

**CITY OF HOUSTON  
HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT (HCDD)  
NOTICE OF FUNDING AVAILABILITY (NOFA)  
HOME INVESTMENT PARTNERSHIP GRANT  
MULTIFAMILY PROGRAM  
SOLICITATION NO.: N-040824**

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**Date Issued:** **April 8, 2024**

**Pre-Application Conference:** **April 11, 2024 at 10:00am**  
<https://bit.ly/HOMEMultifamily2024>  
Meeting ID: 297 900 169 337  
Passcode: MoLDsh

**Or call in (audio only)**  
[+1 936-755-1521](tel:+19367551521) Phone Conference ID: 725 374 041#

**Pre-Application Questions  
Deadline:** **April 18, 2024, 5pm**

**Solicitation Due Date:** **April 26, 2024, 3pm**

**Solicitation Contact Person:** Linsi Broom  
[HCD\\_NOFA@houstontx.gov](mailto:HCD_NOFA@houstontx.gov)  
832-393-0506

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**NOFA SUMMARY**

The City of Houston, Housing and Community Development Department (HCD) seeks to procure applications from developers of multifamily housing to finance construction, reconstruction, rehabilitation or acquisition of multifamily properties to provide affordable housing within the corporate boundaries of the City of Houston. Applicants must demonstrate a capacity to construct, or rehabilitate, and operate multifamily housing that benefits low-income individuals. Applications will be reviewed, underwritten, and scored to select awardees based on a predetermined set of criteria outlined in the NOFA.

DocuSigned by:  
  
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CPO Signature

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## PART I: GENERAL INFORMATION

### Introduction

The City of Houston (City) is the fourth largest city in the United States and is composed of 23 departments with multiple physical locations throughout the geographical boundaries of the City. The City has approximately 23,000 employees with approximately 500 employees involved in the procurement and/or contracting process. Contracts where the City must pay in excess of \$50,000 are routed to City Council for approval. The annual volume of contracts and purchase orders issued by the City in the last five years has ranged from 19,000 to 23,000.

The Housing and Community Development Department of the City of Houston (HCD) oversees a number of programs intended to help low to moderate-income citizens improve and strengthen their neighborhoods. Under the HOME Investment Partnership Grant Program (HOME), the City seeks to build safe and affordable homes across our city where people can thrive and leverage public and private resources to maximize development and renovation efforts throughout the city.

The Multifamily Program is funded primarily by HOME. Additional funding sources may be used depending upon availability.

### Funding

The amount of funding available for the Multifamily Program is approximately \$20,000,000.00.

## PART II: SCOPE OF WORK

### Description | Purpose

Multifamily Program is funded primarily under HOME. Additional funding sources may be used depending upon availability. Assistance may be provided in the form of fully repayable interest-bearing loans, grants, or performance-based loans. Repayment terms may include forgiveness, balloon note at maturity or at sale of the asset or other capital event. Depending on the investment, affordability requirements will extend for a minimum of 20 years and up to 40 years for new construction. Final determination of loan terms will be made during underwriting.

### Eligible Activities

HOME funds can be used for acquisition, new construction, or rehab, including the addition of new units to an existing property. The number of units restricted to low-income tenants is based on the proportion of HOME funds to the total project cost. In addition, the applicant must show "Match" funds—contributions in the form of equity, donated money, time, goods, or services. The department requires that all applications show a minimum of 12.5% of Match funds. Note: LIHTC equity does not meet the standards of Match funds.

Eligible costs associated with eligible activities may include:

- **Rehab** of multifamily properties.
- **New construction of properties or demolition and reconstruction of 64 units or more.** Smaller properties may be considered if the application demonstrates housing of a special need populations.
- **Demolition as part of rehabilitation and reconstruction,** which will serve to reduce density, if appropriate, making the property more manageable.
- **Acquisition of land for multifamily properties.** Land acquisition must be in conjunction with new construction.
- Project-related **soft costs** may be awarded on a limited basis and will be at the recommendation of staff and based on needs determined during the underwriting review.
- **Permanent Supportive Housing Units.** *The Department encourages the inclusion of extensive social services for tenants, funded through the City's Permanent Supportive Housing program.*

**In general, HCD encourages mixed-income projects and will strongly consider properties designed for both low income and market rate residents.**

## Solicitation Schedule

<b>Event</b>	<b>Date</b>
Date NOFA Issued	April 8, 2024
Pre-Application Conference	April 11, 2024
Pre-Application Questions	April 18, 2024
Deadline	
Solicitation Due Date	April 26, 2024

## PART III: EVALUATION AND SELECTION PROCESS

### Evaluation Committee

An evaluation committee shall evaluate Applications in accordance with the evaluation criteria listed below. The evaluation committee reserves the right to issue letter(s) of clarification when deemed necessary to any or all Applicant(s).

### Interviews/Oral Presentations/Demonstrations

The City reserves the right to request that Applicant(s) provide a final presentation handout of their application at the scheduled meeting. No Applicant may attend presentations of any other Applicant. If necessary, Applicants may be scheduled for more than one presentation, demonstration, or interview. The oral presentations, demonstrations and/or interviews may be recorded and/or videotaped.

### Selection Process

The City intends to select Applications that best meets the needs of the City and that provides the best overall value. The City reserves the right to check references on any projects performed by the Applicant, whether provided by the Applicant or known by the City.

Funding will be distributed to Applicant(s) that meet or exceed the minimum points, starting with highest score. After allocating funding based on highest scores, if there are insufficient funds to allocate to the next Applicant, the City may:

- i. Request that the next Applicant lower its funding request,
- ii. Skip the Applicant and award to the next Applicant whose funding request does not exceed available funding (whether based on the initial application or lowered in response to a request as set out in the step above), and/or
- iii. Choose not to award the remaining funding under this NOFA.

The City may continue the steps i and ii above with each next applicant (in order of score from highest to lowest) until all funds are awarded or the City determines it will not award any remaining funds under this NOFA. Upon approval of the selected Applicant(s), an agreement shall be executed by the appropriate City officials.

