

K18-553

COOPERATIVE ENDEAVOR AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

THE TRUST FOR PUBLIC LAND

NATIONAL DISASTER RESILIENCE COMPETITION PARTNER AGREEMENT

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by its duly authorized representative (the “**City**”), and the Trust for Public Land, represented by Jeff Danter, Eastern Division Director, (“**Contractor**” or “**TPL**”). The City and TPL may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of April 15th, 2016 (the “**Effective Date**”).

RECITALS

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

WHEREAS, TPL is a national non-profit organization with a regional office located at 2465 Toulouse Street, New Orleans, LA 70119; 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;

WHEREAS, the City was awarded \$141,260,569 in National Disaster Resilience funds (“**NDR program**”) made available by the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013) (Appropriations Act) and awarded under the National Disaster Resilience Competition as CDBG National Disaster Resilience (“**CDBG-NDR**”) grants from the United States Department of Housing and Urban Development (“**HUD**”) and has selected TPL to be a partner under the NDR program to receive certain funds in order to implement the program as set forth below (See Exhibit B);

WHEREAS, TPL, by undertaking the implementation of this Agreement utilizing CDBG-NDR funds provided by HUD, agrees to carry out this Agreement in full compliance with the laws and regulations of the NDR program and exhibits incorporated to this Agreement;

WHEREAS, the activities hereunder are eligible under the NDR program;

WHEREAS, the City and TPL desire to accomplish a valuable public purpose of developing and establishing a publicly-available portal of environmental, ecological and public health data, citizen demographics, and zoning information to allow public users to analyze potential vulnerable

infrastructure assets to determine where best to invest resilience and green infrastructure actions; and

WHEREAS, the City and TPL desire to explore innovative public and private sector resilience and green infrastructure financing mechanisms and arrangements to help finance such actions and projects; and

WHEREAS, TPL will develop and provide the City with the Climate-Smart Cities Decision Support Portal (the “**Portal**”) to provide public users access to environmental, ecological and public health data, citizen demographics and zoning information to align neighborhood development projects with resilience and green infrastructure best practices and strategies; and

WHEREAS, TPL will research, develop and help implement innovative public and private sector resilience and green infrastructure financing mechanisms and arrangements; and

WHEREAS, the City will provide TPL with National Disaster Resilience grant funding in exchange for the aforementioned services.

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

ARTICLE I – TPL’S OBLIGATIONS

A. Climate-Smart Cities Decision Support Portal. TPL will develop a publicly-available online portal designed to help align neighborhood development projects with resilience and green infrastructure best practices and strategies.

1. Technical Advisory Team

Contactor will establish a Technical Advisory Team (“**TAT**”) and provide expert review and advice regarding development of the Climate-Smart Cities Decision Support Portal (the “**Portal**”), including but not limited to expert local planning objectives, data sources, implementation priorities, design rationale and project deliverables. Contactor shall provide City with list of TAT participants and contact information.

2. New Orleans Climate-Smart Cities GIS Model

TPL, in consultation with the TAT and key stakeholders, will design GIS model framework that prioritizes green infrastructure investment tied to the “connect, cool, absorb, protect and reference” layered strategy. Contactor shall provide City with conceptual GIS model design.

3. Data Collection

TPL, in consultation with the TAT and key stakeholders, will direct collection and management of all project-relevant GIS data, in particular, public health data provided by the Louisiana Public Health Institute. TPL shall provide City with data matrix including data sources, scales and translation documentation.

4. Integration of Public Health Data

TPL will collaborate with the Louisiana Public Health Institute to collect and incorporate public health data into the Portal, including but not limited to:

1. Assessing relevant human scale health data such as respiratory illnesses, cardiovascular diseases, heat related illnesses, and other

diseases; and

2. Identifying and documenting available neighborhood-level health outcome data for Orleans Parish by race, gender, age and other factors; and
3. Providing analytical support for data integration into the Portal; and
4. Providing instructional materials on use of health data in developing targeted resilience and green infrastructure strategies.

5. Model Implementation

TPL will develop model framework based upon GIS model design and project-relevant GIS data to help optimize project siting to obtain multiple resilience and green infrastructure benefits. TPL shall provide City with parcel prioritization maps and data layer shapefiles for each layered objective (“connect, cool, absorb, and protect”) prioritized to stack objectives with annual updates.

6. Web-Based Portal

TPL will provide City with web-based Portal hosted on TPL’s servers for five years (beginning at time of completion of the web-based Portal) with annual system updates, as well as provide user training and support services, and partner/stakeholder workshops and training sessions.

7. Metrics

TPL, in consultation with the TAT, will develop five (5) specific and computable resilience and green infrastructure-benefit metrics for incorporation into the Portal. Additionally, TPL will be responsible for providing annual reports to the City on the NDR Project-specific performance metrics located in Exhibit C to this Agreement, in accordance with HUD CDBG-NDR reporting requirements.

B. Financing Mechanisms and Arrangements. TPL will collaborate with the City to help identify and seek innovative public and private sector financing mechanisms and arrangements for resilience and green infrastructure actions and projects.

1. Current Conditions and Project Assessment

TPL will build on the development of the decision support tool to conduct an assessment of “high impact” neighborhoods for potential resilience projects throughout New Orleans. This assessment will build a portfolio of projects to evaluate for potential funding and finance opportunities. Specific needs and gaps related to financing green infrastructure will be explored on identified projects in collaboration with other consultants conducting related research. Outcomes will focus on the link between financing mechanisms, operations and maintenance, design, regulations, programming, and governance options. TPL will provide City with a Current Conditions and Project Assessment white paper.

