

CITY OF MENIFEE

MASTER CONTRACT SERVICES AGREEMENT FOR CDBG-QUALIFIED MINOR HOME REHABILITATION GRANT PROJECTS

THIS MASTER CONTRACT SERVICES AGREEMENT FOR CDBG-QUALIFIED MINOR HOME REHABILITATION GRANT PROJECTS (“Agreement”) is made and effective this _____ day of _____, 2023 (“Effective Date”) by and between the CITY OF MENIFEE, a California municipal corporation, (“City”) and «**Contractor**», a «Entity_Type» (“Contractor”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

SECTION 1. SERVICES.

1.1 Background. City participates in the Community Development Block Grant (“CDBG”) program administered by the United States Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §§ 5301 et seq.) as amended from time to time, and the regulations promulgated thereunder (24 C.F.R. §§ 570 et seq.). Pursuant to the CDBG program, City receives funds from HUD (“CDBG Funds”) to be used for the support of community development activities that meet at least one of the three national objectives of the program: (i) benefiting low- and moderate-income persons, (ii) preventing and eliminating slums and blight, and (iii) addressing a community development need having a particular urgency. City operates a Minor Home Rehabilitation Grant Program (“Program”) using CDBG Funds. To participate in the Program, a homeowner applies for certain home improvements to be made to the home. For qualified homeowners, City facilitates specified home improvements and uses CDBG Funds to pay for those home improvements. Each participating homeowner enters into a construction contract with the contractor selected to perform the work for the specific homeowner’s home improvements.

1.2 Purpose. The purpose of this Agreement is to authorize Contractor to provide services on a CDBG-qualified project through purchase orders issued by the City Manager or designees (each a “Purchase Order”) subject to the terms and conditions herein (the “Services”).

1.3 No Guaranteed Work. The Parties acknowledge that this Agreement serves as a master services agreement to establish Contractor as an approved contractor which may perform Services as part of the Program for the City pursuant to Purchase Order(s) issued in the discretion of the City Manager. This Agreement does not guarantee that Contractor will be issued any work from City, or any particular amount of work, including for any Services. By entering into this Agreement, Contractor is obtaining the ability to receive Purchase Orders from the City Manager, and the City is obtaining the ability to issue Purchase Orders without a requirement for subsequent City Council approval.

1.4 Quotes for Work. Prior to issuing a Purchase Order, City shall solicit at least three (3) quotes from pre-approved contractors for the work subject the specific Purchase Order.

1.5 Commencement of Work. Contractor shall not commence work until Contractor has received a signed Purchase Order from City. Any work commenced by Contractor prior to the receipt of a signed Purchase Order shall not be paid or compensated in any manner.

1.6 Term. This Agreement shall become effective on the Effective Date and shall continue until the date which is eighteen (18) months from the Effective Date (“Term”). The time provided to Contractor to complete the Services required by this Agreement shall not affect City’s right to terminate this Agreement.

1.7 Purchase Order(s). Contractor agrees to furnish Services pursuant to Purchase Order(s) issued by the City Manager or designee in the form attached hereto as Exhibit A, which is attached hereto and incorporated herein by this reference. Each Purchase Order includes all work for a specific homeowner who is participating in the Program.

1.8 Standard of Performance.

a. Quality of Work. As a material inducement to City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the Services contemplated herein. Contractor shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all Services described herein. Contractor covenants that it shall follow the highest professional standards in performing the Services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances, and to the sole satisfaction of the Contract Administrator.

b. Care of Work. Contractor shall adopt reasonable methods during the term of this Agreement to furnish continuous protection to the Services, and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Services by City, except such losses or damages as may be caused by City’s own negligence.

c. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Contractor shall at all times be in compliance with all applicable local, state, and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

d. Warranty. Contractor warrants all work under this Agreement (which for purposes of this Subsection 1.8 shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one (1) year (or the period of time specified elsewhere in this Agreement or in any guarantee or

warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by City of any defect in the work or non-conformance of the work to this Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at Contractor's sole cost and expense. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by Contractor's defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected work.

e. Skilled and Trained Workforce. Contractor, for itself and its subcontractors at every tier, hereby provides an enforceable commitment to comply with California Public Contract Code section 2600 et seq., which requires use of a skilled and trained workforce to perform all work on the agreements that fall within an apprenticeable occupation in the building and construction trades.

f. Inspection and Final Acceptance. The Services shall be performed to the satisfaction of City. City may inspect and accept or reject any of Contractor's work under this Agreement, during performance and/or when completed. City shall reject or finally accept Contractor's work within forty five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud, and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 4 and Section 5, pertaining to insurance and indemnification, respectively. For Services performed on a mobile home, the California Department of Housing and Community Development ("HID") may also inspect Contractor's work performed pursuant to this Agreement.