## Evaluation Criteria

### Threshold (Minimum Requirements)

- T1. Applicant must have a 2023 or earlier 9% tax credit award, 4% tax credit award, or a current active bond reservation for 4% tax credits. Note: *Applicants who have (1) 9% tax credit awards from 2023 or earlier will be prioritized.*
- T2. The project site must be located within the Houston City Limits.
- T3. Census tract poverty rate for new construction cannot exceed 25% or must be mitigated by CRA designation.
- T4. Applicant will not receive funding if it is not current with taxes due to the City, has delinquent loan(s) with HCDD, or if the organization is not in good standing with the City.
- T5. Must be able to provide evidence of site control (deed, lease, or [for acquisition] evidence of earnest money, contract, and recent appraisal).
- T6. Project must contain a minimum of 64 units.
- T7. Applicant must demonstrate successful development of a minimum of 5 affordable housing developments.
- T8. Funding request must be a minimum of \$1,500,000 and cannot exceed \$3,000,000.
- T9. HCDD must receive a \$1,500 application fee at the time of application. Note: Check should be hand delivered to HCDD Offices located at 2100 Travis, 9th floor, Houston, TX, 77002.
- T10. Applicant must not be debarred or suspended or is otherwise excluded from or ineligible for participating in Federally funded programs.
- T11. The project site must meet HCDD Flood Zone Standard.

### Scoring Criteria

Maximum Total Score = 100 Points

Organizational Expertise (25 Points)

Location Information (25 Points)

Project Information (25 Points)

Financial Analysis (25 Points)

#### S1. Organizational Expertise (25 Points)

HCDD will review qualifications and experience of proposed staff and strength of the development team.

1. **Organization Experience** - Applicants to provide the following:
  - a. Company resume detailing development and construction experience, as well as involvement in affordable housing transactions.
  - b. Resume(s) of key personnel
  - c. A list of at least three references who have financed recent transactions for your developments, including bank name; contact name; phone number; development name, type and location of transaction(s) financed.
  - d. An account of the company or key personnel's experience receiving and administering governmental allocated proceeds including, but not limited to, 9% and 4% Housing Tax Credits, HOME, CBDG, CDBG-DR and TIRZ etc.
2. **Real Estate Experience** - Applicants' prior experience with development of properties similar to the location, size, scope of the proposed project. Applicants to provide Real Estate Owned Schedule of all owned and managed properties dated no later than six months of application.
  - a. Name of Property
  - b. Location
  - c. Scope of Work (new construction, renovation, reconstruction, purchase)
  - d. Total Units
  - e. Total Affordable Units

- f. Type of property (e.g. market rate, income restricted, mixed use.. etc)
- g. Total development Costs
- h. Occupancy Rate
- i. Net Operating Income
- j. Debt Service Coverage Ratio

*If the applicant has developed a similar project but no longer owns and/or manages the development, a description of the project should be included with date of when the property was sold or transferred.*

3. **Financial Capacity** - Overall financial condition and the developer, sponsor or any key personnel providing a development guaranty. Applicants to provide a **minimum three years** of audited or company prepared operating statements that including:
  - i. Balance sheet
  - ii. Income statement
  - iii. Tax returns

*Additional documentation may be requested by HCDD*
4. **Public Funding** – Applicants are required to demonstrate experience with financing and administration of public funds.

## **S2. Site Location Information (25 Points)**

HCDD will prioritize scoring of applications with site(s) based on the following criteria.

1. **Concerted Revitalization Area** - Sites located within any identified Concerted Revitalization Plan identified by a prior adopted plan by Houston City Council.
2. **Deconcentration of Poverty** - Sites located in census tracts with low levels of poverty concentration. Sites in census tracts with >25% poverty levels will not be recommended, unless located within a Concerted Revitalization Area.
3. **Access to Local Transit** - Sites located within a ¼ mile to high frequency Metro stop. High frequency transit service is defined as service arriving every 15 minutes on average from 6 am to 8 pm seven days a week.
4. **School Performance** - Elementary, Middle and High School Ratings issued by TEA for schools zoned to the site.
5. **Neighborhood Amenities** - Proximity to neighborhood amenities including grocery stores, public park, pharmacy, health facility and public library.
6. **Employment** - Proximity to employment and/or training opportunities

## **S3. Project Information (25 Points)**

The following information to be outlined in the project application. Applications that demonstrate the following criteria will be prioritized.

1. **Project Readiness** - Applicants are required to demonstrate project readiness to reflect a readiness to close and commence work within one year of award.
  - a. A defined scope of work including preliminary design plans and site plans
  - b. Timeline for project scope including design, permitting, arranging third party financing, general contractor selection and closing
2. **Sources and Uses**
  - a. Identify all construction period and permanent sources documented with a Letter of Intent from provider reflecting similar terms
  - b. Detailed cost estimates or all hard costs and soft costs
3. **Market Rate Composition** - Properties demonstrating a mixed-income approach with a percentage of units reserves as unrestricted market rate
4. **Housing for special needs** – Applicant must specify housing will be provided for special needs populations that may include permanent supportive housing, previously homeless, section 811, etc.
5. **Energy Efficiency and Resilient Design** - Properties that demonstrate energy efficiency and/or sustainable practices. Applications for Housing Types that promote resilient flood design that may protect resident life

and property during flooding events. Examples include raised podium construction, pier and beam foundation for single-family or development with no ground level units. The project narrative should provide a description of the project design.

6. **Resident Services** - Properties that demonstrate resident services provided at no cost to the resident
7. **Local Support** - Demonstration of community support that the applicant has sought, received and implemented (if needed) views and recommendations from members of the community regarding the proposed development.
8. **Quality Onsite Educational Programming** – provide quality onsite educational opportunities at no additional cost to residents

#### **S4. Financial Analysis (25 Points)**

HCDD will review each proposal to determine whether the development is feasible in terms of cost, sources and uses and other financial thresholds. These thresholds will include, but not be limited to, the following:

