

K18-831

**COOPERATIVE ENDEAVOR AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**THE ORLEANS PARISH SCHOOL BOARD**

**WILLIE HALL PLAYGROUND PROPERTY OPERATING AGREEMENT**

**THIS PROPERTY OPERATING AGREEMENT** (the “**Agreement**” or “**Willie Hall Playground Property Operating Agreement**”) is entered into by and between the City of New Orleans, represented by its duly authorized representative (the “**City**”), and the Orleans Parish School Board, represented by Dr. Henderson Lewis, Jr., Superintendent (the “**OPSB**”). The City and the OPSB may sometimes be collectively referred to as the “**Parties.**” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, the City is a political subdivision of the State of Louisiana; and

**WHEREAS**, the OPSB is a political subdivision of the State of Louisiana, with a principal address located at 3520 General DeGaulle Drive, Suite 5055, New Orleans, LA 70114; and

**WHEREAS**, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes; and

**WHEREAS**, the City and the OPSB desire to work together to:

- 1) Combat child obesity by providing youth with outdoor recreational areas for physical education activities during the school day; and
- 2) Combat adult obesity by providing the community with indoor and outdoor recreational areas for physical activities during non-school hours; and
- 3) Foster community cohesion by providing community gathering spaces during non-school hours; and
- 4) Promote sustainable stormwater management and green infrastructure design practices on publicly-owned properties; and
- 5) Engage in community outreach activities to educate adults and children about environmental sustainability; and

**WHEREAS**, OPSB and the City identified several properties to accomplish those goals, and

one of those properties is the OPSB-owned property located at 4000 Cadillac St., New Orleans, LA 70122; and

**WHEREAS**, the said property was the location of the old Willie Hall Playground and is now the location of the McDonogh 35 Senior High School Campus; and

**WHEREAS**, the City received from the U.S. Department of Housing and Urban Development (“**HUD**”) a grant for storm water management improvements in the St. Bernard community; and

**WHEREAS**, the City has included the restoration of the said property and other recreational improvements to enhance the communities post storm recovery capabilities and quality of life; and

**WHEREAS**, the funding allocation within the HUD grant for the above noted improvements is \$5,223,966.00 which covers all associated soft cost and contingencies; and

**WHEREAS**, the City and OPSB, through this Agreement, now desire to accomplish the valuable public purpose of providing recreational activities and waste water mitigation to the St. Bernard community by improving the said property; and

**WHEREAS**, the City will use the aforementioned funding to build certain recreational improvements on the said property (as defined and described hereinafter); and

**WHEREAS**, OPSB will authorize the City to build those improvements; and

**WHEREAS**, the City and OPSB will share together the use and operation of those improvements.

**NOW THEREFORE**, the City and the OPSB, each having the authority to do so, agree as follows:

### **ARTICLE I – DEFINITIONS**

The Parties agree that the following terms shall have the following meanings for this Agreement:

A. “Owner” shall mean the OPSB or the OPSB’s authorized operator of the Property.

B. “Recreational Improvements” shall mean the improvements fully described and delineated under Exhibit B to this Agreement. The Recreational Improvements shall be City-owned properties.

C. “NORDC” shall mean the City’s authorized operator of the Recreational Improvements.

D. “Property” means the location of the McDonogh 35 Senior High School Campus and more fully delineated under Exhibit A attached to this Agreement.

E. “School” shall mean the McDonogh 35 Senior High School.

F. “Third Party User” shall mean third party entity or individual other than the Owner or NORDC.

### **ARTICLE II – PROPERTY IDENTIFICATION AND PRE-USE INSPECTION**

A. Prior to commencement of use of the Recreational Improvements, representatives of the Owner and NORDC shall jointly inspect the Recreational Improvements. At the end of the joint

inspection and prior to their use, those representatives shall prepare and issue a joint written report detailing the condition of the Recreational Improvements prior to use. Said report shall also address the performance metrics under Paragraph 6 of Article IV.

B. Should NORDC wish to exclude any parts of the Recreational Improvements, which would otherwise be subject to this Agreement, NORDC shall provide the Owner with written reason(s) for exclusion upon request. NORDC shall not unreasonably exclude any part of the Recreational Improvements whose characteristics on their face constitute a good candidate for public use.