1.9 Assignment of Personnel. Contractor shall assign only competent personnel to perform the Services. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the Services. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the Services, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.10 Time. Time is of the essence in the performance of this Agreement. Contractor shall devote such time to the performance of the Services pursuant to this Agreement as may be reasonably necessary to satisfy Contractor's obligations hereunder. Contractor shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established therein. When requested by Contractor, extensions to the time period(s) specified in the Purchase Order may be approved in writing by the Contract Administrator but not shall not exceed one hundred eighty (180) days cumulatively.

1.11 Force Majeure. The time period(s) specified in the notice to proceed for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Contractor shall within ten (10) days of the commencement of such delay notify the Contract Administrator in writing of the causes of the delay. The Contract Administrator shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the sole judgment of the Contract Administrator such delay is justified. The Contract Administrator's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of this Agreement pursuant to this Section.

1.12 Further Responsibilities of the Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless otherwise specified in this Agreement, neither Party shall be responsible for the service of the other.

SECTION 2. COMPENSATION.

2.1 Not to Exceed Compensation. Contractor shall be compensated for the Services and any approved reimbursable expenses as set forth in the relevant Purchase Order, and in no event shall City's compensation to Consultant for a Purchase Order exceed the amount set forth therein. The compensation set forth in the Purchase Order represents total compensation payable to Contractor without limitation to compensation for salary, overhead, benefits, fees, or other costs incurred by Contractor in performance of the Purchase Order. In no event shall compensation for Services exceed the "not to exceed" compensation amount set forth in the Purchase Order. The compensation amount set forth on a Purchase Order shall not exceed twenty thousand dollars (\$20,000). In no event shall the cumulative compensation under all Purchase Orders issued pursuant to this Agreement exceed one hundred thousand dollars (\$100,000).

2.2 Method of Compensation. The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the Services; or (iii) such other methods as may be specified in Purchase Order.

2.3 Invoices. Contractor shall submit invoices monthly during the term of this Agreement, based on the cost for the Services performed and reimbursable costs incurred prior to the invoice date. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall also be detailed by such categories. Invoices shall be signed by a Principal and contain homeowner and project information, Purchase Order number, scope of work completed, and cost of work completed.

Invoices shall be submitted to:

City of Menifee
Attn: Accounts Payable
29844 Haun Road
Menifee, CA 92586

2.4 City Payment of Invoices. City shall independently review each invoice submitted by Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. City will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. Pursuant to California Public Contract Code Section 20104.50, Contractor is notified that for public works Services, City's failure to pay undisputed and properly submitted invoices within thirty (30) days shall be subject to interest at the legal rate set forth in Code of Civil Procedure Section 685.010.

2.5 Total Payment. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering the Services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement. In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entirety of the Services performed pursuant to this Agreement, unless this Agreement is modified in writing prior to the submission of such an invoice.

2.6 Hourly Fees. If applicable, fees for the Services performed by Contractor on an hourly basis shall not exceed the amounts shown on Purchase Order.

2.7 Reimbursable Expenses. Reimbursable expenses are included within Purchase Order. Contractor shall not be entitled to any additional compensation for the attendance of meetings reasonably deemed necessary by City for the execution of the Services.

2.8 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any federal or state taxes.

2.9 Payment upon Termination. In the event that City or Contractor terminates this Agreement pursuant to Section 8, City shall compensate Contractor for all outstanding costs and reimbursable expenses incurred for Services satisfactorily completed and for reimbursable expenses as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets in order to verify costs and reimbursable expenses incurred to that date.

2.10 No Waiver. Payment to Contractor for Services performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

SECTION 3. FACILITIES AND EQUIPMENT.

3.1 Contractor Provides Facilities and Equipment. Except as otherwise provided, Contractor shall, at its sole cost and expense, provide all facilities and equipment necessary to

perform the Services required by this Agreement. In no event shall City be required to furnish any facility or equipment that may involve incurring any direct expense.

SECTION 4. INSURANCE REQUIREMENTS.

Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below and provide certified copies of insurance policies and original endorsements, indicating that Contractor has obtained or currently maintains insurance that meets the requirements of this Section and which is satisfactory, in all respects, to City. Contractor shall maintain the insurance policies required by this Section throughout the term of this Agreement. The cost of such insurance shall be included in Contractor's compensation. Contractor shall not allow any subcontractor, Contractor or other agent to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Contractor acknowledges the insurance policy must cover inter-insured suits between City and other insureds. Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages to any persons or property resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible nor shall it limit Contractor's indemnification liabilities as provided in Section 5. Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Contract Administrator in the Contract Administrator's sole discretion. If this Agreement continues for more than three (3) years duration, or in the event the Contract Administrator determines that the Services to be performed under this Agreement creates an increased or decreased risk of loss to City, Contractor agrees that the minimum limits of the insurance policies required by Section 4 may be changed accordingly upon receipt of written notice from the Contract Administrator; provided that Contractor shall have the right to appeal a determination of increased coverage by the Contract Administrator to the City Council of City within ten (10) days of receipt of notice from the Contract Administrator.

