



Request for Proposals

**Deaverview Master Plan
298-FY26-CED-RFP-DeaverviewMasterPlan
Federally Funded**

City of Asheville
Project Manager: James Shelton
Email: jshelton2@ashevillenc.gov

Date Issued: June 17, 2026

PROPOSALS DUE BY: July 17, 2026 5:00pm EDT

1. Request for Proposal Notice

Pursuant to the City of Asheville's Procurement, Purchasing and Contracting Policy, Proposals will be received by the City of Asheville for the following: The Community Development Division, in partnership with the Housing Authority of the City of Asheville (HACA) and PEAK Academy (a public charter school), seeks proposals for the development of a Master Plan for a collection of City-owned and HACA-owned properties in the Deaverview neighborhood in West Asheville measuring a combined 58+ acres. Notice is hereby given that the City will accept proposals until July 17, 2026 5:00pm EDT.

The RFP is comprised of the base RFP document, any attachments, and any addenda released before contract award. All attachments and addenda released for this RFP in advance of any contract award are incorporated herein by reference.

2. Description

This project will be a comprehensive master planning effort that envisions a holistic community revitalization through the development of mixed-income housing (affordable and market-rate rental and homeownership), educational facilities, and recreational and wellness facilities. The Parties (City, HACA, and PEAK Academy) and the selected Master Planner will collaborate throughout the process while also engaging with the broader Deaverview community to ensure community buy-in of the Master Plan. The final Master Plan must serve as a financial and operational roadmap and demonstrate the proposed development characteristics for the Collective Site.

Core Scope Requirements and Deliverables

The scope of work requires the Master Planning firm to address all planning elements necessary for a mixed-use development, including:

- **Housing Strategy:** Develop a mixed-income housing strategy to include rental and homeownership units of various building typologies, ensuring the final plan includes a minimum of 340 housing units (replacing the existing 160 Deaverview units plus an additional 180 units).
- **Educational Facilities:** Plan for approximately four (4) acres for educational use, anchored by PEAK Academy.
- **Public Amenities:** Integrate park, recreation, community facilities, and wellness/supportive services for public use, aligning with the goal of creating positive community impact and well-being.
- **Infrastructure & Connectivity:** Identify conceptual streetscape, multimodal transportation (including connectivity infrastructure to support proposed uses), and utility improvements required.

The Master Plan shall be completed within 18 months of the date of contract execution, unless otherwise agreed to by the Parties.

3. Statutory and/or Licensure Requirements

The following requirements may be met by the qualifications of the applying firm or by obtaining these services from a partner firm:

- Property Appraisals
- Surveys
- Environmental analysis
- Civil engineering
- Pro forma analysis
- Financial feasibility
- Geotechnical analysis
- Traffic analysis

4. Evaluation Criteria & Required Content

Proposals will be scored and evaluated based upon the following criteria and demonstrated capacity of the applicant to provide the required deliverables.

- 1. Qualifications:** The system provider must have at least 3 years in providing planning services and developing neighborhood master plans.
 - a. Describe the Firm's unique qualifications as they pertain to developing master plans, particularly plans that combine mixed-income housing, open space, and educational facilities.
 - b. Describe the background and qualifications of those who would be on the project team. Information should include relevant firm history, names and credentials of individuals demonstrating qualifications, location of their home and branch offices, honors, awards, certifications (if any), and areas of specialization (if any).
- 2. Project Understanding and Approach:**
 - a. Provide a description of your understanding of the scope of work and how your team will approach the project.
 - b. Provide a general schedule with anticipated milestones and durations.
 - c. Describe your approach to ensuring the community is engaged and has the opportunity to participate in the planning process, including incorporating past engagement and development efforts in the community.
 - d. Identify key tasks and how they will be handled.