C. Should Owner wish to exclude any particular parts of or facilit(ies) located on the Property which would otherwise be subject to this Agreement, the Owner shall provide NORDC with written reason(s) for exclusion upon request. Owner shall not unreasonably exclude any part of or facilit(ies) located on the Property whose characteristics on their face constitute a good candidate for expanded public use.

### **ARTICLE III – PERMITTED USES**

A. **Order of Use.** The order of use of the Recreational Improvements shall be as follows:

1. Owner's Use.
2. NORDC's Use.

B. **Availability for Use.** The Recreational Improvements availability under this Agreement shall be as follows, subject to the priority of uses set forth in Paragraphs A and D of this Article:

1. **During the School Year.** While School is in session, inclusive of summer classes, NORDC shall use the Recreational Improvements in accordance with the following schedule:

- A. Monday – Friday: 4:00 pm to 9:00 pm.
- B. Saturday: 9:00 am to 2:00 pm.
- C. Sunday: as needed or available.
- D. Legal/School Holidays/Official Closures: as needed.

2. **Outside of the School Year.** When School is not in session, NORDC shall use the Recreational Improvements in accordance with the following schedule:

- A. Monday – Friday: 4:00 pm to 9:00 pm.
- B. Saturday: 9:00 am to 2:00 pm.
- C. Sunday: as needed or available.

3. **Scheduling Conflicts.** In the event that the foregoing schedules for use by NORDC conflicts with School activities to be held on the Recreational Improvements, the School shall submit a request to NORDC to accommodate such School activities. Any adjustments to the schedules shall be by mutual agreement of the Parties.

4. **Locking and Securing Recreational Improvements.** At the end of its

permitted use, each party shall ensure that the Recreational Improvements are locked and secured in accordance with a mutually agreed document. The Parties agree to establish said document prior to commencement of use of the Recreational Improvements. The Parties further agree to discuss and revise said document during the term of this Agreement.

**C. Permitted Uses.** Permitted uses of the Recreational Improvements including any community, recreational or educational uses consistent with the general purpose of the type of property being used, as permitted in the City’s Comprehensive Zoning Ordinance (“CZO”).

**D. Priority of Permitted Uses.** Thirty days prior to the beginning of and the end of the School year, the Owner shall each time submit to NORDC a list of program/activities that the Owner deems as priority. NORDC shall review the list and coordinate with the Owner to ensure a mutually agreed upon calendar of program/activities. The Owner will have scheduling priority with respect to games and events and NORDC shall not object to the Owner’s priority of use with regard to any given event absent good cause.

**E. Non-Permitted Uses:** The following use of the Recreational Improvements under this Agreement shall be prohibited:

1. Any use inconsistent with general purpose of use of type of property;
2. Any use not permitted pursuant to applicable provisions of the CZO and without prior written authorization of the Owner and NORDC; and
3. Any other use not permitted by law.

#### **ARTICLE IV – JOINT USE PROVISIONS**

Joint Use of the Recreational Improvements shall be subject to the following conditions:

1. **Operating, Maintenance, and Repairs Costs.** The Parties understand and acknowledge that the following costs may apply to the Recreational Improvements: electricity, water, turf and/or grass cutting, trash pick-up (which includes maintenance personnel, operating, fleet maintenance and fuel), janitorial supplies; and high mast lighting repairs. The Parties further acknowledge that other costs, either unknown or impossible to estimate at the time of the execution of this Agreement, may apply.
2. **Responsibility for Costs.** Prior to commencement of use of the Recreational Improvements, the Parties will determine (i) the responsibility of each party for the payment of the aforementioned costs, and (ii) the frequency to discuss and to re-evaluate said determination. To that effect, the Parties agree that said determination can change because either costs, or usage of the Recreational Improvements, or both can vary during the term of this Agreement. Overall, the Parties agree to use their best efforts to discuss and to agree to the implementation of any and all changes to the costs that may occur during the term of this Agreement.
3. **Security.** As needed, NORDC shall be responsible for providing adequate security during its expressly scheduled or agreed upon use of the Recreational

Improvements. The Owner shall be responsible for any security services at all other times the Owner reasonably deems such security is necessary.

**4. Equipment.** NORDC shall be responsible for providing all necessary equipment, including toilet facilities, for its use of the Recreational Improvements. The Owner may allow NORDC's use of its equipment, including toilet facilities, subject to the Post-Use Requirements as provided in Article V.

