuous places at the work site
7 where both employees and applicants for training and employment positions can see the notice.
8 The notice shall describe the Section 3 preference, shall set forth minimum number and job titles
9 subject to hire, availability of apprenticeship and training positions, the qualifications of each;
10 and the name and location of the person(s) taking applications for each of the positions; and the
11 anticipated date the work shall begin.
- 12 D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance
13 with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an
14 applicable provision of the subcontract of in this Section 3 clause, upon a finding that a
15 subcontractor is in violation of the regulations in 24 CFR Part 135. The contract will not
16 subcontract with any subcontractor where the contractor has notice or knowledge that the
17 subcontractor is in violation of the regulations in 24 CFR Part 135.
- 18 E. The contractor will certify that any vacant employment positions, including training positions,
19 that are filled (1) after the contractor is selected but before the contract is executed, and (2) with
20 persons other than those to whom the regulations of 24 CFR Part 135 require employment
21 opportunities to be directed, were not filled to circumvent the contractor's obligations under 24
22 CFR Part 135.
- 23 F. Non compliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination
24 of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 25 G. With respect to the work performed in connection with Section 3 covered Indian housing
26 assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25
27 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires
28 that to the greatest extent feasible (i) preference and opportunities for training and employment
29 shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be
30 given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract
31 are subject to Section 3 and Section 7(b) to the maximum extent feasible, but not in derogation of
32 compliance with Section 7(b).

ATTACHMENT VI

MONTHLY REPORTING REQUIREMENTS Rental Housing Activity

Project Name: _____
Project Address: _____
Activity Type: Rehab Only ____ New Construction Only ____ Acquisition Only ____
Acquisition & Rehab ____ Acquisition & New Construction ____
Property Type: Condominium ____ Cooperative ____ SRO ____ Apartment ____
FHA Insured: Yes ____ No ____ Mixed Use: Yes ____ No ____ Mixed Income: Yes ____ No ____
Total Units: _____
Total HOME-assisted Units: _____
Total 504 Units: Mobility-impaired _____ % of Total Units _____
Sensory-impaired _____ % of Total Units _____
Projected Start Date: _____
Projected Completion Date: _____

Reporting Month: _____

1. CONSTRUCTION ACTIVITY

◆ UNITS UNDERWAY

Total Non-504 HOME-assisted Units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

Total 504 HOME-assisted units under construction

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

Total HOME-assisted units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

◆ UNITS COMPLETE (with Certificates of Occupancy)

Total Non-504 HOME-assisted Units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

Total 504 HOME-assisted Units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

♦ **UNITS COMPLETE (with Certificates of Occupancy) (continued)**

Total HOME-assisted Units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

2. OFFICE OF COMMUNITY DEVELOPMENT (OCD) CERTIFICATIONS

Total Non-504 HOME-assisted Unit Certifications Received

This Month	To Date
_____	_____

Total 504 HOME-assisted Unit Certifications Received

	<u>This Month</u>	<u>To Date</u>
Mobility-impaired	_____	_____
Sensory-impaired	_____	_____

Total HOME-assisted Unit Certifications Received

This Month	To Date
_____	_____

3. LEASE EXECUTIONS

Total Non-504 HOME-assisted Unit Lease Executions

This Month	To Date
_____	_____

Total 504 HOME-assisted Unit Lease Executions

This Month	_____	To Date	_____
Total HOME-assisted Unit Lease Executions			
This Month	_____	To Date	_____

Describe any problems that are delaying the completion or occupancy of the project by the targeted completion date.

Describe your organization's outreach strategies for reaching your targeted Section 504 population.

List outreach activities your organization conducted this month. (Provide documentation to OCD.)

Describe the results of those activities.

(For Compliance with 24CFR 570.506 and Section 109, Housing and Community Development Act of 1974, as Amended, and Section 217(b)(1) Of Title II, the National Affordable Housing Act, as amended, Title VI, Civil Rights Act of 1964)

Signature of Reporting Officer:

Note: This report is due on the 5th working day of each month along with the Monthly Reporting Requirements.

[illegible]

INSTRUCTIONS FOR COMPLETING DIRECT BENEFIT PROFILE

Organizations are required to identify persons benefiting from each activity planned, and distinguish between those who will benefit directly and those who will benefit indirectly. A direct benefit will accrue to any activity where a personal record must be completed by the client or maintained by the organization in order for the client to receive services. Persons must be identified by racial and ethnic background. The individuals themselves make this determination.