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- e. Describe your approach to considering environmentally sustainable elements (energy, resilience, health, etc) into the project
- f. Provide your approach to data security. Confirm that all customer data is owned by the City of Asheville and provide the process for supplying this data to the City of Asheville upon contract termination. List any software you anticipate using.
- g. Provide a copy of your service level agreement (SLA).
- h. Explain any anticipated challenges with the project.
- i. Provide a description of the ability of the Firm to commit resources necessary to complete this project and the team to perform project tasks on schedule and on budget. A capacity chart/graph can be included.
- j. Explain your approach to conducting any Technical Analysis and Feasibility, including but not limited to:
 - **Site Constraints Analysis:** Conduct a thorough analysis of current physical conditions and limitations to "test fit" potential development programs against the reality of the land.
 - **Market Feasibility & Financial Modeling:** Perform a market feasibility study, housing needs assessment, and detailed pro-forma analysis to identify the ideal mix of uses and establish a guiding financial model.
 - **Financial Roadmap:** Identify necessary public investments and potential financing tools, such as tax credits or private-public partnerships, to ensure the project's long-term economic viability.
- k. Collaboration and Engagement - The selected firm must implement a rigorous and authentic community engagement strategy:
 - **Partner Collaboration:** Collaborate equally with the City, HACA, and PEAK Academy throughout the process, acting as a technical expert to guide the Parties in realizing their shared vision.
 - **Community Engagement:** Mutually develop strategies to engage with Deaverview residents and the wider Deaverview community to incorporate learning into the plans, building on the foundation of the documented 2021 community input.
- l. Project Completion and Final Deliverables - The final output of this engagement shall include:
 - **Conceptual Design:** Conceptual renderings and preliminary infrastructure requirements, including multiple options with a range of site design characteristics that can be used to facilitate community reaction, stakeholder input, and recommendations from the City, HACA, and PEAK officials.
 - **Draft Plan Submission:** A draft Master Plan for review and sign-off by the City Manager's designee, the HACA Executive Director, and the PEAK Academy Executive Director.

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- **Final Master Plan:** Presentation of the final Master Plan for formal adoption and endorsement by the Asheville City Council, HACA Board of Directors, and PEAK Academy Board of Directors.

- 3. Relevant Projects and References:** Please provide contact information on similar sized contracts for both current and former clients, as well as provide specific client references with the following criteria:

Projects:

- a. List a maximum of five (5) relevant projects.
- b. List only projects involving current staff, indicate which team members were actually involved in the project, and specify their role.
- c. List relevant projects in date order with the newest projects listed first.
- d. Describe in detail the services your Firm and sub-consultants (if any) provided and the outcome of the project (on-time, on-budget, the number of change orders issued).
- e. Describe specific experience from the past relevant projects in providing the scope of services listed for this project.
- f. Provide the client name for whom services were provided and the appropriate individual who may be contacted as a representative of each client (include phone number, email, and address of contact).
- g. Total project budget and if final cost exceeded, met, or was under budget.

References:

- a. A minimum of three (3) most recent comparable projects
 1. North Carolina clients are preferred

4. Cost Proposal

Please provide your cost proposal for the services/project.

NOTE: Pricing is not confidential or proprietary; all proposals not to exceed fifty (50) pages.

5. Cost Proposal

Instructions: The proposal shall include pricing for all services. Pricing shall be inclusive unless otherwise indicated. The proposal shall itemize all services, including any hourly rates for all professional, technical and support personnel as well as all other charges related to completion for a fully functioning system. The proposal shall include a total cost not to be exceeded. (Please add lines/descriptions if necessary)

Description	Cost
Required Services:	
Community Engagement	\$
Site Constraints Analysis	\$
Market Feasibility & Financial Modeling	\$
Financial Roadmap	\$
Plan Development	\$
Optional Additional Services:	
	\$
	\$
	\$
	\$
	\$
Total Cost Not to Exceed (required services only)	\$

Total Cost Not to Exceed (with optional services)	\$
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Name of Firm:	
Authorized Signature:	
Printed Name:	
Title:	
Email:	
Date:	

6. Evaluation Metrics

Criteria	Points
Project Understanding and Approach	40
Qualifications	30
Relevant Projects and References	20
Pricing	10
Total Possible Points	100

7. RFP Schedule and Proposal Submission

RFP Issued:	June 17, 2026
Pre-Proposal Meeting (Optional):	June 23, 2026, 12:00 PM EDT Google Meet joining info Video call link: meet.google.com/fpk-dyer-sgy

	(US) +1 513-461-2357 PIN: 464 326 447#
Questions Deadline:	June 26, 2026 5:00pm EDT
Addendum:	July 2, 2026, 5:00pm EDT
Deadline for Proposal Submittals:	July 17, 2026 5:00pm EDT

8. Evaluation and Selection Process

Submittals will be reviewed for responsiveness, and responsive submittals will further be screened by a selection committee in accordance with the above criteria. The firm(s) submitting the highest-rated proposal may be invited for interviews.

Interviews, if held, will be scored and ranked separately from the written proposals. However, the City may use criteria similar to the above Evaluation Criteria to score and rank Proposers' responses to interview questions or instructions, in addition to other relevant information provided or requested.

After interviews, a Best and Final Offer (BAFO) may be requested. The City reserves the right to make an award without further discussion of the proposal submitted with the offeror. Therefore, the proposal should be submitted initially on the most favorable terms and pricing that the firm or individual might propose.

The City reserves the right to award a contract to the firm whose proposal best accomplishes the desired results.

The City of Asheville reserves the right to request additional information or clarification from proposers during the evaluation process.