4.1 Workers' Compensation. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor pursuant to the provisions of the California Labor Code. Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident, ONE MILLION DOLLARS (\$1,000,000.00) disease per employee, and ONE MILLION DOLLARS (\$1,000,000.00) disease per policy. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against City and its officers, officials, employees, and authorized volunteers for loss arising from the Services performed under this Agreement. Pursuant to California Labor Code Section 1860, Contractor is required to secure the

payment of compensation to Contractor's employees. Pursuant to California Labor Code Section 1861, Contractor hereby submits to City the following:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor Initial: _____

4.2 Commercial General and Automobile Liability Insurance.

a. General Requirements. Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage, for risks associated with the Services contemplated by this Agreement, TWO MILLION DOLLARS (\$2,000,000.00) general aggregate, and TWO MILLION DOLLARS (\$2,000,000.00) products/completed operations aggregate. If a Commercial General Liability Insurance or an Automobile Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from the Services contemplated under this Agreement, including the use of hired, owned, leased, and non-owned automobiles.

b. Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 Code 2, 8, and 9 including "any auto" and endorsement CA 0025 or equivalent). No endorsement shall be attached limiting the coverage.

c. Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

(i) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(ii) The policy must cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately.

(iii) The insurance must be maintained for at least one (1) year following the completion of the Services or the expiration or termination of this Agreement.

(iv) Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 Professional Liability Insurance.

a. General Requirements. Contractor, at its own expense, shall maintain professional liability insurance appropriate to Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to the Services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of the Services or the expiration or termination of this Agreement. During this additional five (5)-year period, Contractor shall annually and upon request of City submit written evidence of this continuous coverage.

b. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

(i) The retroactive date of the policy must be shown and must be no later than the commencement of the Services.

(ii) If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the Effective Date of this Agreement, Contractor must provide extended reporting coverage for a minimum of five (5) years after the expiration or termination of this Agreement or the completion of the Services. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the Services under this Agreement. City shall have the right to exercise, at Contractor's sole cost and expense, any extended reporting provisions of the policy, if Contractor cancels or does not renew the coverage.

(iii) A copy of the claim reporting requirements must be submitted to City prior to the commencement of the Services under this Agreement.

4.4 Pollution Liability Insurance. Contractor, at its own expense, shall maintain pollution liability insurance written on a per occurrence for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per pollution incident and ONE MILLION DOLLARS (\$1,000,000.00) in the general aggregate. The policy shall apply to any incidents at or from any location on which Contractor performs the Services under this Agreement. The insurance must be maintained for at least one (1) year following the completion of Contractor's services or the expiration or termination of this Agreement.

4.5 All Policies Requirements.

a. Verification of Coverage. Prior to beginning the Services under this Agreement, Contractor shall furnish City with certificates of insurance, additional insured endorsement or policy language granting additional insured status complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance must include the following reference:

«Contract Title». The name and address for additional insured endorsements, certificates of insurance and notice of cancellation is: City of Menifee, 29844 Haun Road, Menifee, CA 92586. City must be endorsed as an additional insured for liability arising out of ongoing and completed operations by or on behalf of Contractor.

b. Notice of Reduction in or Cancellation of Coverage. Contractor shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self insured retention is increased. In the event any of said policies of insurance are cancelled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 4 to the Contract Administrator.

c. Additional Insured; Primary Insurance. City and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of the Services performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor, as applicable; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by Contractor in the course of providing the Services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or authorized volunteers. The insurance provided to City as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by City. Additional insured status shall continue for one (1) year after the expiration or termination of this Agreement or completion of the Services.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees, and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against City, its officers, employees, agents, authorized volunteers, and their respective insurers.

d. Deductibles and Self-Insured Retentions. Contractor shall obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the Services. During the term of this Agreement, only upon the prior express written authorization of the Contract Administrator, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

e. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

f. Variation. The Contract Administrator may, but is not required to, approve in writing a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that City's interests are otherwise fully protected.

4.6 Remedies. In addition to any other remedies at law or equity City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement;

b. Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or

c. Terminate this Agreement.

SECTION 5. INDEMNIFICATION.

5.1 Indemnification for Professional Liability. Where the law establishes a professional standard of care for performance of the Services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend (with counsel selected by City), and hold harmless City and any and all of its officers, employees, officials, volunteers, and agents from and against any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, causes of action (whether in tort, contract, under statute, at law, in equity, or otherwise) charges, awards, assessments, fines, or penalties of any kind (including costs and expenses incurred by City and reasonable consultant and expert fees and expenses of investigation, costs of whatever kind and nature and, if Contractor fails to provide a defense for City, the legal costs of counsel retained by City) and any judgment (collectively, "Claims") to the extent same are caused in whole or in part by any negligent or wrongful act, error, or omission of Contractor, its officers, agents, employees, or subcontractors (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of professional services under this Agreement.