- Project Name:** Enter the official project name as it appears on Page 1 of the Agreement.
- Project Number:** Enter the project number as it appears on Page 1 of the Agreement.
- Organization Name:** Enter the organization's name as it appears on Page 1 of the Agreement.
- Name & Title of Reporting Officer:** Enter the name and title of the person in the organization responsible for the Direct Benefit Profile.
- Signature of Reporting Officer:** Self-explanatory
- Report Period:** Enter the month for which the data is being reported.
- Column 1:** Enter the total number of persons receiving direct benefits for the current report month and cumulatively from execution of Agreement through report period.
- Column 2:** Of the total number of clients entered in Column 1, enter the number and percentage of White people receiving direct benefits (a person having origin in any of the original peoples of Europe, North Africa or the Middle East).
- Column 3:** Of the total number of clients entered in Column 1, enter the number and percentage of African American people receiving direct benefits (a person having origin in any of the black racial groups of Africa).
- Column 4:** Of the total number of clients entered in Column 1, enter the number and percentage of Asian people receiving direct benefits (a person having origin in any of the people of the Far East, Southeast Asia, and the Indian subcontinent, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam).
- Column 5:** Of the total number of clients entered in Column 1, enter the number and percentage of American Indian/Alaskan Native people receiving direct benefits (a person having origin in any of the original peoples of North, Central and South America, and who maintain tribal affiliation or community attachment).
- Column 6:** Of the total number of clients entered in Column 1, enter the number and percentage of Native Hawaiian/Other Pacific Islander people receiving direct benefits (a person having origin in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands).
- Column 7:** Of the total number of clients entered in Column 1, enter the number and percentage of American Indian/Alaskan Native & White people receiving direct benefits.
- Column 8:** Of the total number of clients entered in Column 1, enter the number and percentage of Asian & White people receiving direct benefits.

- Column 9:** Of the total number of clients entered in Column 1, enter the number and percentage of Black/African-American & White people receiving direct benefits.
- Column 10:** Of the total number of clients entered in Column 1, enter the number and percentage of American Indian/Alaskan Native & Black/African-American people receiving direct benefits.
- Column 11:** Of the total number of clients entered in Column 1, enter the number and percentage of Other Multi-racial people receiving direct benefits.
- Column 12:** Of the total number of clients entered in Column 1, enter the number and percentage of Hispanics receiving direct benefits (a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race).
- Column 13:** Of the total number of clients entered in Column 1, enter the number and percentage of Female-headed households receiving direct benefits.
- Column 14:** Of the total number of clients entered in Column 1, enter the number and percentage of Extremely Low Income persons receiving direct benefits (0% - 30% MFI).
- Column 15:** Of the total number of clients entered in Column 1, enter the number and percentage of Very Low Income persons receiving direct benefits (31% - 50% MFI).
- Column 16:** Of the total number of clients entered in Column 1, enter the number and percentage of Low Income persons receiving direct benefits (51% - 80% MFI).

ATTACHMENT VII

OFFICE OF COMMUNITY DEVELOPMENT (OCD) – FISCAL and COMPLIANCE UNIT

An overview of Policies and Procedures

I. Purpose

The following procedures are to assist staff members assigned to the Office of Community Development for the purpose of monitoring sub-grantee agencies for compliance with federal and state regulations regarding the use of funds awarded by these governmental agencies and to reduce and/or eliminate ineligible costs incurred by programs administered by the City of New Orleans.

II. Authorization

The Office of Community Development is authorized to monitor sub-grantee agencies which receive federal and/or state funding via the granting agencies (Office of Criminal Justice, New Orleans Police Department, Mayor's Office, Divisions of Federal and State Programs, Intergovernmental Relations...) The Office of Community Development and other monitors will review the fiscal and programmatic records of all agencies receiving grant funding through city departments and agencies. The review of these sub-grantees will be conducted by two teams of monitors, the City's Compliance Monitors and Contracted Monitors. OCD Fiscal and Compliance Unit will conduct monthly fiscal desk reviews and some site reviews based on a risk. Contracted Monitors will conduct programmatic and fiscal reviews based on risk.

III. Guidelines

A. Contract Compliance Guidelines

1. A copy of all agency award letters to sub-grantees must be submitted to the OCD Fiscal and Compliance Unit by the granting agency. Also, all new, renewed and amended contractual agreements must be forwarded to the OCD Fiscal and Compliance Unit upon execution.
2. All contractual agreements must include a copy of the OCD – Fiscal and Compliance Unit Policies and Procedures and authorizing federal legislation and thereby made a part of the documents.
3. Measurable goals, objectives and performance indicators must be specifically stated in the verbiage of the contract document for meaningful monitoring purposes.
4. All contractual agreements, meeting the expenditure requirement, must include a statement requiring sub-recipients to provide an engagement letter from a certified public accounting firm to conduct an audit of federal funding. A copy of the engagement letter must be submitted to the director of the granting agency within a month of the agencies ending fiscal year. The director of the granting agency will forward a copy to OCD – Fiscal and Compliance Unit. The audit must be completed within nine (9) months after the project fiscal year ends. A copy of the completed audit should be received within nine months of the agencies fiscal year as outlined in OMB Circular 2 CFR 200.