**5. Third Party Use.** Upon joint Owner and NORDC approval provided in writing to the Third Party User, the Recreational Improvements may be made available for short-term third party use subject to mutually agreed upon conditions consistent with the terms of this Agreement and in accordance with all applicable laws.

**6. Performance Metrics.** Prior to NORDC's initial use of the Recreational Improvements, the Parties shall develop performance metrics and tracking/reporting measures related to the use of the Recreational Improvements to be used to determine the success of achieving goal(s) of this Agreement.

#### **ARTICLE V – POST-USE REQUIREMENTS**

**A.** The Owner and NORDC agree that in the event of use by a Third Party User, the Third Party User shall be responsible for returning the Recreational Improvements back (via remediation, restoration, repairs, or other work) to the same condition existing immediately prior to use.

**B.** In the event of unauthorized use by a Third Party User, NORDC and the Owner shall be responsible for returning the Recreational Improvements subject to shared use to the same condition existing immediately prior to such use. NORDC shall be responsible for the Recreational Improvements used by NORDC only.

**C.** NORDC or the Owner shall have the right to require a post use inspection to ensure compliance with Section A under this Article.

**D.** NORDC and the Owner shall each be responsible to return the Recreational Improvements back to the same condition existing immediately prior to their respective use.

#### **ARTICLE VI - DURATION AND TERMINATION**

**A. Term.** The term of this agreement shall be for five (5) years from the Effective Date.

**B. Extension.** The Parties can opt to extend the term of this Agreement for two (2) additional five (5) year periods, subject to applicable City Council approval. The maximum duration of this Agreement inclusive of all available extensions shall not exceed fifteen (15) years from the Effective Date

**C. Termination for Convenience.** Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of the termination at least ninety (90) calendar days prior to the intended date of termination.

**D. Termination for Cause.** Either party may terminate this Agreement immediately for cause by sending written notice to the other party. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any

representation or warranty in this Agreement. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

#### **ARTICLE VII - INDEMNITY**

A. To the fullest extent permitted by law, each party will indemnify, defend, and hold harmless the other, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the “**Indemnified Parties**”) from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any negligent act or omission or the operation of the party, its agents or employees while engaged in or in connection with the use of the Recreational Improvements in accordance with this Agreement.

B. ***Limitation.*** Each party’s indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the party nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. The Parties intend and agree that each party shall be fully responsible for all liabilities incurred in connection with their respective uses of the Recreational Improvements, regardless of the presence or absence of insurance.

#### **ARTICLE VIII - INSURANCE**

A. Without limiting any obligations or liabilities of any party to this Agreement, each party to this Agreement shall have the option to maintain self-insurance or to procure at its own expense and maintain insurance policies in effect at all times during the term of this Agreement.

B. The Owner acknowledges and understands that the City is self-insured.

#### **ARTICLE IX - NON-DISCRIMINATION**

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

B. ***Non-Discrimination.*** In the performance of this Agreement, the Parties will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee

of a party working with the other party in any of other party's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the other party. The Parties agree to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**C. Incorporation into Subcontracts.** The Parties shall incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

## **ARTICLE X - INDEPENDENT CONTRACTOR**

**A. Independent Contractor Status.** Under this Agreement, each party shall operate as an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the other party and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the other party. As such, neither party shall be liable to the other party or anyone employed by the other party for worker's compensation or unemployment compensation coverage.

**B. Waiver of Benefits.** Each party shall operate as an independent contractor, and as such shall not receive any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security from the other party, for any services rendered under this Agreement.

## **ARTICLE XI - NOTICE**

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

**1. To the City:**

Chief Administrative Officer  
City of New Orleans  
1300 Perdido Street, 9<sup>th</sup> Floor  
New Orleans, LA 70112

&

City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

Copy to:

Chief Executive Officer  
City of New Orleans  
New Orleans Recreation Development Commission  
5420 Franklin Avenue  
New Orleans, LA 70122

2. To OPSB:

Superintendent  
Orleans Parish School Board  
3520 General DeGaulle Drive, Suite 5055  
New Orleans, LA 70114

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

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

**ARTICLE XII - ADDITIONAL PROVISIONS**

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

**B. Assignment.** This Agreement and any part of either party's interest in it are not assignable or transferable without the other party's prior written consent.