1. **Proforma Analysis** - revenue and expense reasonableness
2. **Debt coverage** - Applicants to note debt coverage ratio of any must-pay loan should reflect no less than 1.10 but no greater than 1.50. Applications without permanent debt to reflect an income/expense ratio of 1.05.
3. **Cost Analysis** - Comparison of Construction Cost per unit and Total Cost per unit relative to similar properties submitted under this NOFA and in the marketplace. Considerations will be made for certain high-cost designs that include podium style, single-family or land costs for high opportunity or urban core areas.
4. **Leverage and Gap Analysis** - Applications that reflect a lower leverage of HCDD proceeds will be prioritized. Any application exceeding the following will be reviewed on a case-by-case basis:
  - a. HCDD proceeds to be no greater than 20% of total sources
  - b. HCDD proceeds to account for no greater than \$50k of the total units within the development (e.g. HCDD proceeds / total units)
5. **HOME Match Funds** – Applications that demonstrate HOME “Match” funds. These include non-federal funds including private equity grants contributions. Applications that can reflect at least 12.5% of HOME Match funds will be prioritized. *\*\* Note that LIHTC equity, deferred developer fee and first lien loan funds do not qualify as Match funds.*

### **Financial Evaluation and Underwriting**

Applications will go through an underwriting process, which will evaluate the ownership structure, property operations, the sources and uses of funds, and the financial statements of the owner and guarantor.

The pro-forma operating statement will make adequate provisions for the anticipated number of rent-restricted units, vacancy rate (no greater than 10% stabilized), and replacement reserves of no less than \$300/unit/year.

HCD will review the underlying proposed debt and operating pro-forma of the property to determine the development’s feasibility during the affordability period (i.e. demonstration of debt service coverage ratio of at least 1.15). For properties such as those for special needs population, which demonstrate that they cannot carry any debt service, income should exceed expenses by a margin of no less than a 1.05 income/expense ratio. *A commitment of the ownership entity to cover any losses will be required in the event of cash flow shortfalls.*

### **Financing Terms**

As a policy, the City desires to provide enough funding to each approved transaction to increase the availability of affordable units, or substantially improve the quality of existing units, without over-subsidizing the development or increasing the risk of too much debt for the restricted rents to support.



*The City reserves the right to determine award and financing terms based on its financial evaluation of the transaction in tandem with the program requirements and availability of funds. Applicants will identify all other sources of capital in the application.*

### **Loan Amount**

Applicants should make a *specific loan request* to the City of at least \$1,500,000 and not to exceed \$3,000,000. The request should represent the **gap** between (a) the total project cost and (b) the Applicant's equity plus commercially available debt, grants, tax credits, and other capital contributions.

### **Terms**

*Awards will be structured as non-amortized loans with interest only payments due annually. Awards for PSH or other transactions without permanent senior debt may be performance base loans with no payment requirements.* HCD will typically provide for a maximum twenty-four (24) month construction period. Any expected variation from this timeline should be explained in footnotes to the pro-forma project costs. The loan term and property affordability period will begin at the acknowledgement by HCD of successful completion of the project (IDIS completion). Loan commitments are not transferable and become due and payable in full in the event of noncompliance or default over the life of the agreement. The Land Use Restriction Agreement (LURA) term will be determined at the time of underwriting. Loan terms will be a minimum term of twenty (20) years up to forty (40) years determined at underwriting.

*Except for PSH transactions or other transactions not financed with permanent debt, loans will be repayable at term, sale or re-finance of the property.* Applicants may not transfer ownership of the asset, or refinance its debt, throughout the affordability period except with the express consent of the Director of HCD. A revised gap analysis may be performed at a modification request to determine if project requires subsidy funding. Any request for loan modification by the applicant in event of sale, refinancing, new ownership, etc may alter HCD's loan terms.

### **Interest Rate**

Interest rates will vary based on the level and type of investment by the City and the program funding, however to be underwritten at a minimum rate of 1.00%. PSH and other transactions without senior permanent debt will not be subject to payment terms. Determination will occur during underwriting review, and the City will establish a final loan structure to meet financial feasibility and program regulatory requirements. The loan will be structured with annual interest only payment beginning at the end of the construction period and continuing for the loan term.

### **Loan Position**

The City's LURA will be superior to all other liens. In most cases the City loan position will be junior to Senior Debt; however, the City reserves the right to have a position senior to other sources of financing.

### **Fees**

Applicants will be subject to an application fee of \$1,500 due at the time of submission. Also, subsequent to the construction period and throughout the affordability period, awardees will be subject to an annual Compliance Monitoring Fee of \$25 per HOME or other HCD financed unit. Applicant will be responsible to meet all third-party expenses (attorney, plan and cost review, ... etc.) incurred by HCD, whether or not the loan closes.

Modification of HCD loan terms after loan closing may be subject to modification fees no less than \$25,000 and determined at the request of the loan modification.

### **Material Changes**

Any material changes to the project during underwriting or construction must be reported in writing to the Department. Failure to do so may result in a Default under the loan.



### Construction Guaranty and Cost Overruns

Developers will personally guarantee the loan until rehabilitation or construction is complete and all buildings receive certificates of occupancy (Completion Guaranty). Upon completion, if the development complies with applicable HUD requirements, personal liability of the guarantors will be released except for losses due to *fraud, theft, failure to pay taxes, failure to maintain insurance and similar acts or omissions (“bad acts exceptions”)*.

### Affordability Covenants

A LURA requires that the rents charged to low-income tenants are based upon the renter’s income as a percentage of Area Median Income (AMI) established annually by HUD. The LURA also defines the number of units which to be restricted to low-income and very-low-income tenants (“restricted units”). *These covenants must be in a lien position superior to all other liens, including existing debt, and will require any existing lender to subordinate to the rent restrictions.*

The LURA will be recorded in higher priority than any first lien made by a commercial lender and will remain in force throughout the affordability period despite bankruptcy, sale, or other event transferring title. The LURA will be insured with a separate title insurance policy provided by the developer. Developers are advised to use the HOME restrictions (described below) to underwrite all projects since they are the strictest with respect to affordability.

The Developer will use its best efforts to distribute the restricted units among unit sizes in proportion to the distribution of unit sizes in the Property and to avoid concentration of restricted units in any area or areas of the Property.

During the affordability period, HCD will monitor each project for financial stability, status on annual payments due as well as compliance with the City’s Minimum Property Standards and LURA. This will include:

- Regular review of audited financial statements
- Annual inspections of property to assure that Minimum Property Standards are maintained
- Verifying lease related documentation/actions to demonstrate compliance with Affirmative Marketing and Fair Housing requirements under local, state and federal rules in tenant selection/housing;
- Verifying income documentation and eligibility of persons certified/assisted; and
- Certifying/approving rent rates and utility allowances within limits set by local, state or federal agencies as applicable to each project.