B. Monitoring Responsibilities of the Office of Community Development

The Office of Community Development monitoring responsibilities are conducted by the Fiscal and Compliance Unit. The fiscal unit will perform monthly fiscal desk reviews of Cost Control Statements and the compliance unit will conduct site reviews of sub-recipient agencies receiving grant funding from the City.

Fiscal Unit Payment Processing Procedures:

The Subrecipients will prepare the following for submission to OCD's front desk:

1. The original cost control statement with supporting backup documentations.
2. The submission of cost control statements should occur at least by the fifth (5) working day of every

month.

OCD receptionist will clock-in the cost control statement(s) and forward the original to the Program Analyst. The Program Analyst will review the documents for proper documentation and then forward the cost control statement(s) to the fiscal unit for processing. The Fiscal Accountant will verify costs documented in column two (2) on the original cost control statement(s) with the backup documents submitted by the Subrecipients. If costs submitted for reimbursement are questionable the Fiscal Accountant will email the Program Analyst and the subrecipient. It is the responsibility of the Subrecipient to recoup any questionable costs on the next period cost control statement(s). After total review, the Fiscal Accountant will forward all cost control statements to the Accounting/Finance Department for payment processing and filing. Subrecipients should expect to receive payment in approximately twenty (20) days after submitting cost control statement(s) to OCD – Fiscal Unit. All checks are mailed to the subrecipients.

The following documents are required for payment review and processing, which will include but is not limited to such items as:

1. Invoices
2. Payroll journal
3. General ledgers
4. Letters of approval and subcontract agreement for professional services
5. Bid information for supplies, materials and equipment when required
6. Letter of approval from Granting Agency if indirect cost is being requested
7. Lease agreements

Compliance Monitor Site Review Responsibility

Compliance Monitors will conduct site reviews in accordance with the schedule devised by the Team Leader, based on risk and need.

Site visits responsibilities for Compliance Monitors will include the review of the following documented records:

1. Personal Services
 - a. Personnel policy
 - b. Time Sheets
 - c. Leave records
 - d. Payroll register
 - e. Federal and State withholding records for each employee
 - f. State unemployment tax forms
 - g. Convention and travel expense reports
 - h. Mileage reimbursement reports
 - i. Quarterly federal and state tax reports
 - j. Yearly 1099 and W2 forms
2. Accounting Journals
 - a. Cash Disbursements journal
 - b. Cash Receipts journal
 - c. General journal
 - d. General ledger
 - e. Subsidiary accounts payable ledgers
3. Bank Accounts
 - a. Signature cards
 - b. Separate bank account

- c. Separate program income bank account
 - d. Monthly reconciled bank statements
- 4. Fidelity or Surety Bond
- 5. Contractual Services
 - a. Professional Services
 - Three (3) "request for Proposal" (Bid's)
 - Letter of Approval from the granting agency
 - b. Subcontract agreement
 - c. Cost allocation plans for utilities, if necessary, and pre-approved by the Granting Agency.
 - d. Rent and lease agreements (Land and Building)
 - e. Rent and lease agreement (Equipment)
 - f. Long-distance telephone logs
 - g. Indirect cost rate pre-approved by the Granting Agency
 - h. An automobile mileage log
- 6. Supplies and Materials
 - a. Invoices
 - b. Bids required for purchase as follows:
 - 1. Purchases less than \$250.00, no solicitation of bids is required
 - 2. \$ 250.01 to \$1000.00 - needs three (3) telephone bids from vendors
 - 3. \$1000.01 to \$5000.00 - need three (3) Request for Quotations (RFQ's) from vendors
 - 4. \$5,000.01 up - need prior approval from Granting Agency
 - c. Verification of Invoices must include:
 - 1. Approval of payment;
 - 2. Marked paid; and,
 - 3. Indicate check number
- 7. Equipment
 - a. Bids required for purchase as follows:
 - 1. Purchases less than \$250.00, no solicitation of bids is required
 - 2. \$ 250.01 to \$1000.00 - needs three (3) telephone bids from vendors
 - 3. \$1000.01 to \$5000.00 - need three (3) Request for Quotations (RFQ's) from vendors
 - 4. \$5,000.01 up - need prior approval from Granting Agency
- 8. Signed Corporate minutes to the Board of Directors regular meetings
- 9. Obtain and read copies of the pertinent documents from City of New Orleans personnel
- 10. Review of fiscal documentation
- 11. Review the independent audit report