5.2 Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, protect, defend (with counsel selected by City), and hold harmless City, and any and all of its officers, employees, officials, volunteers, and agents from and against any and all Claims, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor. Contractor will promptly pay any judgment rendered against City, its officers, agents, or employees for any such Claims arising out of or in connection with the performance of or failure to perform such Services, operations or activities of Contractor hereunder.

5.3 Subcontractors. Contractor shall incorporate similar indemnity agreements with its subcontractors. Contractor shall be fully responsible to indemnify City, and failure of City to monitor compliance with these provisions shall not be a waiver hereof.

5.4 Limitation of Indemnification. The provisions of this Section 5 do not apply to claims occurring as a result of City's sole or active negligence. The provisions of this Section 5 shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officers, officials, employees, and agents acting in an official capacity. In the event any applicable law contains a limitation on indemnification under this Agreement, such limitation shall supersede the provisions herein only to the extent required by said law.

SECTION 6. INDEPENDENT CONTRACTOR.

At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of the Services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.9; however, otherwise City shall not have the right to control the means by which Contractor accomplishes the Services rendered pursuant to this Agreement. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall not at any time or in any manner represent that it is or any of its officers, employees, or agents are in any manner officers, officials, employees, or agents of City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Except for the fees paid to Contractor as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing the Services hereunder. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Contractor shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

SECTION 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Contractor and any subcontractor shall comply with all applicable local, state, and federal laws and regulations applicable to the performance of the work hereunder, including the CDBG Requirements and the legal requirements set forth in Exhibit B attached to this Agreement. "CDBG Requirements" shall collectively refer to the requirements of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §§

5301 et seq.) as amended from time to time, and the implementing regulations set forth in 24 C.F.R. §§ 570 et seq. as amended from time to time, and the requirements set forth and referred to in Exhibit B attached to this Agreement. In the case of any conflict between the CDBG Requirements and this Agreement, the CDBG Requirements shall control; it being understood, however, that in order to be in compliance with this Agreement and the CDBG Requirements, Contractor shall, to the extent possible, comply with the most restrictive provisions in this Agreement and the CDBG Requirements. Contractor shall not hire or employ any person to perform work within City or allow any person to perform the Services required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States. Contractor acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Contractor shall require the same of all subcontractors.

7.3 Prevailing Wages. Contractor acknowledges and agrees that it shall be independently responsible for reviewing the applicable prevailing wage laws and regulations and effectuating compliance with such laws, including, but not limited to the prevailing wage and related requirements set forth in this Subsection 7.3. Contractor shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of California Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

a. Public Work. Contractor hereby expressly acknowledges and agrees that City has never previously affirmatively represented to Contractor, its employees or agents in writing or otherwise that the Services are not a “public work,” as defined in Section 1720 of the California Labor Code. It is agreed by the Parties that, in connection with the Services, including, without limitation, any public work (as defined by applicable law), if any, Contractor shall bear all risks of payment or non-payment of state and/or federal prevailing wages and/or the implementation of California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. To the extent applicable, City will enforce all penalties required by law for Contractor’s failure to pay prevailing wages.

b. California Labor Code. The Contractor’s attention is directed to Division 2, Part 7, Chapter 1 of the California Labor Code and especially to Article 2 (Wages); and Article 3 (Working Hours), thereof.

(i) In accordance with Sections 1773 and 1773.2 of the California Labor Code, City has found and determined the general prevailing rates of wages in the locality in which the public work is to be performed are those determined by the Director of Industrial Relations and available at <https://www.dir.ca.gov/OPRL/2022-1/PWD/Southern.html>. Copies of the prevailing rates of wages are maintained with City’s principal office and are available to any interested party on request. Contractor shall post a copy of the prevailing rate of per diem wages at each job site.

(ii) Contractor is aware of and will comply with the provisions of California Labor Code Section 1776, including the keeping of payroll records and furnishing certified copies thereof in accordance with said Section. Pursuant to California Labor Code

Section 1771.4, Contractor must submit certified payroll records to the Labor Commissioner using the Department of Industrial Relations' electronic certified payroll reporting (eCPR) system.

(iii) Pursuant to California Labor Code Section 1810, it is stipulated hereby that eight (8) hours labor constitutes a legal day's work hereunder.

(iv) Pursuant to California Labor Code Section 1815, work performed by employees of contractors in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than 1 ½ times the basic rate of pay.

(v) Pursuant to California Labor Code Section 1813, it is stipulated hereby that Contractor shall, as a penalty to City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of this Agreement by Contractor or by any subcontractor hereunder for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of Article 3 (commencing with Section 1810), Chapter 1, Part 7, Division 2 of the California Labor Code.