2. Research and Development of Sustaining Green Infrastructure Financing Mechanisms

TPL will convene full-day green infrastructure implementation charrette to generate potentially viable policy and finance options to support green infrastructure in cities and regions nationwide. Contactor shall invite a broad-based group of thought leaders from multiple sectors – local, state and federal government, research universities and think tanks, environmental groups, real estate developers and financiers, water infrastructure industry, private capital market, NGO development finance sector, non-profit organizations, and the philanthropic community. The goal of the green infrastructure implementation charrette will be to generate innovative methods for leveraging existing municipal financing options to support sustained project development in New Orleans.

3. Evaluating Implementation Potential of Innovative Green Infrastructure Options

TPL will partner with leading academic institutions to conduct and analyze feasibility research, including but not limited to legal and regulatory analysis, financial and market analysis, and revenue estimating analysis as to the potential and viability of innovative green infrastructure financing options.

4. Assessment of Public Support for Green Infrastructure Concepts

TPL will conduct and analyze public opinion surveys to test public receptivity to city-scale resilience and green infrastructure concepts and public financing options. TPL will hold series of individual briefings with key stakeholders prior to and following public opinion surveys to determine City implementation capabilities of public financing options.

C. Key Personnel. TPL services shall be provided by the following key personnel:

1. Holly Bostrom, *Climate-Smart Cities Program Director*
2. Breece Robertson, *GIS Director*
3. Chris David, *GIS Project Manager*
4. Will Abberger, *Conservation Finance Director*
5. Warren Jimenez, *Urban Finance Director*
6. Sarah Olivier, *New Orleans Program Manager*

TPL shall notify the City in writing of any change of the above listed Key Personnel. The City retains the right to reject any such substitution within 30 days of receipt of written notice of substitution.

D. Data Security. TPL will take commercially reasonable precautions to prevent the loss of or alteration to City's data files in TPL's possession. In addition, TPL will establish and follow reasonable security measures to prevent unauthorized access to City's data files.

E. Disaster Recovery. TPL will maintain a commercially reasonable disaster recovery plan ("DR Plan") for its business operations, a copy of the summary of which is available to the City upon request. TPL agrees to follow its DR Plan. TPL may amend its DR Plan at any time, provided that TPL shall not reduce its disaster recovery ability to less than the disaster recovery ability in effect pursuant to the DR Plan in existence on the Effective Date of this Agreement. TPL will be

under no obligation to create and maintain any disaster recovery plans specific to the work being performed under this Agreement.

F. TPL will make a good faith effort to accommodate requests made by the City, or a vendor working on behalf of the City, for information and assistance in integrating TPL's product with a third party application.

G. The term "Confidential Information" shall mean any materials or information, which either party reasonably regards as confidential and proprietary. The Confidential Information of TPL includes but is not limited to the software and associated codes, documentation, flow charts, logic diagrams, user manuals and screens; business plans, analysis and developments; personnel capabilities and compensation information, and similar information.

Each party will keep in confidence and protect the Confidential Information of the other party and neither use nor disclose it to third parties except as expressly permitted by this Agreement. Each party will inform its employees and contractors of their obligations in this respect to ensure that such obligations are met.

Notwithstanding anything herein to the contrary, TPL acknowledges that it has read and understands the requirements mandated by Louisiana Revised Statute 44:1 (Louisiana's public records law), *et seq.*, including Sec. 44:3.2, which states in pertinent part, that TPL shall provide a cover sheet when submitting all records containing proprietary or trade secret information that shall state in bold type, "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION." TPL shall clearly mark each instance of information which is, in its opinion, proprietary or trade secret information. To the extent it is necessary in the scope of its services for TPL to provide information to the City which cannot or is not transmitted in documented record form, TPL agrees to provide the City with a memorandum setting forth the type of information that contains proprietary or trade secret information. The determination of whether such information is in fact proprietary or trade secret information shall be made by the City within thirty (30) days of a submission. If City receives a public records request within the thirty day time period, the determination shall be made within the time period prescribed by Louisiana Revised Statutes 44:32(D) and 33(B). The City shall immediately notify TPL prior to the disclosure of the information requested pursuant to a public records request and of the determination of whether or not the information requested is subject to disclosure. The provisions of Sections 4 and 5 will survive the termination of this Agreement.

H. Timeline.

1. TPL will provide the services as described under this Article in accordance with the timeline attached to this Agreement under Exhibit E.
2. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.
3. TPL acknowledges and agrees that time is of the essence in the performance of this Agreement.

ARTICLE II - THE CITY'S OBLIGATIONS

A. **Administration.** The City will administer this Agreement through the Mayor's Office of Resilience & Sustainability.

B. **Access to Information.** The City shall provide TPL with all material and information reasonably necessary to allow TPL to perform its obligations under this Agreement.

ARTICLE III - COMPENSATION

A. **Budget.** The City will pay TPL in accordance with the budget attached to this Agreement under Exhibit D. Specifically, TPL shall invoice the City for payment upon completion of each task as specified in Exhibit D.

B. **Maximum Amount Payable.** The maximum amount payable by the City under this Agreement is \$650,000.00.

C. **Other Costs.** Compensation shall be inclusive of all personnel costs, fringe benefits, equipment costs, travel costs, supply costs, publication costs, and indirect costs identified as those not directly incurred as a result of providing the services listed in this Agreement and deemed ineligible for federal modified total direct costs for on-campus research.

