



**City of New Orleans**

Mayor LaToya Cantrell

***Notice of Funding Availability***  
**Investments in Workforce Development**

**General Information Package**

**Timeline**

Released: **January 8, 2024**

Information Session: **January 22, 2024**

Application Deadline: **February 5, 2024**

Selection of Applicants Announced: **March 2024**

**Office of Workforce Development**

1307 Oretha Castle Haley Blvd.

Suite 3000

New Orleans, LA 70113

504-658-4542 | [nola.gov/workforce-development](http://nola.gov/workforce-development)

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January 2, 2024

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**NOTICE OF FUNDING AVAILABILITY (NOFA)**

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**I. OVERVIEW**

**Agency:** Office of Workforce Development  
Director: Sunae S. Villavaso

**Action:** Notice of Funding Availability (NOFA) for *Investments in Workforce Development*

**Summary:** The City of New Orleans seeks to utilize a portion of its American Rescue Plan Act (ARPA) award to build a sustainable workforce for the next generation. Funding is available to support organizations in developing programs that empower individuals negatively impacted by the COVID-19 pandemic with the skills, certifications, and support necessary to embark on career trajectories with family-sustaining wages that bolster their long term social and economic mobility. A total of \$7,410,000 is available to be allocated to an estimated 12 to 20 awards over a two-year grant period.

**Release Date:** Application packets are available in Microsoft Word and PDF format, beginning **January 8, 2024** from the Office of Workforce Development website. Contact this office at (504) 658-4542 or [owdnofa@nola.gov](mailto:owdnofa@nola.gov) to have the NOFA e-mailed to your organization.

**Informational Meeting:**

A **virtual meeting** will be held on **January 22, 2024, at 10:00AM CDT** to answer general questions related to this NOFA and accompanying application. Call-in information will be circulated prior to the meeting. You may submit questions in advance of the meeting to Sunae Villavaso, Director at [owdnofa@nola.gov](mailto:owdnofa@nola.gov) The session is optional and is not required to be awarded funding.

Register for the virtual information meeting: <https://bit.ly/OWD-NOFA>

**Due Date:** An electronic copy of a completed application must be submitted to the City of New Orleans Office of Workforce Development via email to [owdnofa@nola.gov](mailto:owdnofa@nola.gov) by **February 5, 2024 no later than 5pm CDT.**

**Format:** All applications must be completed using the forms supplied with this **Notice of Funding Availability (NOFA)**. When replying to questions on the applications, please use Calibri, **12-point font size** to facilitate reading by scorers. Word limits for individual questions have not been established, but the applicant's completed **should not exceed 20 pages total**. A complete application must include: the Application Packet, a Project Narrative, a Budget Narrative, and a Detailed Program Budget (in excel format). **Proposals must be complete at the time of submission**. No addenda will be accepted after the deadline date for submission of proposals. Under no circumstance should an applicant leave a proposal at or mail a proposal to the City of New Orleans Office of Workforce Development.

## **II. LEGAL AND REGULATORY AUTHORITY**

This project is funded through American Rescue Plan Act ("ARPA funds") made available by the American Rescue Plan Act, 2021 (Public Law 117-2, signed March 11, 2021) distributed by the U.S. Treasury ("Treasury").

## **III. PROGRAM OBJECTIVES, REQUIREMENTS, AND ELIGIBILITY**

### **A. OBJECTIVES**

The future of our economy relies on a competitive, knowledgeable, and highly skilled workforce. This NOFA will distribute up to \$7,410,000 with the goal of supporting comprehensive workforce development programs.

Areas targeted for investment include but are not limited to:

- Programs that provide opportunities and pathways for youth and young adult workforce development.
- Programs that support and enhance New Orleans growing green infrastructure, sustainability and resilience industries.
- Programs that develop and build on New Orleans rich history of cultural and performing arts.
- Support for individuals with barriers to employment, such as transportation, financial literacy, or identification and documentation challenges.
- Support for current and future educators to access training and certification.
- Programs that upskill, retrain and support workers for in-demand jobs.