**C. Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

**D. Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against either party on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

**E. Entire Agreement.** Except where otherwise provided above, this Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**F. Exhibits.** The following exhibits will and are incorporated into this Agreement:

- Exhibit A – Survey of the Property provided by the Owner which is dated 02/06/2012 and performed by Project Design Group, LLC;
- Exhibit B – List and Delineation of Recreational Improvements provided by the City; and



- Exhibit C – Special Conditions for HUD Contracts;

**G. Jurisdiction.** The Parties consent and yield to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waive any pleas or exceptions of jurisdiction on account of the residence of the party.

**H. Limitations of the Party's Obligations.** The Parties have no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

**I. No Third Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the Parties and the Parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

**J. Non-Exclusivity.** This Agreement is non-exclusive and the Parties may engage in other Agreements, subject to the other party's approval of any potential conflicts with the performance of this Agreement.

**K. Non-Solicitation Statement.** The Parties have not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Parties have not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

**L. Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

**M. Prohibition of Financial Interest in Agreement.** No elected official or employee of the Parties shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the Party shall be deemed to be a financial interest of such elected official or employee of the Party.

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

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

**P. Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable

provision was never a part the Agreement.

**Q. Special Conditions for HUD Contracts.** The Parties acknowledge that the HUD compliance provisions for construction and professional services contracts are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary. See Exhibit C.

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

**S. Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

### **ARTICLE XIII - ELECTRONIC SIGNATURE AND DELIVERY**

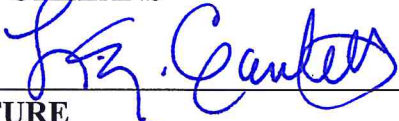
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to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

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**[SIGNATURES CONTAINED ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the City and the OPSB through their duly authorized representatives, execute this Agreement.