ARTICLE IV - DURATION AND TERMINATION

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

B. **Termination for Convenience.** The City may terminate this Agreement at any time during the term of the Agreement by giving TPL written notice of the termination at least 30 calendar days before the intended date of termination.

C. **Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to TPL. "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, including without limitation any failure to comply with of City Code § 2-1120 or requests of the Office of Inspector General. 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 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.

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

ARTICLE V - INDEMNITY

A. To the fullest extent permitted by law, TPL will indemnify, defend, and hold harmless the City, 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 act or omission or the operation of TPL, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to TPL in connection with the performance of work under this Agreement.

B. Limitation. TPL'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 TPL nor any of its agents or employees contributed to such gross negligence or willful misconduct.

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

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

ARTICLE VI - INSURANCE

Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, TPL will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

A. Minimum Requirements:

The following insurance coverages shall be purchased and maintained in TPL's name and shall apply on a primary basis and shall be non-contributory by the City. The total limit of insurance must be equal to or greater than the minimum acceptable limits indicated below. If any policies contain a deductible or self-insured retention, then the evidence of insurance for those policies shall disclose the deductible/retention amount.

1. TPL shall purchase in its name and maintain insurance with a company or companies having at least an AM Best rating of A:VII (7) or acceptable to and approved by the City, and licensed to do business in the State of Louisiana. Such insurance as will protect them from claims which may arise out of or result from TPL's services under the Agreement, whether such services be himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the them may be liable.
2. It is mandatory that within 10 days after the notification of the award of the Project, TPL shall furnish to City the Professional Liability policy and Certificates of Insurance as required in this Agreement.
3. If any of the insurance companies providing any insurance coverage furnished by TPL is declared bankrupt, becomes insolvent, its right to do business in Louisiana is terminated or it ceases to meet the requirements of this Agreement, TPL shall, within 30 days thereafter, substitute another insurance company or companies acceptable to the City. The City reserves the right to mandate cessation of all services until the receipt of acceptable replacement insurance.
4. TPL shall furnish the City satisfactory evidence that he has obtained in his name and has in force and in effect, and shall keep in force and effect for the duration of the Project, (except for Professional Liability insurance which shall be maintained for a minimum of 3 years after Substantial Completion or acceptance of the project, whichever is later, including all extensions of coverage as outlined herein) insurance policies protecting TPL and/or the City against claims arising out of this Agreement.

B. Required Insurance Coverages:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 or similar acceptable to the City, covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - a. \$2,000,000 Aggregate for projects valued under \$5,000,000;
 - b. \$4,000,000 Aggregate for projects valued from \$5,000,000 to \$10,000,000;
 - c. \$5,000,000 Aggregate for projects valued from \$10,000,001 to \$25,000,000;
 - d. \$10,000,000 Aggregate for projects valued over \$25,000,000.
2. Automobile Liability: ISO Form Number CA 00 01 or similar acceptable to the City covering any auto (Symbol 1, or Symbols 7, 8, 9), or if TPL has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$500,000 Combined Single Limit per accident for bodily injury and property damage. Higher limits may apply according to the particular project.
3. Workers’ Compensation: as required by the State of Louisiana, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions): with limits no less than \$1,000,000 per claim. Higher limits of coverage may be required for agreements for Architectural, Engineering, TPL, or other professional services according to specific project needs or contract value.
 - a. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - i. **Additional Insured Status.** TPL will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to TPL’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificateholder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.

- ii. **Primary Coverage.** For any claims related to this contract, TPL's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to TPL's coverage.
- iii. **Claims Made Policies.** If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, TPL must purchase "extended reporting" coverage for minimum of 5 years after the termination of this agreement
- iv. **Waiver of Subrogation.** TPL and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
- v. **Notice of Cancellation.** In the event that its insurance policy is canceled, TPL shall make its best efforts to provide notice of cancellation to the City.
- vi. **Acceptability of Insurers.** Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

C. Other Requirements:

1. TPL will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: Gentilly Resilience District Monitoring and Analysis) within 10 calendar days of the execution of the Agreement by the City and at any other time at the City's request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement;
- b. Copy of the fully executed Agreement;
- c. Copies of all policies of insurance, including all policies, forms, and endorsements; and
- d. Statements disclosing any policy aggregate limit.

2. Without notice from the City, TPL will:

- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
- b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
- c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of TPL according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If TPL fails to perform according to the Agreement, the City will notify TPL. If there is a continued lack of performance after notification, the City may declare TPL in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VIII – LIVING WAGES

To the fullest extent permitted by law, TPL agrees to abide by City Code sections 70-801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code (“**Living Wage**”). If TPL fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

ARTICLE IX - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, TPL (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 TPL’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, TPL 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 the City working with TPL in any of TPL’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 TPL. TPL agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

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

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

ARTICLE X - INDEPENDENT CONTRACTOR

A. **Independent Contractor Status.** TPL is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

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

C. **Exclusion of Unemployment Compensation Coverage.** TPL, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither TPL nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) TPL has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by TPL are outside the normal course and scope of the City's usual business; and (c) TPL has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. **Waiver of Benefits.** TPL, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City 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:

Director
Mayor's Office of Resilience and Sustainability
City of New Orleans
1300 Perdido Street
New Orleans, LA 70112

&

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

New Orleans, LA 70112

2. To TPL:

Sarah Olivier, New Orleans Area Director
The Trust for Public Land
2645 Toulouse Street
New Orleans, LA 70119

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 - CONTRACT TRANSITION

If TPL is not awarded the next agreement after expiration of the Agreement and/or re-procuring of the services, or if the Agreement is terminated in accordance with Article IV., TPL agrees (1) to return City's records during the 90 days following the expiration or termination date of the Agreement without incurring any additional costs, and (2) to cooperate the City with continued operations and a transition during the 90 days following the expiration or termination date of the Agreement with the successor, whether the successor is the City or another contractor. Any transition responsibilities shall be agreed upon in writing via an amendment to the Agreement.