(vi) Contractor is aware of and will comply with the provisions of California Labor Code Sections 1777.5 and 1777.6 with respect to the employment of apprentices. Pursuant to Section 1777.5 it is hereby stipulated that Contractor will be responsible for obtaining compliance therewith on the part of any and all sub-consultants or subcontractors employed by Contractor in connection with this Agreement.

(vii) Pursuant to California Labor Code Section 1775, it is hereby stipulated that Contractor shall, as a penalty to City, forfeit not more than two-hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for the Services by Contractor or any sub-consultant or subcontractor.

c. Bidding Eligibility. Pursuant to California Public Contract Code Section 6109, Contractor may not perform any Services hereunder with a subcontractor who is ineligible to perform the Services pursuant to Section 1777.1 or 1777.7 of the California Labor Code.

d. DIR Monitoring. Pursuant to California Labor Code Section 1771.4, Contractor is hereby notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

e. Indemnification Related to Prevailing Wages. Section 5, Indemnification, specifically encompasses Claims arising from or related to (i) the noncompliance by Contractor or any party performing the Services of any applicable local, state, and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages and hire apprentices); (ii) the implementation of California Labor Code Sections 1726 and 1781, as the same may be amended from time to time, or any other similar law; and/or (iii) failure by Contractor or any party performing the Services to provide any required disclosure or identification as required by California Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

7.4 Licenses and Permits, Fees, and Assessments. Contractor represents, warrants, and covenants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions, and to perform the Services. Contractor represents, warrants, and covenants to City that Contractor and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions, and perform the Services. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City. Contractor shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the Services, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed, or imposed against City hereunder.

7.5 Conflicts of Interest. Contractor represents, warrants, and covenants that Contractor presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.

7.6 Unfair Business Practices Claims. In entering into this Agreement, Contractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials related to this Agreement. This assignment shall be made and become effective at the time City renders final payment to Contractor without further acknowledgment of the Parties.

7.7 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Contractor and its sureties shall be liable for and shall pay to City the sum of FIVE HUNDRED DOLLARS (\$500.00) as liquidated damages for each working day of delay in the performance of any of the Services. City may withhold from any monies payable on account of the Services performed by Contractor any accrued liquidated damages.

SECTION 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may terminate this Agreement at any time and without cause upon thirty (30) days' written notification to Contractor. City may also terminate this Agreement pursuant to Subsection 8.8.

8.2 Termination by Contractor. Contractor may terminate this Agreement upon sixty (60) days' written notice to City.

8.3 Consequences of Termination. In the event of termination, Contractor shall be entitled to compensation for the Services satisfactorily performed up to the date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all materials provided to Contractor or prepared by or for Contractor or City in connection with this Agreement. Upon receipt of any notice of termination, Contractor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Administrator.

8.4 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties. The Contract Administrator shall have the authority to execute amendments to this Agreement which do not materially change the terms hereof, in the Contract Administrator's discretion, to the extent permitted by applicable federal, state, and local law. The Contract Administrator may refer any proposed amendment to the City Council for review and approval.

8.5 Assignment and Subcontracting. City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, without prior written approval of the Contract Administrator. In the event of any unapproved assignment, including in connection with any bankruptcy proceeding, this Agreement shall be void. No approved assignment shall release Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

8.6 Survival. All obligations arising prior to the expiration or termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the expiration or termination of this Agreement.

8.7 Disputes, Default. In the event that Contractor is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Contractor for any of the Services performed after the date of default. Instead, City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, in the sole discretion of the Contract Administrator. During the period of time that Contractor is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, City's remedies shall include, but not be limited to, any or all of the following:

- a. Immediately terminate this Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- c. Retain a different contractor to complete the Services; and/or

d. Charge Contractor the difference between the cost to complete the Services that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the Services.

Any failure on the part of City to give notice of Contractor's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

8.8 Claims by Contractor. Claims, as that term is defined in California Public Contract Code Section 9204, by Contractor and, where applicable, any subcontractor, in connection with a public works project shall be subject to the mediation procedure in California Public Contract Code Section 9204.

SECTION 9. KEEPING AND STATUS OF RECORDS.

9.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports (including but not limited to payroll reports), studies, or other documents relating to the disbursements charged to City and the Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Administrator to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Administrator shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the Books and Records may be given to City, and access shall be provided by Contractor's successor in interest. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

9.2 Reports. Contractor shall periodically prepare and submit to the Contract Administrator such reports concerning the performance of the Services required by this Agreement as the Contract Administrator shall require. Contractor hereby acknowledges that City is greatly concerned about the cost of the Services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Administrator of said fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

SECTION 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If either Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and expenses including costs, in addition to any other relief to which that Party may be entitled; provided, however, that the attorneys' fees awarded pursuant to this Subsection shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing Party in the conduct of the litigation. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Applicable Law, Venue. The laws of the State of California shall govern this Agreement. In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in Riverside County.