**CITY OF NEW ORLEANS**

BY:   
SIGNATURE  
Latoya Cantrell  
FIRST AND LAST NAMES  
Mayor  
TITLE

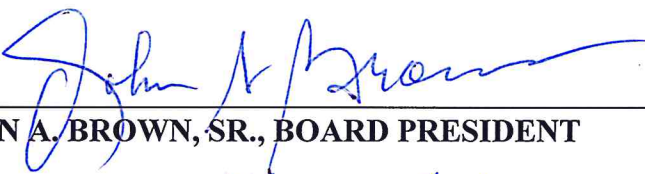
Executed on this 8 of February, 2019

**FORM AND LEGALITY APPROVED:**

Law Department

By:   
Printed Name: Tracy Tyler

**ORLEANS PARISH SCHOOL BOARD**

BY:   
JOHN A. BROWN, SR., BOARD PRESIDENT

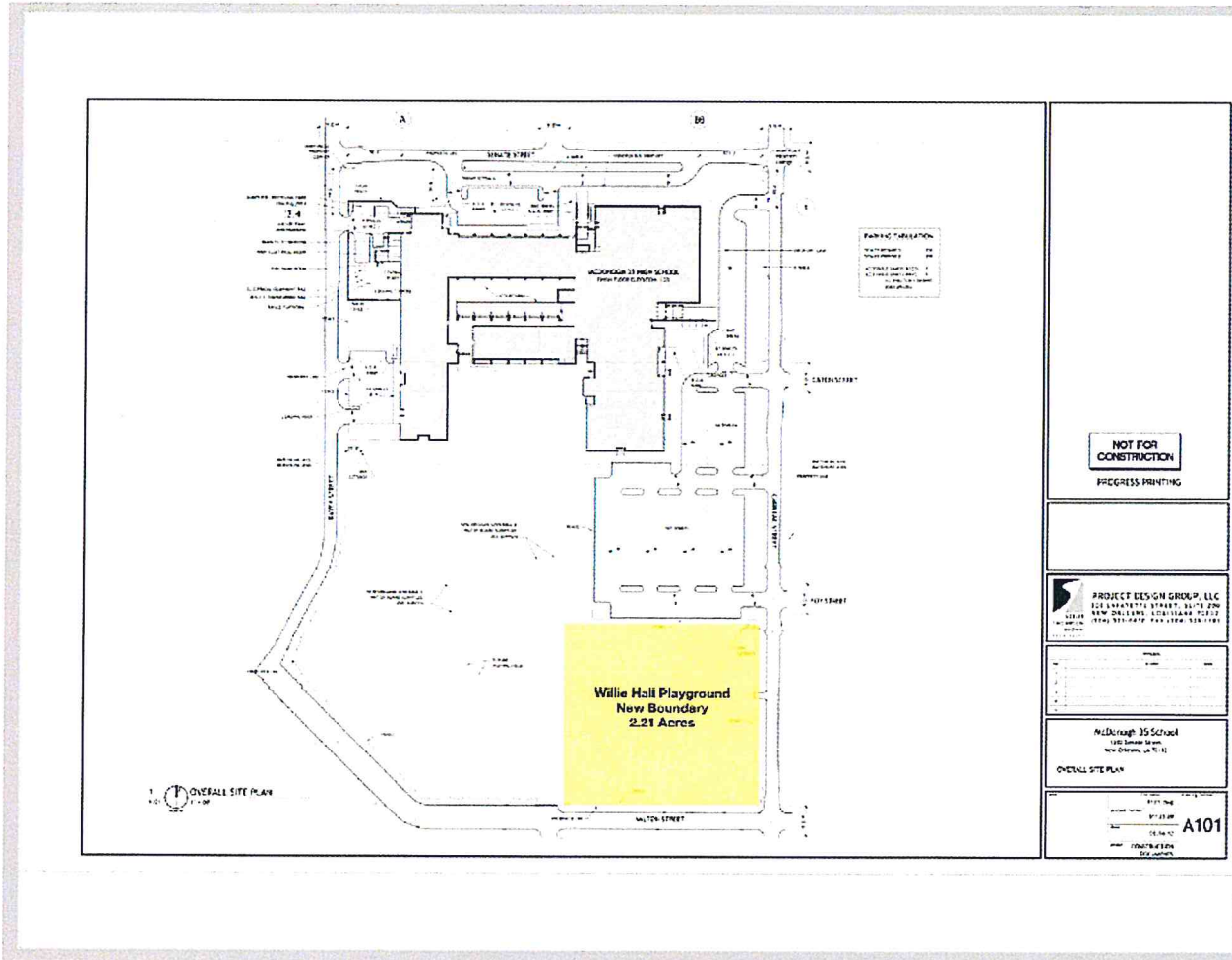
Executed on this 4th of February, 2019

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[EXHIBITS A, B, AND C CONTAINED ON FOLLOWING PAGES]

**EXHIBIT A TO THE COOPERATIVE ENDEAVOR AGREEMENT  
BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
THE ORLEANS PARISH SCHOOL BOARD**

**SURVEY PROVIDED BY THE OWNER WHICH IS DATED 02/06/2012 AND  
PERFORMED BY PROJECT DESIGN GROUP, LLC**



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[EXHIBITS B, AND C CONTAINED ON FOLLOWING PAGES]

**EXHIBIT B TO THE COOPERATIVE ENDEAVOR AGREEMENT  
BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
THE ORLEANS PARISH SCHOOL BOARD**

The improvements include but are not limited to:

1. Regulation size softball field with high mast lighting;
2. Concessions/Restroom facility. This facility consists of a concession area, men and women restrooms, and equipment storage space;
3. Playground equipment;
4. Football field with high mast lighting;
5. Basketball pavilion; and
6. Fencing, gates, or other appropriate safety barrier(s) to control access to the Recreational Improvements by Third Parties.

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**[EXHIBITS C CONTAINED ON FOLLOWING PAGES]**

**EXHIBIT C TO THE COOPERATIVE ENDEAVOR AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**THE ORLEANS PARISH SCHOOL BOARD**

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44. LIMITED ENGLISH PROFICIENCY (LEP)

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

During the performance of this contract, the Sub-recipient agrees as follows:

- A. The Sub-recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Sub-recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Sub-recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  
- B. The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
  
- C. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a

part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. The Sub-recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Sub-recipient's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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



A. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
  - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);
  - (c) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

B. When the Sub-recipient, or any sub-recipient, at anytime, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

C. If the Sub-recipient is participating (pursuant to 41 CFR 60 4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Sub-recipients must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Sub-recipient or Sub-recipient participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall

good faith performance by other Sub-recipients or sub-recipients toward a goal in an approved Plan does not excuse any covered Sub-recipients or sub-recipients failure to take good faith efforts to achieve the Plan goals and timetables.