ARTICLE XIII - 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 TPL's interest in it are not assignable or transferable without the City's prior written consent.

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

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

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

F. 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 the City or TPL 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.

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

H. Employee Verification. TPL swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to TPL a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in TPL being ineligible for any public contract for a period of 3 years from the date the violation is discovered. TPL further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. TPL will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if TPL fails to provide such the requested affidavit or violates any provision of this paragraph.

I. Entire Agreement. 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.

J. Exhibits. The following exhibits will be and are incorporated into this Agreement:

- Exhibit A “HUD NDR Compliance Provisions for Direct Grantee – Construction and Professional Services Contracts”;
- Exhibit B “Partnership Agreement between the City of New Orleans and the Trust for Public Land” dated October 23, 2015;”
- Exhibit C “Trust for Public Land NDR Project-Specific Performance Metrics;”
- Exhibit D “Budget;” and
- Exhibit E “Timeline of Deliverables”

K. Jurisdiction. TPL consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of TPL.

L. Limitations of the City’s Obligations. The City has no obligations not explicitly set forth in

this Agreement or any incorporated documents or expressly imposed by law.

M. 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.

N. Non-Exclusivity. This Agreement is non-exclusive and TPL may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

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

P. 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.

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

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

review and feedback at least thirty (30) days prior to presentation or publication. The City and TPL explicitly understand and agree that this ownership provision takes precedence and replaces the Copyright provision at Paragraph 20 of the Exhibit A, "HUD Compliance Provisions for Sub-Recipients/ Construction and Professional Services Contract."

S. Prohibition of Financial Interest in Agreement. No elected official or employee of the City 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 City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of TPL, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to TPL pursuant to this Agreement without regard to TPL's otherwise satisfactory performance of the Agreement.

T. 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.

U. 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.

V. 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.

W. Special Conditions for HUD NDR Contracts. The "HUD NDR Compliance Provisions for Direct Grantee – Construction and Professional Services Contracts," attached as Exhibit "A" to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to TPL that the City intends to seek reimbursement from the NDR Program in connection with the work to be performed under this Agreement.

X. Subcontractor Reporting. TPL will provide a list of all natural or artificial persons who are retained by TPL at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with TPL's work for the City. For any subcontractor proposed to be retained by TPL to perform work on the Agreement with the City, TPL must provide notice to the City within 30 days of retaining that subcontractor. If TPL fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to TPL, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

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

Agreement and continue in full force and effect.

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

ARTICLE XIV - 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.

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

SIGNATURE

MITCHELL J. LANDRIEU

FIRST AND LAST NAMES

Mayor

TITLE

Executed on this 26TH of April, 2018.

Law Department

By: _____

Printed Name: _____

THE TRUST FOR PUBLIC LAND

BY: _____

JEFF DANTER, EASTERN DIVISION DIRECTOR

23-7222333

FEDERAL TAX I.D.

[EXHIBITS A – E CONTAINED ON FOLLOWING PAGES]

**EXHIBIT A TO THE COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
THE TRUST FOR PUBLIC LAND

HUD NDR COMPLIANCE PROVISIONS
FOR
DIRECT GRANTEE
CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS**

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

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be

cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Contractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

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

A. As used in these specifications:

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

- (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- B. When the Contractor, or any contractor, at 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 Contractor is participating (pursuant to 41 CFR 60 4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Contractor or Contractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or contractors toward a goal in an approved Plan does not excuse any covered Contractor's or contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G(1) through G(16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ

the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- G. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs

relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G(2) above.

- (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on a bulletin board accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Contractors with whom the Contractor does or anticipates doing business.
- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60.3.
- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitation to minority and female Contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.

I. A single goal for minorities and a separate single goal for women has been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the

Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to E.O. 11246.
- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to E.O. 11246, as amended.
- M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60 4.8.
- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprenticeship trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed.

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

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

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

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

Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

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

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

5. **CIVIL RIGHTS**

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

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

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

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

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic

opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Contractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any Contractor where the Contractor has notice or knowledge that the Contractor has been found in violation of the regulations in 24 CFR part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section

3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

8. **SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

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

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

10. **AGE DISCRIMINATION ACT OF 1975**

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

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

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

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

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

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

A. **Lead-Based Paint Hazards**

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

B. **Use of Explosives**

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

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

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

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

13. **FLOOD DISASTER PROTECTION**

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93 234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National

Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

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

14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

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

15. INSPECTION

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

16. REPORTING REQUIREMENTS

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

17. CONFLICT OF INTEREST

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

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

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

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

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

19. **PATENTS**

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

the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

20. **COPYRIGHT**

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

21. **TERMINATION FOR CAUSE**

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

22. **TERMINATION FOR CONVENIENCE**

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

23. **ENERGY EFFICIENCY**

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

24. **SUBCONTRACTS**

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

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

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

26. **PROTECTION OF LIVES AND HEALTH**

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

27. **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract.

The duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

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

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

29. **CHANGES**

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

30. **PERSONNEL**

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

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

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

31. **ANTI-KICKBACK RULES**

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

32. **ASSIGNABILITY**

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

33. **INTEREST OF CONTRACTOR**

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

34. **POLITICAL ACTIVITY**

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

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

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

36. **DISCRIMINATION DUE TO BELIEFS**

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

37. **CONFIDENTIAL FINDINGS**

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

38. **LOBBYING**

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

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

39. **FEDERAL LABOR STANDARDS PROVISIONS**

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

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

Applicability

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

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

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

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

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

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

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

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

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

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

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

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

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

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I (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 I(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the

registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

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

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

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

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

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

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

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

(iii) The Contractor or contractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Contractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the

Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a

percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

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

(1) Overtime requirements. No Contractor or Contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

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

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

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

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

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

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

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

40. SOLID WASTE DISPOSAL ACT

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

Applicability.(a)(1) This guideline applies to all procurement actions using federal funding and involving items designated by EPA in this part, where the purchase price of the item exceeds \$10,000, the value of the quantity acquired by the preceding fiscal year exceeds \$10,000. This guideline shall require that all solid waste management services procurements are conducted in a

manner that maximizes energy and resource recovery. (2) This guideline applies to any public agency using appropriated Federal funds to procure designated items, and to persons contracting with any such agencies with respect to work performed under such contracts. (3) The \$10,000 threshold applies to public agencies as a whole rather than to agency subgroups such as regional offices or sub-agencies of a larger department or agency.

(b) The term *procurement actions* includes:

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

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

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

41. CONFIDENTIALITY

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

42. REPAYMENT OF FUNDS

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

43. DUPLICATION OF BENEFITS

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

44. LIMITED ENGLISH PROFICIENCY (LEP)

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

[EXHIBITS B-E CONTAINED ON NEXT PAGES]

**EXHIBIT B TO THE COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
THE TRUST FOR PUBLIC LAND**

**Partnership Agreement between the City of New Orleans and the Trust for Public Land”
dated October 23, 2015**

Appendix D
PARTNERSHIP AGREEMENT
BETWEEN the City of New Orleans
AND
The Trust for Public Land
FOR

Community Development Block Grant National Disaster Resilience Competition
(CDBG-NDR)

THIS AGREEMENT, entered this 23rd day of October, 2015 by and between the City of New Orleans (herein called the "Applicant") and The Trust for Public Land (herein called the "Partner").

WHEREAS, the Applicant has applied for funds from the United States Department of Housing and Urban Development under the Disaster Relief Appropriations Act, 2013, Public Law 113-2, for the Community Development Block Grant National Disaster Resilience (CDBG-NDR) competition; and

WHEREAS, the Applicant wishes to engage the Partner to assist the Applicant in using such funds if awarded;

NOW, THEREFORE, it is agreed between the parties hereto, contingent upon the award of CDBG-NDR funds to the Applicant, that:

I. SUBRECIPIENT AGREEMENT/DEVELOPER AGREEMENT/CONTRACT

If the Applicant is awarded a CDBG-NDR grant from HUD, the Applicant/Grantee shall execute a written subrecipient agreement, developer agreement, contract, or other agreement, as applicable, with the Partner, for the use of the CDBG-NDR funds before disbursing any CDBG-NDR funds to the Partner. The written agreement must conform with all CDBG-NDR requirements and shall require the Partner to comply with all applicable CDBG-NDR requirements, including those found in Disaster Relief Appropriations Act, 2013 (Public Law 113-2), title I of the Housing and Community Development Act of 1974 (42 USC 5302 et seq.), the CDBG program regulations at 24 CFR part 570, the Notice of Funding Availability for HUD's National Community Development Block Grant Resilient Disaster Recovery Allocation and any subsequent published amendments (the CDBG-NDR NOFA), and the Applicant's CDBG-NDR NOFA application.

II. SCOPE OF SERVICE

A. Activities

The Partner will be responsible for using CDBG-NDR funds to carry out activities in a manner satisfactory to the Applicant and consistent with any standards required as a condition of providing these funds. Such use will be in compliance with the CDBG-NDR NOFA, the Applicant/Grantee's application for CDBG-NDR assistance and the Applicant/Grantee's Grant Agreement for CDBG-NDR. Such use will include the following activities:

Program/Project Delivery

Activity #1: Climate-Smart Cities Decision Support Portal.

The Trust for Public Land will complete the development of the Climate-Smart Cities Decision Support Portal (the portal). Green infrastructure collaborators will have access to a cutting-edge

portal to align project development at the city, neighborhood, and project levels with explicit spatial data tied to the 'connect, cool, absorb, protect' strategy, vulnerable communities, and priority assets (e.g., vulnerable infrastructure). The portal will allow users to "query" the data and priority modeling results to find neighborhoods and parcels of land that meet specific user-driven criteria. For example, a local planner could use the portal to investigate areas of high flooding risk, high concentrations of low-income residents, and a high incidence of vacant property, all with the click of a few buttons. The portal could also be used to provide detailed reports of the green infrastructure values of any specific parcel or set of parcels, to support community engagement or funding requests. Further, the portal will be used to prioritize and determine where to invest in resiliency actions such as changes in zoning, development of more stringent environmental regulations, development guidelines or permitting incentives, and retrofitting "grey" infrastructure to green infrastructure.