### HOME Restrictions

The HOME program restricts rents for affordable (restricted) units based on income at each level. Pursuant to HUD regulations, tenants with income levels at 50% or below Area Median Income (AMI) are eligible for Low HOME rents; tenants with income levels between 51% and 80% of AMI are eligible for High HOME rents. However, **HCD further limits units leased at High HOME rents to tenants earning between 51% and 60% of AMI.**

HCD will provide assistance and monitoring to property owners and managers to ensure the correct rents are being charged to the tenants.

### Number of Restricted Units

The number of restricted units for projects receiving HOME funds is based on the pro-rata share of the HOME funds to the total project cost. So, for a 100-unit project, if HCD provides 15% of the total project cost, then at least 15 units to be restricted. These units are restricted to tenants earning less than 60% of AMI, with 20% of the restricted units (or 3 units in this example) being further restricted to tenants earning less than 50% of AMI.

### Insurance

Title Insurance (both Loan and LURA coverage), Property Insurance, Flood Insurance, Wind Insurance, Builder’s Risk Insurance, and Worker’s Compensation Insurance will be required. Other insurance requirements may apply and will be more fully described in the loan documents.

**Payment, Performance and Maintenance Bond**

The general contractor shall furnish a Payment and Performance bond for the full amount of the construction contract, which requires the contractor's full performance of the contract. The contractor shall also furnish a 1-year Maintenance bond to secure the warranty required under the construction contract between the owner and the contractor. Bonds shall be made payable to the City and the owner, in a form approved by the Director of HCDD. The surety issuing the bond to be on the current list of accepted sureties on federal bonds published by the US Treasury Department and/or on the State Board of Insurance list of authorized insurance companies in Texas.

**Other Liens**

After closing, Borrower will NOT be permitted to place subsequent liens against the property either in priority or subordinate to City's lien. No additional debt is allowed without prior written approval by the Director of HCD. The City's lien (debt) position can be junior to an existing lender, but the LURA covenants must be superior to all other debt and liens including existing debt, and will require the existing lender to subordinate to the rent restrictions. Refinancing of senior debt will be allowed only with approval of the Director.

**Documentation of Agreement**

This NOFA is a framework upon which requests may be submitted. The *Loan/Grant Agreement* will be negotiated and signed by all parties before a financing request is taken to City Council. All documents required by the City and its attorneys including without limitation, the Deed of Trust, Promissory Note, Intercreditor Agreement, LURA, and Assignment of all contracts, leases and rents, will be negotiated and presented as appendices to the Loan/Grant Agreement. Final documents will be executed prior to closing.

*Closing* on the Loan shall be concurrent with closing on any superior liens and any other sources of funds determined to be necessary for the long-term financial feasibility of the Development. All due diligence determined by the Department to be prudent and necessary to meet and to secure the interests of the Department and of the City of Houston to be complete prior to closing.

**PART IV: APPLICATION PROCESS AND REQUIREMENTS****Pre-Application Conference**

A Pre-Application Conference will be held at the date, time, and location indicated on the first page of the NOFA document. Interested Applicant(s) are encouraged to attend. It will be assumed that potential Applicant(s) attending this meeting have reviewed the NOFA in detail and are prepared to bring up any substantive questions not already addressed by the City.

**Additional Information and NOFA Changes**

Requests for additional information and questions should be addressed to the Housing and Community Development Department, Finance Division, HCD NOFA Staff at [HCD\\_NOFA@houstontx.gov](mailto:HCD_NOFA@houstontx.gov) no **later than 5:00 PM**, April 18, 2024. The City of Houston shall provide written responses to all questions received in writing before the submittal deadline. Questions received from all Applicant(s) shall be answered and sent to all Applicant(s) who are listed as having obtained the NOFA. Applicant(s) shall be notified in writing of any changes in the NOFA.

**Letter(s) of Clarification**

All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any Letter of Clarification(s) or interpretation that is not in writing shall not legally bind the City. Only information supplied by the City in writing or in this NOFA should be used in preparing applications. The City does not assume responsibility for the receipt of any Letters of Clarification sent to Applicant(s).

**Required Application Content**

All required application content is listed in the Multifamily NOFA Application Workbook at this hyperlink: [www.houstontx.gov/housing/funding.html](http://www.houstontx.gov/housing/funding.html).

## Examination of Documents and Requirements

Each Applicant shall carefully examine all NOFA documents and familiarize themselves with all requirements prior to submitting an application to ensure that the Applicant meets the intent of this NOFA.

Before applying, each Applicant shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and affecting the requirements of this NOFA. Failure to make such investigations and examinations shall not relieve the Applicant from obligation to comply, in every detail, with all provisions and requirements of the NOFA.

## Post-Application Discussions with Applicant(s)

It is the City's intent to commence final negotiation with the Applicant(s) deemed most advantageous to the City. The City reserves the right to conduct post-application discussions with any Application(s).

## Instructions for Applications

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1. Application submission. Applications will only be received online through <https://bit.ly/NOFA-DocumentPortal>. Paper applications received in person or by email will not be accepted. The City shall bear no responsibility for submitting responses on behalf of any Applicants. Applicant(s) may submit their Application the hyperlink provided any time prior to the stated deadline. This NOFA Application requires a \$1500 application fee. Applicants should hand deliver the check to the 9<sup>th</sup> floor reception area at the HCDD Office, 2100 Travis St, Houston, TX 77002. The check must be submitted by the application due date – Friday, April 26, 2024 at 3pm.
2. Time for Applications. Applications shall be submitted no later than the date and time indicated for submission in this NOFA. Late applications will not be considered.
3. Format. Arial 12 font, double space should be used. Material should be submitted as directed in the hyperlink provided. Page limitations must be adhered to as outlined. Application materials will not be returned to Applicants.
4. Complete Application. Applicants are advised to carefully review all the requirements and submit all documents and information as indicated in this NOFA. Incomplete Applications may lead to an Application being deemed non-responsive. Non-responsive Applications will not be considered.
5. Timely Receipt of Application. Applicant remains responsible for ensuring that its Application is received at the time, date, place, and hyperlink specified. The City assumes no responsibility for any Application not received, regardless of whether the delay is caused by some other act or circumstance.