10.3 Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

10.4 Section Headings and Subheadings. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

10.5 No Implied Waiver of Breach. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

10.6 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.7 Contractor Principals and Representatives. The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____ (Name)	_____ (Title)
-----------------	------------------

_____ (Name)	_____ (Title)
-----------------	------------------

(Name)

(Title)

It is expressly understood that the experience, knowledge, capability, and reputation of the Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the Services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

10.8 City Contract Administration. This Agreement shall be administered by a City employee, «Staff_Contact», «Staff_Title» (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator or his designee. It shall be Contractor’s responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the Services and Contractor shall refer any decisions which must be made by City to the Contract Administrator. Unless otherwise provided by applicable law, the Contract Administrator shall have the power to act on behalf of City for all purposes under this Agreement. Unless otherwise provided in this Agreement, Contractor shall not accept direction or orders from any person other than the Contract Administrator or his designee.

10.9 Notices. Any written notice to Contractor shall be sent to:

«Contractor»

Attn: «Contractor_Contact»

«Address»

«City», «State» «Zip_Code»

Any written notice to City shall be sent to the Contract Administrator at:

City of Menifee

29844 Haun Road

Menifee, CA 92586

Attn: «Staff_Contact», «Staff_Title»

with a copy to:

City Clerk

City of Menifee

29844 Haun Road

Menifee, CA 92586

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served

personally or sent by prepaid, first-class mail. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

10.10 Rights and Remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

10.11 Integration, Interpretation. This Agreement, including Exhibits A and B, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.13 Execution of Contract. The persons executing this Agreement on behalf of each of the Parties hereto represent and warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

10.14 Nondiscrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

10.15 No Third Party Beneficiaries. There are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

10.16 Nonliability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

10.17 No Undue Influence. Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential

financial arrangement, or financial inducement. No officer or employee of City shall receive compensation, directly or indirectly, from Contractor, or from any officer, employee, or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement.

10.18 No Benefit to Arise to City Employees. No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to this Agreement during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for the Services to be performed under this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed and entered into this Agreement as of the Effective Date.

CITY OF MENIFEE

CONTRACTOR

«City_Signature»

«Contractor_Signature_1»

Attest:

Sarah A. Manwaring, City Clerk

«Contractor_Signature_2»

Approved as to Form:

Jeffrey T. Melching, City Attorney

[Note: 2 officer's signatures required if
Contractor is a corporation, unless provided
with a certificate of secretary in-lieu]

EXHIBIT B

CDBG CONTRACT PROVISIONS

In addition to the requirements set forth in other provisions of the Agreement, Contractor shall comply, and shall cause all Contractor's personnel to comply, with the following regulations and requirements insofar as they are applicable to the performance of the Agreement.¹

1. Equal Opportunity and Nondiscrimination.

a. Title VI of the Civil Rights Act of 1964, as amended, including Public Law 88-352 implemented in 24 CFR Part 1. This law provides in part that 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. In regard to the sale or lease of property, Contractor shall cause or require a covenant running with the land to be inserted in the deed and leases prohibiting discrimination under this Title, and providing that City and the United States are beneficiaries of and entitled to enforce such covenants. Contractor shall enforce such covenant and shall not itself so discriminate.

b. Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended, including Public Law 90-234. The Fair Housing Act provides in part that there shall be no discrimination in housing practices on the basis of race, color, religion, sex, and national origin. The Fair Housing Act was amended in 1988 to provide protections from discrimination in any aspect of the sale or rental of housing for families with children and persons with disabilities. The Fair Housing Act also establishes requirements for the design and construction of new rental or for-sale multi-family housing to ensure a minimum level of accessibility for persons with disabilities.

c. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, including 42 U.S.C. 5301 *et. seq.*, 42 U.S.C. 6101 *et. seq.*, and 29 U.S.C. 794. This law provides in part that no person on the grounds of race, color, national origin, sex, or religion shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with funds under this Title.

d. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including 42 U.S.C. 5301 *et. seq.* This law provides in part that any grant under Section 106 shall be made only if the grantee certifies to the satisfaction of the Secretary of HUD that the grantee will, among other things, affirmatively further fair housing.