Through the Summer of 2015, The Trust for Public Land worked in partnership with the City to develop a beta version of the portal, focusing on the 'cool,' 'absorb,' and 'social vulnerability' objectives. Additional funding would allow The Trust for Public Land to complete the development of the portal to include priority modeling for the 'protect,' 'connect,' and 'critical infrastructure' objectives, as well as integrate metrics into the decision support portal.

Key tasks are outlined below.

Task 1: Establish a Technical Advisory Team. The Technical Advisory Team (TAT) will provide expert review and advice regarding development of the Climate-Smart Cities Decision Support Portal. The TAT members will be asked to provide expert input regarding locally appropriate planning objectives, data sources, implementation priorities, design rationale, and project deliverables.

Output: List of TAT participants with contact information.

Task 2: Design the New Orleans Climate-Smart Cities GIS Model. Working in consultation with the Technical Advisory Team and key stakeholders, TPL will create the design for a GIS model framework prioritizing green infrastructure investment tied to connect, cool, absorb, protect and reference layers.

Output: Conceptual model design.

Task 3: Data Collection. Working in collaboration with the Technical Advisory Team and key stakeholders, TPL will lead collection and management of GIS data. The Trust for Public Land will specifically partner with the Louisiana Public Health Institute to incorporate public health data into the portal (expanded upon under Activity #2).

Output: Data matrix that includes data sources, scales, and translation documentation.

Task 4: Model Implementation—Optimizing project siting for multiple benefits. TPL will develop a model framework based on the conceptual design generated in Task 2 and GIS data collected in Task 3.

Output: Parcel prioritization maps for each objective (connect, cool, absorb, and protect); Parcel prioritization maps for stacked priorities.

Task 5: Metrics. TPL is in the process of developing a new component to the decision support portal that supports calculating the benefits provided to specific geographic areas by particular green infrastructure interventions. This component allows for querying, ranking, and profiling areas based on pre-defined green infrastructure metrics, such as the increase in tree canopy in a particular area by a certain percentage. Metrics must be defined as specific, computable.

relationships between one or the provided data supported, reasonable conclusion (location, type, size, quality) and a defined objective.

In partnership with the TAT, TPL will develop 5 metrics for incorporation into the decision support portal.

Output: Incorporation of feature into final Decision Support Portal

Task 6: Web-based Decision Support Portal. TPL will make the data and priority location results available through a web-based decision support portal, hosted on the TPL's servers. TPL will provide training and support to users, and will provide updates on a bi-annual basis.

Output: Web-based decision support portal, Workshops/training sessions for partners and stakeholders.

Activity #2: Integration of health data into Climate-Smart Cities Decision Support Portal. The Louisiana Public Health Institute (LPHI) is a uniquely positioned and motivated community partner whose expertise is needed to grow the robustness of the Climate-Smart Cities Decision Support Portal (the Portal). Based in New Orleans, LPHI is a statewide, 501(c)(3) nonprofit organization that was founded in 1997. LPHI's mission is to improve the health and quality of life of all Louisianians regardless of where they live, work, learn or play. LPHI coordinates and manages public health programs and initiatives in the areas of health systems development and community health improvement.

TPL will collaborate with LPHI to 1) assess relevant human scale health data such as respiratory illnesses, cardiovascular diseases, heat related illnesses, and other diseases; 2) identify and document available neighborhood-level health outcome data for Orleans Parish by race, gender, age, and other factors for use in the Portal; 3) provide analytical support for data integration in to the Portal; and 4) provide instructional materials on use of health data in developing targeted strategies.

To achieve these objectives, the partners will use the Greater New Orleans Health Information Exchange (GNOHIE) clinical data repository (CDR). The GNOHIE is managed by the Partnership for Achieving Total Health (PATH), a supporting organization of LPHI. The GNOHIE is a collaborative data sharing platform that connects two major medical centers, fifty-seven community health center sites, six school-based health centers, New Orleans Emergency Medical Services, and local behavioral health providers through a real-time exchange of patient-level encounter data. The GNOHIE CDR contains clinical encounter data including admission, discharge and transfer information, and discrete clinical data elements included in the Continuity of Care Document standard. The GNOHIE captures almost the entirety of the region's Medicaid and uninsured populations, making it a critical resource for analyzing the health and healthcare-related experiences of vulnerable populations.

Integration of these clinical data into the Portal can enhance our ability to link climate change drivers to individual health outcomes at the neighborhood level. This integration will further assist in identifying and engaging vulnerable populations.

Activity #3: Implementation Finance.

The Trust for Public Land has helped research, design, and pass nearly 500 successful state and local ballot measures and legislation, yielding \$60 billion in new public funding for conservation and parks. The most common reason that voters support new park and land conservation funding is to protect water resources. Recent measures in Houston, Texas; St. Louis, Missouri; and Newark, New Jersey, will provide nearly \$1 billion in voter-approved tax and bond funding for parks, trails, and greenways to reduce flooding and polluted runoff. TPL has developed a time-

tested, research-based approach to creating park and conservation funding and will build on this foundation to develop a comparable approach for funding green infrastructure at scale within cities and regions.