- D. The Sub-recipient shall implement the specific affirmative action standards provided In paragraphs G(1) through G(16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Sub-recipient should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Sub-recipients performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Sub-recipient is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Sub-recipient has a collective bargaining agreement, to refer either minorities or women shall excuse the Sub-recipient's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Sub-recipient during the training period, and the Sub-recipient must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Sub-recipient shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Sub-recipient's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Sub-recipient shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Sub-recipient's employees are assigned to work. The Sub-recipient, where possible, will assign two or more women to each construction project. The Sub-recipient shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Sub-recipient's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Sub-recipient or its unions have employment opportunities available, and maintain a record of the organization's responses.
- (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Sub-recipient by the union or, if referred, not employed by the Sub-recipient, this shall be documented in the file with the reason therefore, along with whatever additional actions the Sub-recipient may have taken.
- (4) Provide immediate written notification to the Director when the union or unions with which the Sub-recipient has a collective bargaining agreement have not referred to the Sub-recipient a minority person or woman sent by the Sub-recipient, or when the Sub-recipient has other information that the union referral process has impeded the Sub-recipient's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Sub-recipient's employment needs, especially those programs funded or approved by the Department of Labor. The Sub-recipient shall provide notice of these programs to the sources compiled under G(2) above.
- (6) Disseminate the Sub-recipient's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Sub-recipient in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on a bulletin board accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other

employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- (8) Disseminate the Sub-recipient's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Sub-recipient's EEO policy with other Sub-recipients and Sub-recipients with whom the Sub-recipient does or anticipates doing business.
- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Sub-recipient's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Sub-recipient shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Sub-recipient's work force.
- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60 3.
- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Sub-recipient's obligations under these specifications are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

- (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Sub-recipients and suppliers, including circulation of solicitation to minority and female Sub-recipient associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Sub-recipient's EEO policies and affirmative action obligations.

- H. Sub-recipients are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a Sub-recipient association, joint Sub-recipient-union, Sub-recipient-community, or other similar group of which the Sub-recipient is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Sub-recipient actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Sub-recipient's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Sub-recipient. The obligation shall not be a defense for the Sub-recipient's non-compliance.
- I. A single goal for minorities and a separate single goal for women has been established. The Sub-recipient, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Sub-recipient may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Sub-recipient has achieved its goals for women generally, the Sub-recipient may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. The Sub-recipient shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.
- K. The Sub-recipient shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to E.O. 11246.
- L. The Sub-recipient shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to E.O. 11246, as amended.

- M. The Sub-recipient, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Sub-recipient fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60 4.8.
- N. The Sub-recipient shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprenticeship trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Sub-recipients shall not be required to maintain separate records.
- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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

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

With regard to this second area, the Sub-recipient also is subject to the goals for both its federally involved and non-federally involved construction. The Sub-recipient's compliance with the Executive Order and the regulations in 41 CFR Part 60 4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action

obligations required by the specifications set forth in 41 CFR 60 4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Sub-recipient shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Sub-recipient to Sub-recipient or from project to project for the sole purpose of meeting the Sub-recipient's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60 4. Compliance with the goals will be measured against the total work hours performed.

- C. The Sub-recipient shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subSub-recipient; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, parish, and city, if any):

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

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

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

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

5. **CIVIL RIGHTS**

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

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

The Sub-recipient shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

7. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968- (Section 3 Clause) (applicable to HUD construction contracts and subcontracts above \$100,000)**

During the performance of this contract, the Sub-recipient agrees as follows:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.



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

**8. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**  
 (Applicable to contracts and subcontracts over \$10,000)

- A. The Sub-recipient will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which

the employee or applicant for employment is otherwise qualified. The Sub-recipient agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- B. The Sub-recipient agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Sub-recipient's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Sub-recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Sub-recipient's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Sub-recipient will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Sub-recipient is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Sub-recipient will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Sub-recipient or vendor. The Sub-recipient will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

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

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

10. **AGE DISCRIMINATION ACT OF 1975**

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

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

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

In addition to the foregoing requirements, all nonexempt Sub-recipients and sub-recipients shall furnish to the owner, the following:

- A. A stipulation by the Sub-recipient or sub-recipients, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
- B. Agreement by the Sub-recipient to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c 8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Sub-recipient that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Sub-recipient will take such action as the government may direct as a means of enforcing such provisions.