¹ This exhibit is a list and summary of some of the applicable legal requirements and is not a complete list of all Contractor requirements. The description set forth next to a statute or regulation is a summary of certain provisions in the statute or regulation and is in no way intended to be a complete description or summary of the statute or regulation. In the event of any conflict between this summary and the requirements imposed by applicable laws, regulations, and requirements, the applicable laws, regulations, and requirements shall apply.

e. Executive Order 11246, as amended. This order includes a requirement that grantees and Contractors and their contractors and subcontractors not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

f. Executive Order 11063, as amended, including 24 CFR Part 107. This order and its implementing regulations include requirements that all actions necessary be taken to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental, or other disposition of property assisted with Federal loans, advances, grants, or contributions.

g. Section 504 of the Rehabilitation Act of 1973, as amended. This Act specifies in part that no otherwise qualified individual shall solely by reason of his or her disability or handicap be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance. Contractor must ensure that its programs are accessible to and usable by persons with disabilities.

h. The Americans with Disabilities Act (ADA) of 1990, as amended. This Act prohibits discrimination on the basis of disability in employment by state and local governments and in places of public accommodation and commercial facilities. The ADA also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. The Act defines the range of conditions that qualify as disabilities and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.

i. The Age Discrimination Act of 1975, as amended. This law provides in part that no person shall be excluded from participation in, be denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal assistance.

j. EEO/AA Statement. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

k. Minority/Women Business Enterprise. Contractor will use its best efforts to afford small businesses and minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of the Agreement. As used in the Agreement, the term “small business” means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women-owned business enterprise” means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish-surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Contractor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

2. Environmental.

a. Air and Water. Contractor shall comply with the following regulations insofar as they apply to the performance of the Agreement: Clean Air Act, 42 U.S.C. 7401, *et seq.*; Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and the U.S. Environmental Protection City regulations pursuant to 40 CFR Part 50, as amended.

b. Flood Disaster Protection Act of 1973. Contractor shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained.

c. Lead-Based Paint. Contractor shall comply with the Lead-Based Paint Regulations referenced in 24 C.F.R. 570.608, including 24 C.F.R. Part 35, *et. al.*

d. Historic Preservation. Contractor shall comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 C.F.R. Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties and related laws and Executive Orders, insofar as they apply to the performance of the Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

e. Limitation on Activities Pending Clearance. In accordance with 24 C.F.R. § 58.22 entitled "Limitations on activities pending clearance, "neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 C.F.R. § 58.1(b) on an activity or project until HUD or the state has approved the recipient's Request for Release of Funds (RROF) and the related certifications have been approved. Neither a recipient nor any participant in the development process may commit non-HUD funds or undertake an activity or project that would have an adverse environmental impact or limit the choice of reasonable alternatives. Upon completion of environmental review or receipt of environmental clearance, City shall notify Contractor. HUD funds shall not be utilized before this requirement is satisfied. The environmental review or violation of the provisions may result in approval, modification or cancellation of the City Grant. If a project or activity is exempt under 24 C.F.R. § 58.34, or is categorically excluded (except in extraordinary circumstances) under 24 C.F.R. § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the City has documented its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section by issuing a Notice to Proceed.

3. Uniform Administrative Requirements. The uniform administrative requirements described in 24 C.F.R. § 570.502.

4. Other Program Requirements. Contractor shall carry out each activity under the Agreement in accordance with all applicable federal laws and regulations described in Subpart K

of 24 C.F.R. § 570 except for City's environmental responsibilities under 24 C.F.R. § 570.604 and City's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52.

5. Reversion of Assets. Upon the expiration of the Funding Period or sooner termination of the Agreement, Contractor shall transfer to City (a) any and all CDBG Funds, (b) any accounts receivable attributable to the use of CDBG Funds. In all cases in which equipment acquired, in whole or in part, with funds under the Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under the Agreement were used to acquire the equipment). Equipment not needed by Contractor for activities under the Agreement shall at the election of City either be (a) transferred to City for the CDBG program, or (b) retained by Contractor after compensating City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

6. Relocation. City shall not be responsible for relocating any occupants from any property. If required, Contractor shall have the sole and exclusive responsibility for providing relocation assistance and paying all relocation costs required to comply with all applicable federal and state laws, rules, and regulations, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq.*, as amended, and implementing regulations, and HUD Handbook 1378. Contractor shall indemnify, defend, and hold City harmless from and against any claims, liabilities, damages, or losses made against it by tenants or occupants of any property, including without limitation claims for relocation assistance, inverse condemnation, and claims otherwise arising from any act or omission of Contractor pursuant to the provision of relocation assistance.

7. Allowable Costs and Audits. Contractor shall comply with and administer the Program in accordance with OMB Circular No. A-122 "Cost Principles for Non Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions", as applicable. If Contractor is a governmental or quasi-governmental agency, the applicable sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-87 shall apply. Contractor shall have an annual audit conducted in accordance with OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

8. Records and Reports. Contractor shall provide to City and shall cause each of its contractors, subcontractors, and Contractors to provide to City all records and reports relating to the Program that may be reasonably requested by City in order to enable it to perform its record keeping and reporting obligations pursuant to the CDBG Requirements, including but not limited to those described in the Agreement and 24 CFR 570.506.

9. Religious Organizations. If Contractor is a religious organization as defined by the CDBG Requirements, Contractor shall comply with all conditions prescribed by HUD for the use of CDBG funds by religious organizations, including the First Amendment of the United States

Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. § 570.200(j).