The City reserves the right to reject any or all proposals, or to waive minor irregularities in said proposals, or to negotiate with the successful firm(s). In the case of differences between written words and figures in a proposal, the amount stated in written words shall govern. In the case of a difference in unit price versus the extended figure, the unit price shall govern.

The City reserves the right to no-award this project in the best interest of the City.

The City will notify all proposers whether or not they are selected for the subject work. Email is the City's preferred method of communication for all stages of the RFP process.

Black Out Period: Vendors must not make any contact with any City of Asheville Personnel, in addition to HACA and PEAK Personnel, other than those listed in the RFP between the date the RFP is issued and the proposal due date to ensure fairness to all vendors. There will also be no

vendor contact during the evaluation period until after the contract award, unless the City has a need to seek clarification from a vendor regarding their proposal.

9. Proposal Submittal Instructions

All Proposals must be made and submitted in a non-editable electronic document (PDF) format. Links are not allowed. Proposals must be delivered via email. **Proposals shall not exceed 50 pages, inclusive of any title/cover sheets, appendices, and/or any supplemental pages. Any submission over 50 pages will not be reviewed.** The City of Asheville takes no responsibility for emails that are undeliverable or delayed. It is the responsibility of the submitter to obtain email confirmation. All proposals MUST be clearly identified in the email subject line as 298-FY26-CED-RFP-DeaverviewMasterPlan and MUST be delivered by July 17, 2026 5:00pm EDT.

Electronic Submission via Email:

Project Manager: James Shelton

Subject: 298-FY26-CED-RFP-DeaverviewMasterPlan

Email Address: jshelton2@ashevillenc.gov

Late proposals will not be considered. All proposals must be signed by an authorized representative of your organization. Faxed proposals will NOT be considered.

Questions and Addenda

Inquiries and/or clarifications must be submitted via email to the project manager by June 26, 2026 5:00pm EDT. Any revisions to this RFP shall be made by written addendum only. Addendum will be issued answering all questions and/or addressing any approved modifications to the RFP. No oral statements by any person shall modify or otherwise affect this RFP. Proposers shall acknowledge receipt of any addendum by returning a signed copy with their proposal. All addenda will be posted to www.ashevillenc.gov/bids. It is the responsibility of the proposer to check this website periodically for any changes to this proposal.

10. Request for Proposal (RFP) Terms and Conditions

Standard Contract: Upon completion of the evaluation and recommendation for award, the selected vendor will be required to execute a general services contract.

Contract Term: The term of this contract shall begin upon execution and remain in effect until the project is complete or until the maximum dollar amount has been expended. Not to exceed the allowable period as specified in the deliverables.

Independent Contractor: At all times the Contractor shall represent himself/herself to be an independent contractor offering services to the City of Asheville and shall not represent himself/herself, or his/her employees, to be an employee of the City of Asheville. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime,

etc., and agrees to indemnify, save, and hold the City of Asheville and its officers, agents, and employees harmless from and against any and all loss, cost (including attorney fees), and damage of any kind related to such matters.

Publicity Clause: Respondent must obtain prior written approval from the City for use of information relating to the City or this Agreement in advertisements, brochures, promotional materials or media, press releases, or other informational avenues.

Non-Appropriation: If the City does not receive funding for this Contract from the City Council for any fiscal year applicable to this Contract, then the City shall have the right to terminate this Agreement without penalty by giving not less than thirty (30) days' written notice documenting the lack of funding.

Conflict of Interest: The Contractor shall warrant that no official or employee of the City who has a conflict of interest has been employed or retained to solicit or aid in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the City.

Non-Collusion: Proposers submitting proposals shall warrant that their offer is made without any previous understanding, agreement, or connection with any person, firm, or corporation submitting a separate proposal for the same project and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action. This condition shall not apply to proposals that are submitted by Proposers who have partnered with others to submit a cooperative proposal that clearly identifies a primary contractor and the associated sub-contractors.

E-Verify Employer Compliance: Per NC HB 786 Session Law 2013-418, Employers and their subcontractors with 25 or more employees as defined must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program and can be accessed via this link: <https://www.e-verify.gov/>.

Iran Divestment and Israel Boycott: City of Asheville staff are responsible for verifying that the contractor is not listed on the Iran Divestment List or the Companies Boycotting Israel Final Divestment List published by the NC State Treasurer pursuant to N.C.G.S. 147-86.60 and 147-86.82. The City shall not contract with any company or their affiliates listed on these divestment lists.