The City encourages innovative and impactful proposals beyond those enumerated above that enhance the employment prospects for our community now and in the future.

Each selected participating organization must commit to a rigorous evaluation of program impacts in collaboration with the City of New Orleans.

Program providers will be selected based on the responsiveness of proposals, past success in providing workforce development services or related support services, capacity to scale, budget narratives, and the number of participants in New Orleans that can be served.

**The strategic aim of this NOFA is to award funding to support the development and implementation of programs that provide pathways to high-quality employment for New Orleans residents who were negatively impacted economically by the COVID-19 pandemic.**

## B. KEY REGULATIONS AND REQUIREMENTS

Organizations that are selected through this NOFA will be required to:

### I. Contract with the City of New Orleans

- A. Agree to the standard terms and conditions of City contracts and adhere to the City's hiring requirements (**Appendix D**)
- B. Submit City of New Orleans Tax Clearance Form (available at: <https://nola.gov/next/purchasing/topics/policies,-procedures,-forms-and-templates/>)
- C. Submit a Certificate of Insurance, as required by the subrecipient agreement.

### II. Federal Compliance

This project is to be funded with a federal grant and the successful candidate must adhere to all relevant federal regulations (**Appendix E**).

### III. Financial Audit

The City of New Orleans requires that organizations submit the organization's most recent and current audited financial statements with its NOFA response(s). Annual audits will be required from the applicants awarded funding.

### IV. Reporting

Awarded applicants will be expected to submit quarterly reports regarding project outcomes and expenditures.

## C. ELIGIBILITY

### I. Eligible Applicants

- A. Proposals will be accepted from for-profit business entities, non-profits (with 501c3 status), and community-based organizations (e.g. chamber of commerce, churches, community associations). Priority consideration will be given to organizations with a proven track record in delivering workforce development programs and services comparable to those outlined in the proposal.
- B. Preference will also be given to applications that can demonstrate access to additional funding sources or strategic partners that multiply the impact of this funding or increase the capacity of the applicant.

- C. The organization submitting the application must elect a current staff member as their primary applicant. This applicant must be a U.S. Citizen at least 18 years of age.

II. Ineligible Applicants

- A. Proposals from organizations that are delinquent on any Federal debt, any State of Louisiana debt, or any City of New Orleans debt will not be considered for funding.
- B. Proposals from previously funded organizations that have not met audit requirements will not be considered for funding. All audits must be clear of ineligible/disallowed costs related to all funding provided by the City of New Orleans.
- C. No contractor principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.
- D. Proposals from organizations or managing members that are not in compliance with City funding commitments or that have unresolved compliance issues.
- E. Applications will not be accepted from individuals, but they are welcome to partner with an eligible organization.

D. FUNDING DETAILS AND TIMELINE

I. Number of Awards:

The Office of Workforce Development anticipates awarding (12 -20) applications. However, the number of awards and total amount awarded is within the sole discretion of the Office of Workforce Development and may be more or less than this number. The Office of Workforce Development reserves the right to select semi-finalists and ask that they present additional information. The Office of Workforce Development may also, at its sole discretion, cancel this NOFA at any time.

II. Award Amounts:

The minimum award amount is \$100,000 and the maximum award amount is \$1,000,000.

III. Award Duration and Start Date:

The requested funding period and proposed project timeline should be between 6 and 24 months. The project should begin in the second quarter of 2024.

**IV. APPLICANT SELECTION PROCESS:**

A. MINIMUM THRESHOLD REQUIREMENTS

Applications will be reviewed to ensure that they meet the following minimum requirements:

- I. Proposed projects with an implementation timeline longer than 24 months will not be considered for funding.
- II. Proposed projects requesting an award amount less than or higher than the proposed amount will not be considered.
- III. Applicants must be affiliated with a non-profit or for-profit organization. Projects from individuals will not be considered.
- IV. Proposals must be complete upon submittal. No addenda will be accepted after the deadline has passed.

B. SCORING

Applications will be reviewed by a committee and scored based on the factors set forth below. Supporting documentation, when available and applicable, should be included in the application submission. Maximum 100 points allowed) Evaluation of the Applications shall be within the sole judgment and discretion of the Evaluation Committee. Full scoring rubric is accessible in **Appendix B**.