10. Conflict of Interest. Contractor will comply with 24 C.F.R. 84.42, 85.36 and 570.611 regarding the avoidance of conflict of interest, which provisions include (but are not limited to) the following:

a. Contractor shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer or agent of the Contractor shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Contractor, or any designated public agency.

11. Political Activity (24 CFR 570.207(a)(3)). Contractor is prohibited from using CDBG funds to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as sponsoring candidate forums, distributing brochures, voter transportation, or voter registration.

12. Anti-Lobbying Certification. By its execution of the Agreement, Contractor hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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.

b. If any funds other than Federal 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, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

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c. It will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. At the request of City, Contractor shall execute a separate document that contains the certifications set forth above.

13. Drug-Free Workplace Requirements. Contractor shall comply with and be subject to the requirements of the federal drug-free workplace requirements, which include the following actions be taken:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an ongoing drug-free awareness program to inform employees about: (a) the dangers of drug abuse in the work place; (b) the grantee's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (i).

d. Notifying the employee in the statement required by paragraph (i) that, as a condition of employment under the grant, the employee will: (a) abide by the terms of the statement; and (b) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

e. Notifying the agency in writing, within ten (10) calendar days after receiving notice under sub-paragraph (iv)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (iv)(b), with respect to any employee who is so convicted: (a) taking appropriate personnel action against such an employee, up to and

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including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (b) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (i), (ii), (iii), (iv), (v), and (vi).

14. Procurement. Contractor will comply with the procurement standards under 24 CFR 85.36 for governmental Contractors and 24 CFR 84.40-48 for Contractors that are non-profit organizations. Contractor shall comply with all existing and future City policies concerning the purchase of equipment.

15. Labor Provisions.

a. Section 3 of the Housing and Community Development Act of 1968. Contractor shall comply with and cause its contractors and subcontractors to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u), the HUD regulations issued pursuant thereto at 24 C.F.R, Part 135, and any applicable rules and orders of HUD issued thereunder. The Section 3 clause, set forth in 24 C.F.R § 135.38 provides:

i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

ii) The parties to this 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 certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to

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take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

v) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

vi) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Contractor shall abide by the Section 3 clause set forth above and will also cause this Section 3 clause to be inserted in all contracts relating to the Program.

b. Labor Standards. Contractor shall comply with the provisions of 24 C.F.R. 570.603 and related requirements. Contractor shall include in all applicable construction contracts the provisions of federal law imposing labor standards on federally assisted contracts. Contractor shall comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 3141 through 3148), the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.* and implementing regulations), the Copeland Anti-Kick Back Act (40 U.S.C. 276c and 18 U.S.C. 874 *et seq.*), the implementing regulations of the U.S. Department of Labor including 29 CFR Parts 1, 3, 5, 6 and 7, and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of the Agreement. Contractor shall maintain documentation that demonstrates compliance with these provisions and such documentation shall be made available to City and HUD for review upon request. Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

c. HUD Form 4010. Contractor shall comply and cause Contractor Personnel to comply with the provisions of HUD Form 4010 attached hereto. HUD Form 4010 must be included in the bid packet and construction contract and subcontracts for the Project.

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A. 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.

(1) MINIMUM WAGES

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

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place, where it can be easily seen by the workers.

(ii) Additional Classifications.

- (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;
 - (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, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed 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 ("Administrator"), Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove 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 ("OMB") under OMB control number 1235-0023.)
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or 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 1235-0023.)

- (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 1235-0023.)
- (2) **Withholding.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. 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 subcontractor 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 subcontractor to the respective employees to whom they are due. The U.S. Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.
- (3) **Payrolls and basic records.**
- (i) **Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and 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(s), 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 1235-0023 and 1215-0018)
- (ii) **Certified Payroll Reports.**
- (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), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request 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 contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1235-0008.)

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor 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 provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being 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; and
 - (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 subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (iii) The contractor or subcontractor 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 U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor 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 subcontractor'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.

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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, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
 - (6) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs (1) through (11) in 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 subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor 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 subcontractor 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 U.S. 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 subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.
 - (10) **Certification of Eligibility.**
 - (i) 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) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802.

(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 subcontractor 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 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 subcontractor 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 the individual 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 B(1) of this paragraph, the contractor, and any subcontractor responsible therefor, shall be liable for the unpaid wages. In addition, such contractor and subcontractor 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 B(1) of this paragraph, in the sum set by the U.S. Department of Labor at 29 CFR 5.5(b)(2) 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 B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the DOL adjusts this civil monetary penalty for inflation no later than January 15 each year.

(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 U.S. Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor 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 subcontractor for unpaid wages and liquidated damages, as provided in the clause set forth in subparagraph B(2) of this paragraph.

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

C. HEALTH AND SAFETY

The provisions of this paragraph (c) are applicable 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 or her 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 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 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 subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

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