Drug Free Workplace: The City of Asheville is a drug-free workplace employer. The City requires contractors/vendors entering into a contract with the City to provide a drug-free workplace in the performance of said contract. The contractor, upon execution of the contract, certifies that it will provide a drug-free workplace during the performance of the work on this contract. The contractor agrees to notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specify the actions that will be taken for violations of such prohibitions. Responsive actions should be appropriate and sufficient to address and remediate any violations of this requirement.

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Expenses Incurred In Preparing Proposal: The City of Asheville accepts no responsibility for any expense incurred by the proposer in the preparation of a proposal. Such expenses shall be borne exclusively by the proposer.

Addenda: Any and all revisions to this document shall be made only by written addendum from the City of Asheville Purchasing Division. Therefore, no oral statements by any person shall modify or otherwise affect the terms, conditions, or specifications stated in this request for proposals. The proposer is cautioned that the requirements of this RFP can be altered only by written addendum and that verbal communications from any source are of no effect.

Ad Valorem Taxes: Proposers/Vendors please note that City Policy adopted by the City Council Resolution No. 93-139, prohibits the City from entering into contracts with persons or firms who are delinquent in the payment of ad valorem taxes owed to the City of Asheville.

Termination: This contract may be terminated by either party, with thirty (30) days prior written notice. Notice shall be served under this contract by email and acknowledged by both parties.

Insurance Requirements: The successful proposer (Contractor) agrees to keep and maintain for the duration of this Agreement including but not limited to commercial general liability, auto liability, professional liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below. The Contractor will ensure subcontractors retained to provide services associated with this Project evidence the same lines and minimum limits of coverages stipulated herein. The Contractor shall furnish the City with certificates of insurance for each type of insurance described herein, with the City listed as Certificate Holder and as an additional insured on the Contractor's general liability policy and provide a waiver of subrogation on the Contractor's general liability and workers' compensation policy. In the event of bodily injury, property damage, or financial loss caused by the Contractor's negligent acts or omissions in connection with Contractor's services performed under this Agreement, the Contractor's Liability insurance shall be primary with respect to any other insurance which may be available to the City, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, the Contractor and their insurance carrier shall give the City at least thirty (30) days prior written notice. No work shall be performed until the Contractor has furnished to the City the above referenced certificates of insurance and associated endorsements, in a form suitable to the City.

Commercial General Liability:	\$1,000,000 per occurrence
Commercial Auto Liability:	\$1,000,000 combined single limit
Professional Liability:	\$1,000,000 per claim-made
Workers' Compensation:	Statutory
Employer's Liability:	\$500,000

Governing Law And Jurisdiction: The parties acknowledge that this Agreement is made and entered into in Asheville, North Carolina, and will be performed in Buncombe County, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties, and liabilities of the parties under this Agreement, and that North Carolina law shall govern the interpretation and enforcement of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law

principles). Disputes arising under this Agreement shall be resolved in an appropriate court in North Carolina.

Indemnification: The successful proposer shall indemnify, defend and hold harmless the City and the City's officers, employees and agents from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, and other liabilities (including settlement amounts) that arise directly or indirectly from:

- Any infringement of any copyright, trademark, or patent, any misappropriation of any trade secrets, or infringement or misappropriation of any other proprietary rights, in connection with any software, documentation, services, or other products supplied directly or indirectly by successful proposer in connection with this Agreement, or any allegation of any of the foregoing (collectively referred to as "Infringement Claims");
- Any acts of negligence or willful misconduct by the successful proposer or any of its agents, employees, or subcontractors (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness, or disease to any person(s) or damage or destruction to any property, real or personal;
- Any acts or omissions of the successful proposer with respect to the services provided by the successful proposer under this Agreement (or any allegations of any of the foregoing);
- Any claims by any persons or entities supplying labor or material to the successful proposer in connection with the performance of the Company's obligations under this Agreement.

If an Infringement Claim occurs, the successful proposer shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that any such replacement or modification will not affect the performance of any network or component thereof or affect the performance of any type of City system, product, item, or device or of any service that the City provides.

Proprietary/Confidential Information-Trade Secrets:

Trade Secrets and Personal Identification Information Definition

Upon receipt by the City, all materials submitted (including the Proposal) are considered public records with certain, limited exceptions, including (1) material that qualifies as "trade secret" information under N.C. Gen. Stat. § 66-152 et seq. ("Trade Secret" or "Trade Secrets") or (2) "personally identifiable information" protected by state or federal law, to include, but not be limited to, Social Security numbers, bank account numbers, and driver's license numbers ("Personally Identifiable Information" or "PII").

Instructions for Marking and Identifying Trade Secrets

If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section by: (1) clearly separating them on different pages from the rest of the Proposal and (2) including a clear designation or indication, on each page where Trade Secrets or PII appear, that these materials are “confidential” or a “trade secret,” as appropriate. The proposal can create this clear designation or indication by placing a caption/header/footer of “confidential” or “trade secret” on the pages where Trade Secrets or PII appear.