Section	Maximum Points
General Qualifications + Experience	30
Scope of Work	30
Budget	15
Funding-Specific Information	25
Total Points (Maximum)	100

Please note that the City of New Orleans reserves the right to fund lower rated proposals over higher scoring proposals in order to address gaps in services and to provide an equitable distribution of funds to help an underserved population, geographical area, etc.. **Any awarded project must align with the City’s priorities and will have a minimum score of 70 points. Meeting the minimum score does not guarantee an award of funding.**

V. GRANT AWARD PROCESS

- A. The City of New Orleans will notify in writing applicants selected for funding within 30 days of the NOFA application deadline (**February 5, 2024**). All awards are subject to further contract negotiation and availability of funds.
- B. As necessary, The Office of Workforce Development will subsequently request that selected applicants submit additional project information. Any request for additional documentation is to confirm or clarify information provided in the

application or to revise information provided in the application based on the level of funding.

- C. Projects will be awarded until such time as the available funds are exhausted. Awards may contain conditions and/or include amendments to the proposals contained in the application.
- D. All awards will contain performance goals, including the development and implementation of timelines and number of units developed and/or persons served.
- E. Awards that proceed to contract will be for a defined term with conditions for renewal and extension.
- F. For an updated grant award process and timeline, please see **Appendix A**.
- G. **THE CITY OF NEW ORLEANS RESERVES THE RIGHT TO CANCEL, IN WHOLE OR IN PART, THIS NOFA AT ANY TIME AND WITHOUT NOTIFICATION.**



**VI. APPENDIX:**

A. NOFA Timeline..... p. 10

B. NOFA Scoring Rubric ..... p. 11

C. Application Packet ..... p. 13

D. Compliance with City’s Hiring Requirements ..... p. 18

E. Federal Compliance Provisions ..... p. 19

## **APPENDIX A: NOFA TIMELINE**

<b><u>Tasks</u></b>	<b><u>Description</u></b>	<b><u>Dates</u></b>
1	NOFA Announced	January 8, 2024
2	NOFA Informational Session for Applicants	January 22, 2024 at 10 AM CDT
3	NOFA Applications Due	February 5, 2024 at 5 PM
4	Selected Subrecipients Announced By	March 2024
5	Prepare and Route Scope of Work and Subrecipient Agreements for Awardee(s)	Q2 2024
6	Subrecipient Agreements Executed and Work Begins	Q2-Q3 2024
7	First Quarterly Report Due	October 1, 2024
8	Dissemination of Evaluation Findings from Subrecipient Projects	Q4 2026
9	Prepare Final Report for ARPA Funding Utilization (2026 Deadline)	Q4 2026

**APPENDIX B: NOFA SCORING RUBRIC**

Scoring Item	Possible Points	Total Points
<b>General Qualifications &amp; Experience</b>		<b>25</b>
Applicant clearly articulates their experience in managing large grants or funding sources and that they are best suited to accomplish the work as described within the NOFA.	<b>10</b>	
Applicant demonstrates longevity as a service provider, including work in the City of New Orleans.	<b>5</b>	
Key personnel on the project have the qualifications and experience to carry out the proposed activities. If applicable a detailed plan to hire the appropriate personnel is included.	<b>10</b>	
<b>Program or Project Approach</b>		<b>30</b>
Proposed program is well described and there is a reasonable expectation that the program could result in demonstrated success for the majority of program participants.	<b>10</b>	
Applicant provides a thoroughly documented plan to meet the goals of the proposed project or program, including how activities will be implemented, evaluated, and completed within the timeframe.	<b>10</b>	
There is a strong rationale for the design of the proposed program based in research, best practices, and/or past experience.	<b>10</b>	
<b>Program Eligibility and Impact</b>		<b>25</b>
Proposed eligibility criteria for participants meets ARPA requirements.	<b>7</b>	