## **PART V. SPECIAL CONDITIONS**

### **No Contact Period**

Neither Applicant(s) nor any person acting on Applicant(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City, their families or staff members. All inquiries regarding the Application are to be directed to the designated City Representative identified on the first page of the NOFA.

With the exception of Applicant's formal response to the Application and written requests for clarification during the period officially designated for such purpose by the City Representative, neither Applicant(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City, their families, or staff through written or oral means in an attempt to persuade or attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any Applicant from the time of issuance of the Application through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award. However, nothing in this paragraph shall prevent a Applicant from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the Application.

### **Appeals**

Appeals should be filed in accordance with HCDD's Complaints and Appeals Policy (HCDD Policy #21-038 and General Land Office Grants Citizen Complaint and Appeal Policy (HCDD Policy #23-038), if applicable.

### **Cancellation**

The City has sole discretion and reserves the right to cancel this NOFA, or to reject any or all Proposals received prior to contract award.

### **Executive Order 1-56 Zero Tolerance for Human Trafficking in City Service Contracts and Purchasing**

The City has a zero tolerance for human trafficking, and, per Executive Order 1-56, City funds shall not be used to promote human trafficking. The Applicant is expected to comply with this Executive Order and notify the City's Chief Procurement Officer of any information regarding possible violation by the Applicant or its subcontractors providing services or goods to the City. The Executive Order is available on the City's website: [www.houstontx.gov/execorders/1-56.pdf](http://www.houstontx.gov/execorders/1-56.pdf)

### **Preservation of Contracting Information**

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Application and the Applicant agrees that the contract can be terminated if the Applicant knowingly or intentionally fails to comply with a requirement of that subchapter.

### **Pay or Play**

Applicant shall comply with the City's Pay or Play Program, as set out in Executive Order No. 1-7, the requirements, and terms of which are incorporated into this NOFA for all purposes. The Applicants have reviewed the requirements of Executive Order No. 1-7 at <http://www.houstontx.gov/obo/popforms.html>. The Applicants should demonstrate that they have the willingness and ability to comply with the City's Pay of Play Program.

### **Minority Business Enterprises/Women Business Enterprises**

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **38%** (30% MBE, 8% WBE) of the value of this Agreement to MWBEs. If the Contractor is a

certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the re For more information regarding Good Faith Efforts, visit: <http://www.houstontx.gov/obo/docsandforms/goodfaithefforts.pdf> requirements for good faith efforts on file with OBO and will comply with them.

### **Drug Abuse Detection and Deterrence**

It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31.

The Executive Order is available on the City's website: <https://www.houstontx.gov/execorders/1-31.pdf>

### **Compliance With Certain State Law Requirements**

*Anti-Boycott of Israel.* Applicant certifies that Applicant is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

*Anti-Boycott of Energy Companies.* Applicant certifies that Vendor is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

*Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Applicant certifies that Applicant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

*Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Applicant certifies that, at the time of this Agreement neither Applicant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Applicant, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

### **Affirmatively Furthering Fair Housing (AFFH)**

Applicants will complete and submit an Affirmative Fair Housing Marketing Plan, found at <https://www.hud.gov/sites/documents/935-2A.PDF> in furtherance of the City's commitment to non-discrimination and equal opportunity in housing. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, gender, religion, familial status, or disability. The plan will provide detailed procedures and actions geared to attract eligible persons in the housing market area to the development.

Proposed plans must identify demographics of the area, including underrepresented populations least likely to have access or knowledge to the development. AFFH Marketing campaigns and staff training policies should be addressed in detail.

Beginning at lease-up, records will be maintained describing actions taken by the Applicant to affirmatively market its units. The City will assess the results of these actions annually, for the duration of the funding agreement. Documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act is required.

### **Uniform Relocation Act**

If existing tenants are required to move out of their units as a result of a project receiving federal funding, the Applicant must comply with both the Uniform Relocation Assistance Act and Real Property Acquisition Policies Act



of 1970, as amended, (URA) as well as HCDD's Policies and Procedures for Relocation. The URA requires that the owner of the property receiving federal funding must provide notices and assistance to tenants impacted by acquisition, demolition, and/or rehabilitation/ reconstruction.

HCDD staff will assist owners in complying with the URA. Applicants will be required to provide a Relocation Plan and budget for any Proposals of developments that will require relocation of residents.

The application must include the URA Assurance Letter, Notice to Seller, and Seller's Occupancy Certificate if you are purchasing (or transferring title to another entity) real property; and/or the application must include a Relocation Plan, Relocation Budget, and the last Rent Roll (or list of occupants) if you are purchasing, rehabilitating, demolishing, or redeveloping (new construction) a structure with tenants (residential or nonresidential) or occupants at the time of the application submission date.

### **Targeted Hiring And Section 3**

The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701 u, "Section 3") applies to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000. The Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City. Contractors/subcontractors that are debarred, suspended or otherwise excluded from or ineligible for participation on federal assistance programs may not undertake any activity in part or in full under this project.

Section 3 is a provision of the Housing and Urban Development Act of 1968, created to direct training, employment, and contracting opportunities generated by certain HUD financial assistance to low- and very-low-income persons and business concerns which provide economic opportunities to low and very low-income persons. The requirements of Section 3 apply to Housing and community development assistance expended for housing rehabilitation, housing construction, or other public construction. All contractors or subcontractors that receive covered contracts more than \$100,000 under this NOFA are required to comply with the requirements of Section 3.

To ensure that activities generate significant opportunities for Section 3 Residents in Houston, HCDD strongly encourages contractors to exceed minimum Section 3 requirements for targeted hiring of Section 3 Residents. HCDD will specify levels of best efforts of targeting efforts.

Minimum requirements provide that any contractor or subcontractors with a covered contract more than \$100k are required to comply with the requirements of Section 3. Contractor responsibilities include, but are not limited to: recordkeeping, document submittals, monthly reporting, and providing documentation of efforts made to meet numerical performance goals.