Availability of Proposals to City Staff and Contractors

By submitting a Proposal, each Company agrees that the City may reveal any Trade Secret materials and PII contained therein to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who serve on the Evaluation Committee or who are hired or appointed by the City to assist in the evaluation process.

Availability of Proposals via Public Records Requests

Any person or entity (including competitors) may request to review Proposals submitted in response to an RFP. Only those portions of RFPs properly designated as Trade Secret or PII or that the City is prohibited by law from disclosing are not subject to disclosure. The public disclosure of the contents of a Proposal or other materials submitted by a Company is governed by N.C. Gen. Stat. §§ 132 and 66-152, et seq. When determining whether to mark materials as Trade Secret, please note the following:

- Entire Proposals may not be marked as Trade Secret
- Pricing may not be marked as Trade Secret

The City may disqualify any proposer that designates its entire Proposal as a Trade Secret, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret or PII. Each Company agrees to indemnify, defend, and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Company has designated as a Trade Secret or PII. This includes an obligation on the part of the Company to defend any litigation brought by a party that has requested Proposals or other information that the Company has marked Trade Secret or PII.

Upon receipt of a public records request for any information designated as Trade Secrets or PII, the City may elect to notify the Company that submitted the designated information of the request, and that absent receipt of a court order or other documentation sufficient to relieve the City of its obligations under the North Carolina Public Records Act or other applicable law by a deadline designated by the City, such information may be disclosed to the requesting party. In

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such an event, the Company agrees that the City shall not be liable to the Company for any damages or losses of any kind arising from said disclosure.

Exhibit A: Federally Required Terms & Conditions Related to CDBG-DR (attached)

EXHIBIT A: FEDERAL CONTRACT REQUIREMENTS

Federal Applicability:

The City anticipates that this Contract may be financed in whole or in part with Federal and or State funding. As such, applicable Federal and State laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal and/or State requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal and/or State Government determines otherwise. This Section identifies the Federal and State requirements that are applicable to this Contract. The Subrecipient is responsible for complying with all applicable provisions.

To the extent applicable, the Federal and State requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Subrecipient pursuant to its obligations under this Contract. The Subrecipient and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the Federal awarding agency's terms and conditions.

This Contract may be financed, in whole or in part, by funding provided by federal programs **including, but not limited to**, the Federal Emergency Management Agency (FEMA), the Department of Housing and Urban Development, (HUD), or the Department of Transportation (DOT). Subrecipient shall at all times comply with all applicable federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Subrecipient's failure to comply shall constitute a material breach of this Contract.

REMEDIES:

PERFORMANCE AND DEFAULT: If, through any cause, contractor shall fail to fulfill in timely and proper manner the obligations under The Contract, the City shall have the right to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In that event any or all finished or unfinished deliverable items under The Contract prepared by the contractor shall, at the option of the City, become its property, and the contractor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of The Contract, and the City may withhold any payment due the contractor for the purpose of set off until such time as the exact amount of damages due the City from such breach can be determined. The City reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from the contractor without expense to the City.

In the event of default by the contractor, the City may procure the goods and services necessary to complete performance hereunder from other sources and hold the contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by the contractor under The

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Contract, or upon the contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the contractor, the City may immediately cease doing business with the contractor, immediately terminate The Contract for cause, and may take action to debar the contractor from doing future business with the City.

TERMINATION FOR CAUSE OR CONVENIENCE:

For purposes of clarity, it is expressly noted that, if the contractor fails to fulfill its obligations under the Contract, or otherwise breaches the terms of The Contract, the City shall be entitled to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In such an event, the City shall have the right to pursue any of the additional remedies listed in the preceding section of these Terms and Conditions.

If this contract contemplates deliveries or performance over a period of time, the City may, for any reason within its sole discretion, terminate this contract at any time by providing 30 days' notice in writing from the City to the contractor. In that event, any or all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the City, become its property. If the contract is terminated by the City as provided in this section, the city shall pay for those items for which such option is exercised, less any payment or compensation previously made.

CONTRACT CHANGES:

Contract changes must be in writing and agreed on by the city and the vendor and will be implemented by contract amendments. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. Contract amendments will be coordinated with the Project Manager and approved by the City before any changes should occur.

NONDISCRIMINATION

Equal Employment Opportunity

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

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

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compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will comply with Section 504 of the Rehabilitation Act of 1973, as amended. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (9) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the City to enter into such litigation to protect the interests of the City. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a City or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated

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eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceeding.

Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC 623 through 634 and the implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, the Subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subrecipient agrees to comply with any implementing requirements the Federal awarding agency may issue.

Sex

The Subrecipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC 1681 et seq.; all applicable requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 USC 2000e et seq.; and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, that prohibit discrimination on the basis of sex.

Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Subrecipient agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

Access to Services for Persons with Limited English Proficiency

The Subrecipient agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency,"; 42 USC 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"; 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

Drug or Alcohol Abuse Confidentiality and Other Civil Rights Protections

To the extent applicable, the Subrecipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act

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of 1970, as amended, 42 USC 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 USC 290dd through 290dd-2, and any amendments thereto.

Other Nondiscrimination Laws

The Subrecipient agrees to comply with applicable provisions of other Federal and/or State laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal and/or State Government determines otherwise in writing.

Inclusion in Subcontracts

The Subrecipient also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE DAVIS-BACON ACT- CONSTRUCTION

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

Subrecipients are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Additionally, contractors are required to pay wages not less than once a week.

The Subrecipient also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

1. *Minimum wages.*

- i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 Subrecipient and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(I)(iv) of this section; 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 §5.5(a)(4). Laborers or mechanics performing work in more than

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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 paragraph (a)(l)(ii) of this section) and the Davis Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and its subSubrecipients at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, 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. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore 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 Subrecipient and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer 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 the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Subrecipient, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(l)(ii) (B) or (C) of this section, 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.

i. 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 Subrecipient 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.

ii. If the Subrecipient does not make payments to a trustee or other third person, the Subrecipient may consider as part of the wages of any laborer or mechanic the

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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 Subrecipient, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. *Withholding.*

The Federal Agency and/or Client 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 Subrecipient under this contract or any other Federal contract with the same prime Subrecipient, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Subrecipient, 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 Subrecipient or any subSubrecipient 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Subrecipient, 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.

3. *Payrolls and basic records.*

i. Payrolls and basic records relating thereto shall be maintained by the Subrecipient during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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 Subrecipient 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. Subrecipients employing apprentices or trainees under approved programs shall of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii. (A) The Subrecipient shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the federal agency if the agency is a party to the contract, but if the agency is not such a party, the Subrecipient will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the federal agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

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<http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Subrecipient is responsible for the submission of copies of payrolls by all subSubrecipients. Subrecipients and subSubrecipients shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the federal agency if the agency is a party to the contract, but if the agency is not such a party, the Subrecipient will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the federal agency, the Subrecipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Subrecipient to require a subSubrecipient to provide addresses and social security numbers to the prime Subrecipient for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

- 1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a) (3) (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a) (3) (i) of Regulations, 29 CFR part 5, 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 Regulations, 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 paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Subrecipient or subSubrecipient to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

i. The Subrecipient or subSubrecipient shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the federal agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Subrecipient or subSubrecipient fails to submit the required records or to make them available, the Federal agency may, after written notice to the Subrecipient, 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 Subrecipient 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 Subrecipient 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 Subrecipient's or subSubrecipients 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 Subrecipient will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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iii. *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part 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 Subrecipient shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. *Subcontracts.*

The Subrecipient shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (l) through (10) and such other clauses as HUD may by appropriate instructions require, and also a clause requiring the subSubrecipients to include these clauses in any lower tier subcontracts. The prime Subrecipient shall be responsible for the compliance by any subSubrecipient or lower tier Subrecipient with all the contract clauses in 29 CFR 5.5.

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 Subrecipient and a subSubrecipient 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. *Breach.*

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Subrecipient and subSubrecipient as provided in 29 C.F.R. § 5.12.

10. *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 Subrecipient (or any of its subSubrecipients) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

11. *Certification of eligibility.*

- 1) By entering into this contract, the Subrecipient certifies that neither it (nor he or she) nor any person or firm who has an interest in the Subrecipient'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)(l).
- 2) 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)(l).
- 3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT

- a. Subrecipient. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty 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 forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States(in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) 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 subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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a. Definitions

- i. Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of et seq.).
- ii. Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 240l (d)) must also occur during the period of contract performance.
- iii. Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- iv. Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- v. Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3- 12, respectively, will be used.
- vi. Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501 (c) {3} of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

b. Allocation of Principal Rights

The Subrecipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Subrecipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. Invention Disclosure, Election of Title and Filing of Patent Application by Subrecipient

- i. The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Subrecipient will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.
- ii. The Subrecipient will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more

than 60 days prior to the end of the statutory period.