There is a strong plan for verifying ARPA eligibility and recruiting participants.	5	
The expected impacts on either the number of participants or on participants' success are significant.	7	
The proposed results/outcomes are clear, ambitious yet reasonable, measurable, and related to proposed actions/activities.	6	
<b>Budget and Financials</b>		<b>20</b>
Resources needed to carry out the project are thoroughly described and clearly connected to the activities in the program description. Applicant has placed an emphasis on a significant portion of funding directly benefiting program participants.	10	
The Applicant provides a detailed budget that demonstrates how 100% of requested ARPA funds will be spent prior to 2026.	5	
The Applicant documents financial strength and that they will not rely on ARPA funding to maintain basic organization operations and that the organization is sustainable beyond the end of the ARPA funding period.	5	
<b>Total Possible Points</b>		<b>100</b>

## APPENDIX C: APPLICATION PACKET

Application Packet
Applicant Organization:
Applicant Address:
Form of Business: <input type="checkbox"/> Nonprofit <input type="checkbox"/> For-Profit <input type="checkbox"/> Other: _____
Zip Code(s) where your project serves:
Program Summary: Provide a summary of the program or project: (250 words maximum)
Total Amount of Funding Requested:
Proposed Number of Participants Reached:
Length of Proposed Program or Project:
Proposed Program or Project Start Date:
Proposed Program or Project End Date:

### SECTION 1: PROGRAM OR PROJECT NARRATIVE

Please respond to the prompts below regarding your agency’s experience in workforce development programming and your agency’s plan for implementing a workforce development program. Please use **Times New Roman, 12-point** font with double spacing to facilitate reading by scorers. This packet, including both this section and Section 2 **should not exceed 20 pages** total.

### SECTION 1A: ORGANIZATIONAL EXPERIENCE

Address each of the following questions below for the organization to demonstrate capacity and ability to execute successful programs/projects.

1. Provide a brief description of the objectives or mission statement of the organization or agency and relevant experience. How long has the organization been in existence? Describe how the program provides opportunities to empower individuals negatively impacted by the COVID-19 pandemic with the skills, certifications, and support necessary to embark on career trajectories with family-sustaining wages that bolster their long term social and economic mobility.
2. Describe the services currently provided by the organization. Provide a brief description of related projects/programs successfully undertaken within the last 3 years.
3. Describe your organization’s current or new staff positions that will oversee and implement the program functions outlined in section 1.B. Please include resumes of staff who will be integral to the program if they are existing staff in a separate attachment, if applicable. If new staff will be hired, provide a plan to hire the necessary personnel to execute the project.

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**SECTION 1B: PROGRAM DESIGN & ELIGIBILITY**

1. Provide a detailed description of the proposed program, please be sure to highlight the important, innovative, or unique aspects of the program and how the program supports the economic mobility of participants. Explain whether that program is an existing program that will be expanded or a new program that will be implemented.
2. What are the eligibility requirements proposed for program participants? What is your plan to ensure that participants meet the ARPA eligibility guidelines? Please see U.S. Treasury Final Rule for more information eligibility at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>
3. How many participants do you anticipate serving? How will program participants be recruited?
4. Identify the proposed program duration. Include a detailed timeline for project planning and implementation, including key milestones.

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**SECTION 1C: EVIDENCE-BASED APPROACH**

1. What is the rationale behind your program design and eligibility criteria?
2. What, if any, research informed your program design? What, if any, internally collected data or data from other programs suggests the efficacy of your approach?
3. OPTIONAL IF RELEVANT: What learnings from past experience have informed or changed the approach?

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**SECTION 1D: PROGRAM IMPACT**

1. Is the program designed for broad impact (more participants with less change), depth of impact (fewer participants but greater change), or a mix of both? And why?
2. What qualitative changes in learning or behavior can participants expect as a result of participating in the program?
3. What measurable impacts do you expect for participants of the program? Use quantitative metrics, where possible.
4. How will you track program impacts? If desired impacts are not achieved at certain intervals, what changes will you make to the program?
5. OPTIONAL IF NOT RELEVANT: OPTIONAL IF NOT RELEVANT: The Chief Administrative Office plans to engage an evaluator for all programs in the Investments in Workforce Development portfolio. If your organization plans to do additional evaluation or monitoring activities, please describe the activities and explain the rationale.