The General Contractor is required to complete a Utilization Plan that demonstrates a commitment to meet Section 3 numerical goal requirements. Thereafter, any contractor with a contract more than \$100k will be required to comply with the same requirements that demonstrate efforts to meet Section 3 requirements.

To the greatest extent feasible, contractors/subcontractors with a need to hire new persons to complete covered contract activities or needs to subcontract portions of the work to another business, are required to direct their newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. The minimum numerical goal(s) are as follows:

- 30% of the total number of new hires should meet Section 3 resident criteria;
- 10% of all construction contracts should be awarded to Section 3 Business Concerns; and
- 3% of all non-construction contracts should be awarded to Section 3 Business concerns.

Contractors Good Faith Efforts to provide training, employment, and contracting opportunities to Section 3 Residents

and Section 3 Business Concerns should be demonstrated throughout the duration of the project. For additional information regarding Section 3 compliance requirements you may visit: [link](#).

## Environmental Review

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users.

All properties assisted under this Program will be subject to an Environmental Review by the City prior to rehab, land acquisition, and/or new construction. CHDO Developers will be required to submit the project site address, and parcel identification number, which the City will conduct the environmental review in compliance with [24 CFR Part 58](#). If the project passes the Environmental Review, the city will issue a Notice to Proceed, and the Developer may move forward with the approved land acquisition and new construction activity.

A commitment of funds can occur only upon satisfactory completion of an environmental review to determine whether the project meets federal, state, and local environmental standards, and receipt by the City of a release of funds from HUD under 24 CFR Part 58.35(a) or 58.36. Developers must agree that the provision of any funds to their project(s) is conditioned on the HCDD's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. Developer's funding may be required to contract for environmental consulting services to provide the information required, which shall be an eligible project soft cost. In addition, the following regulations are applicable:

- Per 24 CFR 58.5(i)(2)(i), it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.
- Per 58.5(i)(2)(ii) the environmental review of Multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.
- Lots to be acquired for selection cannot and will not undergo any development or other activity that constitutes a choice limiting action per 24 CFR 58.22, regardless of whether HUD or non-HUD funds are used. No HUD funds can or will be used prior to the issuance of the Release of Funds/Authority to Use Grant Funds (AUGF) and all necessary site-specific environmental review and clearance as required by 24 CFR 58.
- Regulations found at 24 CFR 58 also govern sound mitigation requirements if noise levels in a Normally Unacceptable Noise Zone (NUNZ, 65-75 decibels (dB)) or Unacceptable Noise Zone (UNZ, 75+ dB), and regulations found at 24 CFR 55 govern flood mitigation for any existing properties that reside in the 100-year floodplain.
- Hazardous materials described at 58.5(i)(2)(i) cover all forms of contamination, including but not limited to lead and asbestos that may be found in older buildings, particularly those built prior to 1978.

An ASTM E1527-13 Phase I Environmental Site Assessment (ESA), under 6 months of age, must accompany projects involving acquisition (rehab and new construction) as well as all new construction projects (with or without acquisition).

## Floodplain and Floodway Development

**Floodway development is prohibited.** Developments with improvements within 100-year floodplain will also be ineligible unless the applicant can demonstrate flood mitigation practices to avoid adverse impacts to residents. Sites not located within 100-year floodplain but reported flooding events within the past 10 years may be subject to



these requirements.

Mitigation efforts to include Chapter 19 of the City's Code of Ordinances. Mitigation efforts may include, but not limited to, elevating building site out of the floodplain, elevated podium construction, restricting ground floor space for residential use, pier and beam foundations for single-family units, etc. Any mitigation efforts will be considered on a case-by-case basis by HCDD. Applicants are advised to check property addresses against the most recent flood maps which can be accessed on Harris County Flood Control District website at [www.hcfdc.org](http://www.hcfdc.org).

### **Applicability Of OMB Circulars**

Sub-recipient of CDBG funds must comply with the policies, guidelines, and requirements of 24 CFR 84, which now codifies OMB Circular No. A-110; A-122; and A-133 as they relate to the acceptance and use of grant amounts by nonprofit organizations.

### **Texas Public Information Act**

All information submitted to the City is subject to the provisions of the Texas Public Information Act (TPIA), located in Chapter 552 of the Texas Government Code. Proposers may mark any information submitted, including their financial information, as confidential, trade secret, proprietary, or any other designation of choice. The City will notify any proposer should their information be requested under the TPIA and proposers will have an opportunity to assert their own arguments to the Texas Attorney General as to why their information should be excepted from public disclosure.

### **Conflicts Of Interest**

In addition to conflict of interest requirements in 24 CFR 84, which now codifies OMB Circular A-110, no person who is an employee, agent, consultant, officer, or an elected or appointed official of the City, state recipient or nonprofit recipient (or any designated public agency) that receives CDBG grant amounts and who exercises or has exercised any functions or responsibilities with respect to assisted activities or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for him or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

### **Applicable laws:**

An Applicant selected to receive CDBG funds must comply with all applicable state and federal laws and regulations, including but not limited to the requirements set out in specified Exhibit, and the City Charter and Code of Ordinances in its performance under this Agreement.

## **PART VI: FEDERAL PROVISIONS**

Contractor must comply with the following federal provisions, as applicable, as a condition of this City of Houston ("City") Agreement. For purposes of this **Exhibit**, the following terms have the meanings set forth in this **Exhibit**.

- "Agreement" means the Agreement, to which this **Exhibit** is attached.
- "Contractor" means Contractor, Vendor, Developer, or Subrecipient as defined in the Agreement to which this **Exhibit** is attached.
- "Federal Agency" means any relevant federal agency overseeing or administering the funding set forth in the Agreement to which this **Exhibit** is attached as a source of funding, including but not limited to the Department of Housing and Urban Development (HUD).

Contractor also acknowledges that the City is using federal funds, including but not limited to Community Development Block Grant Funds, for all or a portion of this Agreement.

Contractor also shall provide for compliance with the federal laws, rules, regulations, interpretive guidance and other materials set forth in this **Exhibit** in any agreements it enters into with other parties relating to the federal funds.