Task 1: Research and development of innovative Green Infrastructure financing mechanisms. In order to create the large-scale funding needed to implement city-scale green infrastructure, it will be necessary to move beyond a project-by-project approach, using traditional water infrastructure financing sources (e.g. ratepayers and low-interest state bonds). TPL envisions that such an approach will require mobilizing a wide array of traditional and innovative funding sources into a coherent “funding quilt” from many sources, including local, state, and federal governments, private capital markets, NGO development finance groups, nonprofit community organizations, and the philanthropic community. There are many potential financing approaches that could support green infrastructure, including revolving funds, PIs, or tax-exempt pollution control bonds. TPL will help our municipal partners determine whether and how these approaches might be coordinated to meet their needs.

To evaluate the potential varied approaches to financing green infrastructure, TPL will convene a full-day finance charrette, inviting a broad-based group of thought leaders from multiple sectors—local, state and federal government, research universities and think tanks, nonprofit environmental groups, real estate, the water and infrastructure industry, private capital markets, the NGO development finance sector, nonprofit organizations, and the philanthropic community. The goal of the finance charrette will be to generate potentially viable policy and finance options to support green infrastructure in cities and regions nationwide. City- or region-specific application will require in-depth examination with a primary focus on legal and policy research.

Task 2: Evaluate implementation potential for green infrastructure financing innovations. TPL will partner with a leading academic institution to determine through feasibility research whether and how these innovative financing concepts could be adopted in New Orleans. The core of this research will consist of a comprehensive legal analysis—conducted by our partner—to determine whether these potential financing options can be used under current local, state, and federal law or whether legislative/regulatory changes are needed. For private market financing options, our partner will provide in-depth research on how new financing instruments (e.g. tax credits, revolving loan funds, credit enhancements) can be developed to support green infrastructure. TPL will also create revenue estimating models to determine the potential of these financing options to contribute to the funding quilt. This research will take approximately 12 months, with the findings to be presented at a second finance charrette geared towards thought leaders, such as elected officials, public agency staff, NGO partners, and civic, business, and philanthropic leaders.

Task 3: Assess public support for green infrastructure concepts and build a leadership coalition for implementation. TPL uses public opinion surveys to research financing proposals and pass ballot measures and legislation. These surveys help us design measures that resonate with voters and public officials. TPL will commission a public opinion survey with a third party consultant to test receptivity to the city scale green infrastructure concept, viability of potential financing options to voters and public officials, and how best to communicate these concepts to the public. Using the results of the public opinion survey research, TPL will hold a series of individual briefings with key stakeholders to determine if city leadership can be mobilized to implement the financing options.

B. Project Schedule

CDBG-NDR funding is subject to strict statutory deadlines for expenditure. In accordance with section 904(c) of title IX of the Disaster Relief Appropriations Act, 2013, a Grantee is required to expend all CDBG-NDR funds within two years of the date that HUD signs the grant agreement. Consistent with this duty, the Partner is required to complete all CDBG-NDR assisted activities identified in section 1(A) above within 24 months.

The Partner agrees to implement the following:

Activity	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8
Climate-Smart Cities Decision Support Portal								
Task 1: Establish LAY								
Task 2: Design GIS Model								
Task 3: Data Collection								
Task 4: Model Implementation								
Task 5: Metrics								
Task 6: Web-based Portal and training								
Partnership with EPHI								
Implementation Flexures								
Task 1: Charter								
Task 2: Evaluate Potential								
Task 3: Public Opinion								

C. Staffing

The Trust for Public Land staff working on this planning effort includes:

Jed Daley, Climate Conservation Director, guides the organization's climate policy work, including as founding co-chair of the Forest-Climate Working Group. Daley has been newly nominated to serve as a member of the public-private national council established by the Obama administration to guide the work of the federal Landscape Conservation Cooperatives.

Shawn O'Rourke, Green Infrastructure Director, has in-depth experience using landscape as infrastructure; he Co-Chairs an Urban Resilience Grant at the Urban Land Institute, was appointed to the City of Boston Climate Adaptation and Preparedness Committee, and serves on the Urban Land Institute's Boston's Sustainability Committee and Sea Level Rise Committee.

Holly Howell, Climate-Smart Cities Program Manager, manages the project pipeline and implementation of the organization's climate adaptation and mitigation work. She is responsible for developing and managing science-based partnerships with academic institutions and consulting firms; coordinating the implementation of GIS web-based decision support portals with internal and external partners; and partnering with field staff to identify and develop projects.

Breene Robertson, GIS Director, manages the award-winning, comprehensive, and coordinated GIS program. She oversees projects ranging from city and county open space plans to multi-jurisdictional modeling efforts that cover a wide range of "Land for People" issues, such as health

disparities, stormwater management, wildlife protection, climate protection, clean drinking water, and park equity analyses.

Chris David, GIS Project Manager, leads the GIS development of Climate Smart Cities projects nationwide. His expertise is in GIS project design and modeling, site suitability, and GIS science. David has over 10 years of experience in the GIS field and has worked for the District of Columbia Office of Planning and with NOAA, as an Environmental Planner.

Mont Zepher, National Research Director, leads the Conservation Finance research program, which has written more than 150 comprehensive feasibility reports, whose analysis and recommendations help design ballot measures, shape legislation, and influence public policy. He has also led efforts to publish *LandFacts*, an annual comprehensive review of conservation ballot measures.

Cindy Brown, Louisiana State Director, will serve as the local point of contact, work with the City lead to plan and schedule all workshops when the portal is launched, and coordinate stakeholder engagement at the field level. Brown oversees The Trust for Public Land's Louisiana, Mississippi, and Arkansas programs.