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**SECTION 1E: PROGRAM LOCATION AND SERVICE DELIVERY**

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1. Program participants must be Orleans Parish residents. Will the proposed program be implemented citywide? If not, please provide the focus for delivery of the program or project such as target communities, geographies, or zip codes. See section III.A. of the NOFA for information on eligible participants.

## **SECTION 2: PROGRAM OR PROJECT BUDGET**

Please describe your proposed budget by responding to the prompts below. When replying to prompts, please use Times New Roman, 12-point font with double spacing to facilitate reading by scorers. When submitting your proposal, include separate attachments with your excel document budget narrative and your organization's financials, including your most recent 990 and a copy of your most recent financial statement. If you have an audited financial statement, please submit it as a separate attachment.

### **SECTION 2A: BUDGET AND BUDGET NARRATIVE**

Please provide a description of project costs below in a narrative format. Please also include an Excel document that breaks down costs across allowable categories. All such costs should be limited to the amounts that are necessary and reasonable to accomplish the program activities and must meet applicable federal eligibility restrictions. Any awarded project will be subject to OHSS' feasibility and cost reasonableness analyses.

Allowable costs include, but are not limited to:

- A. Program staff salaries, including fringe and benefits
- B. Organizational administrative/overhead costs;
- C. Office supplies, outreach & promotional materials;
- D. Travel & transportation costs;
- E. Resources to support immediate program participants needs

Restrictions on use of funds include, but are not limited to:

- A. Organizations must operate within the geographic boundary of the City of New Orleans
- B. Program recipients or project participants must be City of New Orleans residents.
- C. Administrative costs must not exceed 10% of the total requested budget.
- D. Proposed budget should not include the use of funds to purchase food for meetings or events.

Submit your most recent 990 and a copy of your most recent financial statement. If you have an audited financial statement, please submit.

### **Acknowledgements**

The undersigned certifies and makes assurance of the Applicant's compliance with:

- i. Organization does not owe Federal debt, any State of Louisiana debt, or any City of New Orleans debt.
- ii. Applicant organization has met audit requirements to be considered for funding, including submission of organization's most recent completed audit, and all audits

of previously funded organizations are clear of ineligible/disallowed costs related to all funding provided by the City of New Orleans.

- iii. No contractor principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.
- iv. Proposals are in compliance with City funding commitments and do not have unresolved compliance issues.
- v. Title VI of the federal Civil Rights Act of 1964 <https://www.hhs.gov/civil-rights/for-individuals/special-topics/needy-families/civil-rights-requirements/index.html>;
- vi. Title IX of the federal Education Amendments Act of 1972 <https://www.justice.gov/crt/title-ix-education-amendments-1972>
- vii. The Equal Employment Opportunity Act and the regulations issued thereunder by the federal government <https://www.eeoc.gov/statutes/laws-enforced-eeoc>
- viii. The Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government <http://www.ada.gov/pubs/ada.html>;
- ix. All contract employees performing services and/or work as a result of this solicitation must have documented legal authority to work in the United States of America;
- x. The condition that the submitted Application was independently arrived at, without collusion, under penalty of perjury; and
- xi. The condition that no amount shall be paid directly or indirectly to an employee or official of the City of New Orleans as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Applicant in connection with the Procurement under this NOFA.

Yes     No

ORGANIZATION	FED EMPLOYER ID NO.
APPLICANT SIGNATURE	DATE
PRINTED NAME	
TITLE	
PERSON RESPONSIBLE FOR PREPARATION OF APPLICATION	



_____ NAME	_____ TITLE
_____ ADDRESS	
_____ CITY	_____ STATE
_____ ZIPCODE	
_____ PHONE NUMBER	_____ EMAIL ADDRESS
<b>PERSON RESPONSIBLE FOR PROGRAM AND CONTRACT MANAGEMENT</b>	
_____ NAME	_____ TITLE
_____ ADDRESS	
_____ CITY	_____ STATE
_____ ZIPCODE	
_____ PHONE NUMBER	_____ EMAIL ADDRESS