D Compliance Team Leader

Compliance Team Leader - responsibilities of review and distribution of assignments, documents and reimbursements are as follows:

- 1. The Team Leader will generate and distribute a schedule of all programs to be monitored.
- 2. The Team Leader and Compliance Monitors will collect, review, and distribute reports to both the

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sub-grantee agencies and the granting agencies. Any findings in the monitoring report which would prevent reimbursement will be noted and reported to the Bureau of Accounting for the necessary action;

3. The Team Leader will be responsible for all personnel supervision of staff members assigned to the OCD – Compliance Unit. These responsibilities include monitoring reported work time, the signing of all time sheets, disciplinary actions and annual evaluations;

Note: All employees assigned to the OCD – Fiscal and Compliance Unit will abide by the personnel policies and procedures of the Office of Community Development. An employee handbook will be provided to each assigned employee, delineating items such as dress code requirements, work hours, office conduct, etc.

E. Granting Agencies

The Health Department, the Mayor's Office, OCD, the Police Department and any other department receiving grant funding:

1. The Granting agencies must submit to the OCD Fiscal and Compliance a copy of all new, renewed and amended sub-grantee contracts for review.
2. The Granting agencies will be responsible for contract development consistent with the guidelines and regulations of the respective grantor agency (federal or state government). Contracts must include measurable performance criteria for sub-grantee adherence and effective monitoring. Also, contracts must include the engagement letter for the services of a certified public accounting firm to conduct an audit of subrecipients funding for agencies meeting the expenditure requirements.
3. The granting agencies will provide for certified public accounting firm reviews through grant funding.

IV. Reimbursement Schedule

The Accounting/Finance Department will generate a check twenty (20) days after the final backup document is received in the OCD – Fiscal and Compliance Unit's office. The check will be mailed to the subrecipients.

V. Inquiries

Detailed questions on any section of these policies and procedures should be directed to the team leader at 658-4200.

Revised-06.30.15

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ATTACHMENT VIII

HUD COMPLIANCE PROVISIONS FOR DIRECT GRANTEE 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 – ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS
8. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
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53. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) 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 for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) 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.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, 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, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) 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, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION
CONTRACT SPECIFICATIONS**

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

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at [41 CFR Chapter 60](#), which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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.

(2) 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 for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) 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.

(4) 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 advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency 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 subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance,

guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

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 subcontract; 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** (applicable to projects with more than \$200,000 in funding from housing and community development financial assistance programs, or more than \$100,000 in assistance from Lead Hazard Control and Healthy Homes programs)

Title 24 Part 75 of the Code of Federal Regulations establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

A. *Employment and Training*

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

- (i) Section 3 workers residing within the service area or the neighborhood of the project, and
- (ii) Participants in YouthBuild programs.

B. Contracting

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

- (i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
- (ii) YouthBuild programs.

C. Contract Provisions

(1) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(2) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

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

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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 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 five (5) years from the official date of the final closeout of the grant.

15. INSPECTION

The authorized representative and agents of 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

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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

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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

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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 that 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 1010, 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 subparagraph (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 HUD Compliance Provisions for HOME Grantees

duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5155). The Contractor must comply with HUD's requirements for duplication of benefits imposed by Federal Register notice on the City (81 Fed. Reg. 36564). The Federal Register notice requires compliance with the following HUD guidance documents: (1) the guidance published by HUD in the Federal Register on November 16, 2011 (76 Fed. Reg. 71060); and (2) the guidance document entitled "HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recover (DR) Assistance," issued on July 25, 2013.

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.

45. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under [37 CFR § 401.2 \(a\)](#) and the recipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Contractor must comply with the requirements of [37 CFR Part 401](#), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

46. BYRD ANTI-LOBBYING AMENDMENT

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

47. PROCUREMENT OF RECOVERED MATERIALS.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. 2 CFR § 200.323

48. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

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

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. 2 CFR § 200.216.

49. DOMESTIC PREFERENCES FOR PROCUREMENTS.

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

(b) For purposes of this section:

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

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. 2 CFR § 200.322.

50. REMEDIES FOR NON-COMPLIANCE

If the Contractor fails to comply with federal statutes, regulations or the terms and conditions of a Federal award, the Department or the City may impose additional conditions, as described in 200.208 Specific conditions. If the Department 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.

51. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

52. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

53. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.