- iii. The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- iv. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the agency, be granted.

d. Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention-

- i. If the contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the agency may only request title within 60 days after learning of the failure of the contractor to disclose or elect within the specified times.
- ii. In those countries in which the contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.
- iii. In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Subrecipient and Protection of the Subrecipient Right to File

- i. The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal to which the invention pertains.
- ii. The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- iii. Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. Subrecipient Action to Protect the Government's Interest

- i. The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to
 1. establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and
 2. convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.
- ii. The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c) (l), above. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- iii. The contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
- iv. The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

g. Subcontracts

- i. The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- ii. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (i) of this clause.

h. Reporting on Utilization of Subject Inventions

The Subrecipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (i) of this clause. As required by 35 U.S.C. 202(c) (5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

i. Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- i.** Such action is necessary because the contractor or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- ii.** Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;
- iii.** Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or
- iv.** Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Contracts with Nonprofit Organizations If the contractor is a nonprofit organization, it agrees that:

- i.** Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the contractor;
- ii.** The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- iii.** The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- iv.** It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Secretary applicants,

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and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

I. Communication

Any communications to be given hereunder by either party to the other shall be deemed to be duly given if set forth in writing and personally delivered or sent by mail, registered or certified, postage prepaid with return receipt requested, as follows:

CONTRACTOR

[Name]
[Street Address]
[City, State, Zip code]

CLIENT

City of Asheville
70 Court Plaza
Asheville, NC 28801

Written notices hereunder delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated five (5) days after deposit in the mail, post prepaid, certified, in accordance with this Paragraph.

CLEAN AIR ACT

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the City of Asheville will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

FEDERAL WATER POLLUTION CONTROL ACT

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the City of Asheville and understands and agrees that the City of Asheville will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

ENERGY CONSERVATION

The Subrecipient agrees to comply with the 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, 42 U.S.C. § 6321, et seq. This requirement extends to all third-party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

DEBARMENT AND SUSPENSION

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2

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- C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into
 3. This certification is a material representation of fact relied upon by the City of Asheville. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Asheville, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment
 4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

The requisite Debarment and Suspension Certification is included as **ATTACHMENT A** and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352

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

The Subrecipient further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

The requisite “Lobbying Certification” is included as **ATTACHMENT B** and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

PROCUREMENT OF RECOVERED MATERIALS

1. In the performance of this contract, the Subrecipient shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— • Competitively within a timeframe providing for compliance with the contract performance schedule; • Meeting contract performance requirements; or • At a reasonable price
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
3. The Subrecipient also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

ACCESS TO RECORDS AND RECORD RETENTION

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier. Under 49 USC 5325(g) and 2 CFR 200.336, applicable Federal and/or State Agency has the right to examine and inspect all records, documents, and papers, including contracts, related to any project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. **Record Retention.** The Subrecipient will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub- agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. **Retention Period.** The Subrecipient agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Subrecipient shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. **Access to Records.**
 - a. The Subrecipient agrees to provide sufficient access to applicable Federal and/or State Agency and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
 - b. The Subrecipient agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Subrecipient and its subcontractors pertaining to the Project, as required by 49 USC 5325(g) and 2 CFR 200.336
 - c. Subrecipient also agrees, pursuant to 49 CFR 633.17 to provide the applicable Federal Agency Secretary, Director, or Administrator or their authorized representatives including any PMO Subrecipient access to Subrecipient's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.
 - d. The Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. **Access to the Sites of Performance.** The Subrecipient agrees to permit applicable Federal and/or State Agency and its contractors access to the sites of performance under this contract as reasonably may be required.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the City of Asheville and the Subrecipient acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States

FEDERAL OR STATE SEAL, LOGO, AND FLAGS

The contractor shall not use any Federal or State Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal or State agency officials without specific agency pre-approval.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

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

NO OBLIGATION BY FEDERAL OR STATE GOVERNMENT

Neither the Federal nor the State Government is a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The Subrecipient agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the Subrecipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products).” – For purposes of this clause, (i) “produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (ii) “manufactured products” means items and construction materials composed in whole or in part of non-ferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

CONFLICT OF INTEREST

No employee, officer, board member, or agent of the City of Asheville or the Subrecipient shall participate in the selection, award, or administration of a contract supported by federal and/or state funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employees or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The Subrecipient shall comply with all federal regulations of Disadvantaged Business Enterprises (DBE) participation in the provision of goods and services. Disadvantaged Business Enterprises, as defined in 2 CFR § 200.321, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The Subrecipient agrees to solicit small and minority business and women's business enterprises whenever they are potential sources. When

economically feasible, the Subrecipient agrees to divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. Where the requirement permits, the Subrecipient agrees to establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises. As appropriate, the Subrecipient agrees to use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- a. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in 2 CFR 200.216 (b) and (c), Public Law 115-232, and FEMA Policy #405-143-1, "Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services"
- b. Prohibitions.
 1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 2. Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from a federal agency to:
 - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c. Exceptions.