1. Contractor shall comply with all applicable federal law, regulations, executive orders, federal policies, procedures, and directives, including without limitation 2 C.F.R. part 200, including, without limitation, the following:
  - a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - b. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - c. Generally, applicable federal environmental laws and regulations.
2. Contractor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
3. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
4. Contractor shall not use the Department of Homeland Security (DHS) or any Federal Government or Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of DHS or any Federal Government or Federal Agency officials without specific DHS or any Federal Government or Federal Agency pre-approval.
5. Use of Funds. Use of Funds. Contractor understands and agrees that the funds disbursed under this Agreement may only be used in compliance with the program/Act/funding requirements.
  - a. Contractor may only use the funds to carry out the Multifamily project. Contractor is expected to develop and implement effective internal controls, policies and procedures, and record retention requirements, to determine and monitor implementation of criteria for determining the eligibility of beneficiaries under the Multifamily project.
  - b. Contractor shall not engage in any project using this assistance unless it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
6. Access to Records. The following access to records requirements apply to this Agreement:
  - a. Contractor agrees to provide the City, any Federal Agency Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, Department of Housing and Urban Development or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall keep its books, documents, papers, and records available for this purpose for at least seven years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
  - b. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - c. Contractor agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.

- d. In compliance with the Disaster Recovery Act of 2018, the City and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.
  - e. Within ten days of written request by the City, Contractor agrees to provide the City all relevant documentation pertaining to the program to confirm compliance with Federal requirements, ensure program is achieving its purpose, and to respond to audits, as necessary.
7. Environmental Compliance – Applicable only to Agreements over \$150,000.
- a. Contractor shall comply with all applicable standards, ordered, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
  - b. Contractor shall report all violations to the Director of HCDD or designee (Director), and understands and agrees that the City, through its designated representative, will, in turn, report each violation as required to assure notification to the Federal Agency, and the appropriate Environmental Protection Agency Regional Office.
  - c. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.
8. Contract Work Hours and Safety Standards Act – Applicable only to Agreements over \$100,000.
- a. 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.
  - b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 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 (a) of this section.
  - c. Withholding for unpaid wages and liquidated damages. The federal agency 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) of this section.
  - d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) 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 (a) through (d) of this section.
9. Equal Employment Opportunity. During the performance of this Agreement, Contractor agrees as follows:
- a. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. “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:

- i. 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. 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.
- e. 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.
- f. 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.
- g. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and 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.
- h. Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) 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. Contractor will take such action with respect to any subcontract or purchase order as the Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
  - i. Provided, however, that in the event 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 United States to enter into such litigation to protect the interests of the United States.

- i. Contractor 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 Contractor 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.
- j. Contractor agrees that it will assist and cooperate actively with the City, the Federal 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 City, Federal 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 City, the administering Federal Agency in the discharge of the City or Federal Agency's primary responsibility for securing compliance.
- k. Contractor 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 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, Contractor agrees that if it fails or refuses to comply with these undertakings, the Federal 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.

#### 10. Procurement of Recovered Materials.

- a. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
  - ii. Meeting Agreement performance requirements; or
  - iii. 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/comprehensive-procurement-guideline-cpg-program>.
- c. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### 11. Domestic Preference Requirements

- a. As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, 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 paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:
  - 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.
  - ii. "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.



## 12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

- a. As used in this paragraph, 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 FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.
- b. Prohibitions
  - i. 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 August 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.
  - ii. Unless an exception in this paragraph applies, Contractor and its Subcontractors shall not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Agency to:
    1. 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;
    2. 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;
    3. Enter, 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
    4. Provide, as part of its performance of this Agreement, 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
  - i. This paragraph does not prohibit contractors, such as Contractor, from providing—
    1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
    2. 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.
  - ii. By necessary implication and regulation, the prohibitions also do not apply to:
    1. Covered telecommunications equipment or services that:
      - a. Are not used as a substantial or essential component of any system; and
      - b. Are not used as critical technology of any system.
    2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
    3. That which 2 C.F.R. Section 200.216 does not apply.
- d. Reporting requirement
  - i. In the event 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 performance of the Services set forth in this Agreement, or Contractor is notified of such by a Subcontractor at any tier or by any other source, Contractor shall report the information in the manner stated below to the recipient or Contractor, unless elsewhere in this Agreement are established procedures for reporting the information.
  - ii. Contractor shall report the following information pursuant to paragraph (e):

1. 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.
  2. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, 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 Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.
13. Remedies. If any work performed and/or goods delivered by Contractor fails to meet the requirements of the Agreement, any other applicable standards, codes, or laws, or otherwise breaches the terms of the Agreement, the Director of HCDD may in his or her sole discretion:
- a. elect to have Contractor re-perform or cause to be re-performed, at Contractor's sole expense, any of the work which failed to meet the requirements of the contract;
  - b. in the case of goods, reject the goods and require Contractor to provide replacement goods that meet the needs of the City and the terms of the Agreement;
  - c. hire another contractor to perform the work and deduct any additional costs incurred by the City as a result of substituting contractors from any amounts due to Contractor; or
  - d. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

14. Suspension and Debarment.

- a. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at [www.SAM.gov](http://www.SAM.gov).
- b. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to verify that none of its 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).
- c. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- d. This certification, found in **Exhibit 1**, is a material representation of fact relied upon by the State of Texas and the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, in addition to remedies available to the State of Texas and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.



- e. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, while this offer is valid and throughout the period of this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
15. Byrd Anti-Lobbying Amendment.
- a. A contractor who applies or bids for an award or receives a Contract of \$100,000 or more shall submit to the Director of HCDD or designee the required certification as set out in **Exhibit 2** of this Agreement. 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.
16. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.
- a. If Contractor intends to subcontract any portion of the work covered by this Agreement, Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:
- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
  - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
17. Davis-Bacon Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.00 and not funded by FEMA-PA Program.
- a. All transactions regarding this Contract/Purchase Order 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. 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.
- b. Contractor is 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.
- c. Additionally, Contractor is required to pay wages not less than once a week.
18. Copeland "Anti-Kickback" Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.0 and when the Davis-Bacon Act also applies.
- a. Contractor. Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145 and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference to this Agreement.
- b. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or the Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