Sarah Oliver, New Orleans Program Manager, will coordinate all of the green infrastructure pilot project work on Habans schoolyard. She will oversee and manage all contracts with design and construction partners and coordinate outreach/education activities taking place at Habans. Her work in New Orleans focuses on urban public land and green spaces.

III. BUDGET

The total budget for the activities described above is \$830,000, including funds to support engagement from LPHE.

The Applicant/Grantee may require a more detailed budget breakdown than the one contained herein, and the Partner shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Applicant/Grantee. Any amendments to the budget must be approved in writing by both the Applicant/Grantee and the Partner.

IV. SPECIAL CONDITIONS

A. CONVICTED FELON STATEMENT

The Applicant complies with City Code § 2-82(c) and no principal, member, or officer of the Applicant has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

B. NON-SOLICITATION

The Applicant has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Agreement. The Applicant has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Agreement.

C. AUDIT AND OTHER OVERSIGHT

The Applicant will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Applicant to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Agreement. The Applicant agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

V. SEVERABILITY

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

VI. SECTION HEADINGS AND SUBHEADINGS

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

VII. WAIVER

The Applicant's failure to act with respect to a breach by the Partner does not waive its right to act with respect to subsequent or similar breaches. The failure of the Applicant to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

VIII. ENTIRE AGREEMENT

This Agreement between the Partner and the Applicant for the use of CDEG-NDR funds, supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Partner and the Applicant/Grantee with respect to this Agreement. By way of signing this agreement, the Partner is bound to perform the agreements within this agreement or any HUD approved amendment thereof. Any amendment to this agreement must receive prior approval by HUD.

Date _____

10/23/15

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

(City of New Orleans)

(Parish)

By _____

By _____

First Deputy Mayor/CAO, Andrew D. Koppelman

Title Louisiana State Director

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[EXHIBIT C-E CONTAINED ON NEXT PAGES]

**EXHIBIT C TO THE COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
THE TRUST FOR PUBLIC LAND**

Trust for Public Land NDR Project-Specific Performance Metrics

1. Increased Access to Public Open Space. Trust for Public Land shall assess number of households within a ten (10) minute walk (0.5 miles) of new or improved NDR-funded public open space and provide a quarterly report.

[EXHIBIT D AND E CONTAINED ON NEXT PAGES]

EXHIBIT D TO THE COOPERATIVE ENDEAVOR AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

THE TRUST FOR PUBLIC LAND

BUDGET

Task	Output	Budget per Task
Activity A: Climate-Smart Cities Decision Support Portal.		
Task 1: Technical Advisory Team ("TAT")	List of TAT participants and contact information	\$10,000
Task 2: New Orleans Climate-Smart Cities GIS Model	Conceptual GIS design model design.	\$100,000
Task 3: Data Collection	Data matrix that includes data sources, scales, and translation documentation.	\$80,000
Task 4: Integration of Public Health Data	Incorporate public health data into the Decision Support Portal	\$20,000
Task 5: Model Implementation	Parcel prioritization maps and data layer shapefiles for each objective (connect, cool, absorb, and protect); Parcel prioritization map and data layer shapefile for stacked priorities.	\$100,000
Task 6: Web-based Decision Support Portal and Training	Web-based decision support portal; Workshops/training sessions for partners and stakeholders.	\$100,000
Task 7: Metrics	Framework for tracking 5 metrics.	
Task 7.1 Reporting Year 1	Reporting Year 1	\$24,000
Task 7.2 Reporting Year 2	Reporting Year 2	\$24,000
Task 5.3 Reporting Year 3	Reporting Year 3	\$24,000
Task 5.4 Reporting Year 4	Reporting Year 4	\$24,000
Task 5.5 Reporting Year 5	Reporting Year 5	\$24,000
Activity B: Green Infrastructure Implementation Finance.		
Task 1: Current Conditions and Project Assessment	Current Conditions Assessment white paper.	\$15,000
Task 2: Research and development of Sustaining Green Infrastructure financing mechanisms	Notes from full-day green infrastructure finance charrette.	\$35,000
Task 3: Evaluate implementation potential for green infrastructure financing innovations.	Presentation of feasibility research findings at second Finance Charrette.	\$35,000
Task 4: Assess public support for green infrastructure concepts	Using the results of the research, TPL will brief key stakeholders to evaluate potential of the city to implement the financing options.	\$35,000
		Total: \$650,000.00

[EXHIBIT E CONTAINED ON NEXT PAGES]

EXHIBIT E TO THE COOPERATIVE ENDEAVOR AGREEMENT

BETWEEN

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AND

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TIMELINE

		2018				2019-2021			
	Complete	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Climate-Smart Cities Decision Support Portal									
Task 1. Technical Advisory Team									
Task 2. GIS Model									
Task 3. Data Collection									
Task 4: Integration of Public Health Data									
Task 5. Model Implementation									
Task 6. Web-based Portal and training									
Task 7. Metrics development									
Task 7.1 Reporting Year 1									
Task 7.2 Reporting Year 2									
Task 7.3 Reporting Year 3									
Task 7.4 Reporting Year 4									
Task 7.5 Reporting Year 5									
Implementation Finance									
Task 1. Current Conditions									
Task 2. Charrette									
Task 3. Evaluate Potential									
Task 4. Public Opinion									

[END OF AGREEMENT]