1. This clause does not prohibit contractors from providing—
 - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

d. Reporting requirement.

1. In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
2. The Subrecipient shall report the following information pursuant to paragraph (d)(1) of this clause:
 - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

e. Subcontracts. The Subrecipient shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

COPYRIGHT AND DATA RIGHTS

“License and Delivery of Works Subject to Copyright and Data Rights”

The Subrecipient grants to the Client a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Subrecipient will identify such data and grant to the Client or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or

images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Subrecipient will deliver to the Client data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Client.”

BUY AMERICA

If this project is subject to the Build America, Buy America Act (BABAA), the Subrecipient and its subcontractors shall certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Subrecipient and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement.

HUAWEI/ ZTB Ban

CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment. (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115–232 and § 200.471.

STATUTORY AND REGULATORY COMPLIANCE

Subrecipient shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by: the Continuing Appropriations Act, 2018, and Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56) approved on

September 8, 2017, as amended; the Bipartisan Budget Act of 2018 (Pub. L. 115-123) approved on February 9, 2018, as amended; the Additional Supplemental Appropriations for Disaster Relief Act, 2019, (Pub. L. 116-20) approved on June 6, 2019, as amended; as well as including, but not limited to, the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including if certain expenses are allowed.

REPORTING REQUIREMENTS

The CONTRACTOR shall cooperate with all Client efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. 85.40-41 (or 84.50-52, if applicable) and 570.507, when applicable.

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, religion 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.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (As required by applicable thresholds)

1. The work to be performed under this Agreement 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.
2. The parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. Part 75 which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
3. 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.
4. The CONTRACTOR agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 75, 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 subcontractor is in violation of the regulations in 24 C.F.R. Part 75. The CONTRACTOR will not subcontract with any subcontractor where the CONTRACTOR has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.
5. 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

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executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent the CONTRACTOR's obligations under 24 C.F.R. Part 75.

6. Noncompliance with HUD's regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
7. 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 (46 U.S.C. § 5307) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
8. For contracts exceeding \$100,000, the CONTRACTOR shall submit Form HUD 60002 (Section 3 Summary Report) to Client on a quarterly basis, notwithstanding the annual reporting requirement set forth in that form's instructions.

FAIR HOUSING ACT

CONTRACTOR shall comply with the provisions of the Fair Housing Act of 1968, as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

FLOOD DISASTER PROTECTION ACT OF 1973

The CONTRACTOR will ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 C.F.R. § 570.605.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT (URA)

Every project funded in part or in full by Community Development Block Grant – Disaster Recovery (CDBG-DR) funds, and all activities related to that project, are subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, 42 U.S.C. § 4601 et seq., and section 104(d) of the Housing and Community Development Act of 1992, as amended (HCDA), 42 U.S.C. § 5304(d), except where waivers or alternative requirements have been provided by the U.S. Department of Housing and Urban Development (HUD). The implementing regulations for URA are at 49 C.F.R. Part 24, and the regulations for section 104(d) are at 24 C.F.R. Part 42, subpart C. Additionally, HUD has established regulations specific to CDBG-funded housing activities at 24 C.F.R. § 570.606. The primary purpose of these laws and regulations is to provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects.

When CDBG-DR funds are planned, intended, or used for any activity or phase of a project and the phases are interdependent, URA applies to that activity or project. This includes any property acquisition, even if CDBG-DR funds are not used to fund the purchase, if the contract to acquire property is executed with the intention of seeking CDBG-DR funds to complete the project or an interdependent phase of the project. Subrecipients are responsible for ensuring URA compliance throughout the design, proposal,

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and implementation of any project that includes real property acquisition or displacement of residential or business occupants.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY
EXCLUSION LOWER TIER COVERED TRANSACTION

(To be submitted with all bids exceeding \$25,000.)

1. The prospective lower tier participant (Bidder/Subrecipient) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. The prospective Bidder/Subrecipient also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
3. Where the prospective lower tier participant (Bidder/Subrecipient) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Subrecipient), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____ [SEAL]

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ATTACHMENT B

CERTIFICATION REGARDING LOBBYING

(To be submitted with all offers exceeding \$100,000; must be executed prior to Award)

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons 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 to 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 Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Subrecipient, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient understands and agrees that the provisions of 31 U.S.C. § 1352, *et seq.*, apply to this certification and disclosure, if any.

Signature of Subrecipient's Authorized

Official Date _____

Printed Name and Title of Subrecipient's Authorized

Official

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary Public _____

My Appointment Expires _____

[SEAL]