## **APPENDIX D: COMPLIANCE WITH CITY'S HIRING REQUIREMENTS**

### **BAN THE BOX**

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

### **LIVING WAGES**

- A. **Definitions**. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.
- B. **Compliance**. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, et seq., which requires, in pertinent part, the following:
  - i. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("Living Wage");
  - ii. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
  - iii. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.
- C. **Living Wage**. In accordance with the Living Wage Ordinance, Living Wage shall be as follows:
  - i. \$15.00 per hour for any work performed on or before December 31, 2023; and
  - ii. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.
- D. **Adjusted Living Wage**. In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.
- E. **Subcontract Requirements**. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify

subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“Article”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

- F. **Reporting**. On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development  
Living Wage - Compliance  
1340 Poydras Street – Suite 1800  
New Orleans, Louisiana 70112

- G. **Compliance Monitoring**. Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “OWD”) and/or the Chief Administrative Office (“CAO”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (iii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.
- H. **Remedies**. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

## **APPENDIX E: FEDERAL COMPLIANCE PROVISIONS**

### **FEDERAL COMPLIANCE PROVISIONS FOR AGREEMENTS WITH SUBRECIPIENTS**

**From 2 CFR 200**

**Applies to all federal grants.**

- 1. REMEDIES FOR NON-COMPLIANCE**
- 2. TERMINATION FOR CAUSE AND TERMINATION FOR CONVENIENCE**
- 3. EQUAL OPPORTUNITY ACT**
- 4. EQUAL OPPORTUNITY ACT FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS**
- 5. DAVIS-BACON ACT**
- 6. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION**
- 7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**
- 8. COPELAND “ANTI-KICKBACK” ACT**
- 9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**
- 10. CLEAR AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**
- 11. DEBARMENT AND SUSPENSION**
- 12. BYRD ANTI-LOBBYING ACT**
- 13. PROCUREMENT OF RECOVERED MATERIALS**
- 14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SERVEILLANCE SERVICES OR EQUIPMENT**
- 15. DOMESTIC PREFERENCES FOR PROCUREMENT**
- 16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**
- 17. ACCESS TO RECORDS**
- 18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**
- 19. NO OBLIGATION BY FEDERAL GOVERNMENT**
- 20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

#### **1. REMEDIES FOR NON-COMPLIANCE**

[See the body of the Agreement for this language.]

#### **2. TERMINATION FOR CAUSE AND TERMINATION FOR CONVENIENCE**

[See the body of the Agreement for this language.]

#### **3. EQUAL OPPORTUNITY ACT.**

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

- (1) The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subrecipient 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 Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Subrecipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subrecipient's legal duty to furnish information.

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

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

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

(8) The Subrecipient will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subSubrecipient or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the Subrecipient becomes involved in, or is threatened with, litigation with a subSubrecipient or vendor

as a result of such direction, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

#### **4. EQUAL OPPORTUNITY ACT FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS.**

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

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

(1) The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subrecipient 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 Subrecipient 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 Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Subrecipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subrecipient's legal duty to furnish information.

(4) The Subrecipient 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 Subrecipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Subrecipient 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 Subrecipient 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 Subrecipient'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 Subrecipient 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 Subrecipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subSubrecipient or vendor. The Subrecipient 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 Subrecipient becomes involved in, or is threatened with, litigation with a subSubrecipient or vendor as a result of such direction by the administering agency, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

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

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Subrecipients and subSubrecipients 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 Subrecipient debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Subrecipients and subSubrecipients by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## **5. DAVID-BACON ACT.**

(For prime construction contracts in excess of \$2,000.)

Applicable contracts must comply with the Davis Bacon Act, as amended (40 U.S.C. 3141-3148). In accordance with the statute, Subrecipients must be 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. In addition, Subrecipients must be required to pay wages not less than once a week.

## **6. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION**

(For construction contracts (incl. alteration and/or repair, including painting and decorating) of a public building or public work, or building or work financed in whole or part from federal funds.)