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

A. **Lead-Based Paint Hazards**

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Sub-recipient and sub-recipients shall

comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

**B. Use of Explosives**

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

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

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

The Sub-recipient shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Sub-recipient fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Sub-recipient. Such action by the Owner does not relieve the Sub-recipient of any liability incurred under these specifications or contract.

**13. FLOOD DISASTER PROTECTION**

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

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

**14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS**

The State of Louisiana, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Sub-recipient which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the State's final closeout of the grant.

**15. INSPECTION**

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

**16. REPORTING REQUIREMENTS**

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

**17. CONFLICT OF INTEREST**

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

18. **ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED**  
(applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Sub-recipient agrees as follows:

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

19. **PATENTS**

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

cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

**20. COPYRIGHT**

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

**21. TERMINATION FOR CAUSE**

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

**22. TERMINATION FOR CONVENIENCE**

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

**23. ENERGY EFFICIENCY**

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

**24. SUBCONTRACTS**

- A. The Sub-recipient shall not enter into any subcontract with any contractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in

contacting programs by any agency of the United States Government or the State of Louisiana.

- B. The Sub-recipient shall be as fully responsible to the Owner for the acts and omissions of the Sub-recipient's sub-recipients, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Sub-recipient.
- C. The Sub-recipient shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind contractor to the Sub-recipient by the terms of the contract documents insofar as applicable to the work of sub-recipients and to give the Sub-recipient the same power as regards terminating any subcontract that the Owner may exercise over the Sub-recipient under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any Sub-recipient and the Owner.

**25. DEBARMENT, SUSPENSION, AND INELIGIBILITY**

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

**26. PROTECTION OF LIVES AND HEALTH**

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

**27. BREACH OF CONTRACT TERMS**

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



28. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

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

29. **CHANGES**

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

30. **PERSONNEL**

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

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

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

31. **ANTI-KICKBACK RULES**

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

under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**32. ASSIGNABILITY**

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

**33. INTEREST OF SUB-RECIPIENT**

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

**34. POLITICAL ACTIVITY**

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

**35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET**

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

**36. DISCRIMINATION DUE TO BELIEFS**

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

**37. CONFIDENTIAL FINDINGS**

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

### 38. LOBBYING

The Sub-recipient certifies, to the best of his or her knowledge and belief that:

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

### 39. FEDERAL LABOR STANDARDS PROVISIONS

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

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

#### **Applicability**

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

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

wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

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

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

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

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

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

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

**(c)** In the event the Sub-recipient, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day

period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Sub-recipient 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 Sub-recipient does not make payments to a trustee or other third person, the Sub-recipient 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 Sub-recipient, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Sub-recipient to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Sub-recipient under this contract or any other Federal contract with the same prime Sub-recipient, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Sub-recipient 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 Sub-recipient or any contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Sub-recipient, 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 Sub-recipient, disburse such amounts withheld for and on account of the Sub-recipient or Sub-recipient to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the Sub-recipient during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the

Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the Sub-recipient 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. Sub-recipients employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The Sub-recipient 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 Sub-recipient will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Sub-recipient is responsible for the submission of copies of payrolls by all sub-recipients. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

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

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

(iii) The Sub-recipient or contractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Sub-recipient or Sub-recipient fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Sub-recipient, 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 Sub-recipient 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 Sub-recipient 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 sub-recipient's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable

classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Sub-recipient 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 Sub-recipient 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 Sub-recipient shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The Sub-recipient or Sub-recipient will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the sub-recipients to include these clauses in any lower tier subcontracts. The prime Sub-recipient shall be responsible for the compliance by any Sub-recipient or lower tier Sub-recipient 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 Sub-recipient and a Sub-recipient as provided in 29 CFR 5.12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The Sub-recipient shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each sub-recipient. The Sub-recipient shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

#### **40. SOLID WASTE DISPOSAL ACT**

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

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

(b) The term *procurement actions* includes:

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

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

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

#### **41. CONFIDENTIALITY**

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

#### **42. REPAYMENT OF FUNDS**

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

#### **43. DUPLICATION OF BENEFITS**

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

#### **44. LIMITED ENGLISH PROFICIENCY (LEP)**

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

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**[END OF AGREEMENT]**