### **(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)(1)(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 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)(1)(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, 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)(1)(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.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the 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.

(iv) 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 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 (write in name of 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 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 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the 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 maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The Subrecipient shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate 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 (write in name of 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 <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 (write in name of appropriate 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 (write in name of 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.

(iii) 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 (write the name of the 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 subSubrecipient's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the 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.

(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 or subSubrecipient shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) 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 subSubrecipient 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) **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.

(10) **Certification of eligibility.**

(i) 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)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**

(Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) **Overtime requirements.** No Subrecipient or subSubrecipient 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 Subrecipient and any subSubrecipient responsible therefor shall be liable for the unpaid wages. In addition, such Subrecipient and subSubrecipient 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 \$31 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 Subrecipient or subSubrecipient under any such contract or any other Federal contract with the same prime Subrecipient, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Subrecipient, such sums as may be determined to be necessary to satisfy any liabilities of such Subrecipient or subSubrecipient for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) ***Subcontracts.*** The Subrecipient or subSubrecipient shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subSubrecipients to include these clauses in any lower tier subcontracts. The prime Subrecipient shall be responsible for compliance by any subSubrecipient or lower tier subSubrecipient with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) The Subrecipient or subSubrecipient shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Subrecipient or subSubrecipient for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the Subrecipient or subSubrecipient will permit such representatives to interview employees during working hours on the job.

Note: Section (c) is for contracts subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1

## **8. COPELAND “ANTI-KICKBACK” ACT**

A. Subrecipient. The Subrecipient 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 Subrecipient or subSubrecipient shall insert in any subcontracts the clause above and such other clauses as FEMA 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 subSubrecipient 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 U. S. Department of Homeland Security Headquarters 500 C St SW Washington, D.C. 20042 Page 13 of 25 [www.fema.gov/procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team) To Table of Contents as a Subrecipient and subSubrecipient as provided in 29 C.F.R. § 5.12.”

## 9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

## 10. CLEAR AIR ACT AND THE FEDERAL WATER POLLUTION CONTRAC ACT

(For contracts over, \$150,000, the Subrecipients must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Contract Act as amended (33 U.S.C. 1251-1387.)

- (1) The Subrecipient 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* and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 7401 *et seq*.
- (2) The Subrecipient agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## 11. 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 Subrecipient is required to verify that none of the Subrecipient’s principals (defined at 2 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 Subrecipient 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 (**insert name of recipient/subrecipient/applicant**). If it is later determined that the Subrecipient 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 (**insert name of recipient/subrecipient/applicant**), 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.

## 12. BYRD ANTI-LOBBYING ACT

The Subrecipient will be expected to comply with Federal statutes required in the Anti-Lobbying Act. Subrecipients who apply or bid for an award 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.

Note: Subrecipients who apply or bid for an award of \$100,000 or more shall file the required certification found below in Appendix A.

### **13. PROCUREMENT OF RECOVERED MATERIALS**

A. 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—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

B. 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>.

C. The Subrecipient also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

### **14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

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

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

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

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

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



## **15. DOMESTIC PREFERENCES FOR PROCUREMENT**

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

(b) For purposes of this section:

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

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

## **16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

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

## **17. ACCESS TO RECORDS**

The following access to records requirements apply to this contract:

- (1) The Subrecipient agrees to provide any official from the federal government or the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Subrecipient which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) 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.
- (3) The Subrecipient agrees to provide the federal administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Subrecipient acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the federal administrator or the Comptroller General of the United States.

## **18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

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

## **19. NO OBLIGATION BY FEDERAL GOVERNMENT**

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

**20. 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.

**Citations:**

Items 1 -15 are from 2 CFR 200, Appendix II

Item 16 is prudent.

Items 17-20 are from FEMA's Recommended Provisions.

**APPENDIX A,  
44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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 person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than 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 subawards at all tiers (including subcontracts, subgrants, 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 was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
**Signature and Title of Subrecipient's Authorized Official Representative**

\_\_\_\_\_  
**Date**