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 this Agreement, and for debarment as a contractor and subcontractor as provided in 29 U.S.C. § 5.12.
19. Changes. The Director of HCDD or designee may modify the scope of services or quantity and type of goods by giving written notification to Contractor, subject to the funds allocated by the City to this Agreement. The notice takes effect immediately upon receipt by Contractor.
20. Protections For Whistleblowers
- a. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
  - b. The list of persons and entities referenced in the paragraph above includes the following:
    - i. A member of Congress or a representative of a committee of Congress;
    - ii. An Inspector General;
    - iii. The Government Accountability Office;
    - iv. A Treasury employee responsible for contract or grant oversight or management;
    - v. An authorized official of the Department of Justice or other law enforcement agency;
    - vi. A court or grand jury; or
    - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
  - c. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
21. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating Contractor-owned, rented, or personally owned vehicles.
22. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving.
23. Publications. Any publications produced with funds from this award must display the following language noting the funds for the project came from federal funds.
- a. Any publications produced with funds from this award or pertaining to projects or programs administered with funds from this award must be approved by the City prior to publication.
24. Debts Owed to the City.
- a. Any funds paid to Contractor (1) in excess of the amount to which Contractor is finally determined to be authorized to retain under the terms of its award from the Federal Agency; (2) that are determined by the Federal Agency Office of Inspector General to have been misused; or (3) that are determined by the Federal Agency to be subject to a repayment obligation and have not been repaid by the Contractor shall constitute a debt to the City and to the Federal government.
  - b. Any debts determined to be owed the City must be paid promptly by Contractor for repayment to the federal government.
  - c. A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the Contractor knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.
25. Contractor understands that the City's obligation for payment under this Agreement is limited in its entirety by the provisions of this Agreement for the performance of services under this Agreement; unless additional

funds are approved by City Council through supplemental allocations to pay for the services, the City shall have no obligation to pay Contractor. Contractor must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds.

**ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS:**

In addition to the General Federal Requirements listed above, if this Agreement is funded using funds from the Community Development Block Grant ("CDBG") Program of U.S. Department of Housing and Urban Development ("HUD"), Contractor shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the CDBG Program, including but not limited to program requirements found in 24 C.F.R. Part 570 (CDBG), 24 C.F.R. 92 (HOME), 24 C.F.R. Part 574 (HOPWA), 24 C.F.R. Part 576 (Emergency Solutions Grant) and the requirements listed below, and flow down these requirements in any agreements Contractor enters into with other parties relating to these funds.

1. Civil Rights Compliance. Contractor shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Contractor is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:
  - a. Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
  - b. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
  - c. Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
  - d. Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
  - e. The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
  - f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
  - g. "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.
  - h. The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
  - i. By signing this Agreement, Contractor understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system
2. National Flood Insurance Program.

- a. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.
  - b. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973, as amended. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.
3. Displacement, Relocation, Acquisition and Replacement of Housing
- a. Contractor understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655), as applicable; and those individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.
4. Section 3 of the Housing and Urban Development Act of 1968
- a. The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 C.F.R. Part 135 apply to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award more than \$100,000, Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.
  - b. Contractor will comply with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Agreement. Contractor certifies and agrees that there is no contractual or other disability which would prevent compliance with these requirements.
  - c. Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
  - d. Contractor will include or have included a Section 3 clause in every subcontract for work in connection with the project. Contractor shall, at the direction of the City, take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of this Section 3 clause. Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135. Contractor shall not let any subcontract unless the subcontractor has provided Contractor with a preliminary statement of ability to comply with the requirements of this Section 3 clause.
  - e. Compliance with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the project. These provisions are binding upon the City, its contractors and subcontractors, their successors and assigns. Failure to fulfill these requirements shall subject the City, its contractors and subcontractors, their successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided.

- f. Contractor shall have completed, signed and delivered a Voluntary Compliance Form (provided by the City) to the Director prior to the execution of this Agreement.
5. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, Subparts A, B, J, K and R may apply to activities under the Contract.
  6. Uniform Administrative Requirements, Cost Principles and Audit Requirements. Contractor shall comply with "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as set forth under 2 C.F.R. Part 200, as applicable.
  7. Conflict of Interest
    - a. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict-of-interest provisions in 2 C.F.R. Part 200, Subpart B - General Provisions, shall apply.
    - b. In all cases not governed by 2 C.F.R. Part 200, Subpart B, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities).
      - i. No persons described in paragraph (ii) (below) who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.
      - ii. The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, contractor, or subrecipient which receives funds under the federal grant.
  8. Eligibility of Aliens Not Lawfully Present in U.S. Contractor understands that aliens not lawfully present in the U.S., as described in 49 C.F.R. §24.208, are not eligible to apply for benefits under certain federal activities.
  9. Architectural Barriers Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. §40.2 or the definition of "building" as defined in 41 C.F.R. §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 for residential structures, and Appendix A to 41 C.F.R. Part 101-19, Subpart 10119.6, for general type buildings).
  10. Records for Audit Purposes. Without limitation to any other provision of the foregoing Agreement/Contract, Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient pursuant to 2 C.F.R. §200.333. Contractor shall maintain records required by 24 C.F.R. §135.92



for the period required under 2 C.F.R. §200.333. Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained under 2 C.F.R. §200.336.

11. Audit Requirements.

- a. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review and audit as described hereinabove at Section 17. Contractor further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than \$750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 C.F.R. Part 200, Subpart F - Audit Requirements.
- b. Single Audit - Single Audit - Contractor further understands that non-Federal entities that expend \$750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 C.F.R. Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 C.F.R. Part 200, Subpart F - Audit Requirements. Once the Contract is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

12. Rights to Inventions made under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §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 C.F.R. 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.

13. Energy Policy and Conservation Act. Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).

14. Procurement of Recovered Materials. See 2 C.F.R. §200.322.

**ADDITIONAL REQUIREMENTS IF THIS IS A SUBRECIPIENT AGREEMENT:**

In addition to the General Federal Requirements and the CDBG Requirements listed above, if this Agreement is a Subrecipient Agreement, the Contractor shall comply with the requirements listed below, and flow down these requirements in any agreements Contractor enters into with other parties relating to these funds.

1. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
2. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
3. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
4. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
5. New Restrictions on Lobbying, 31 C.F.R. Part 21.
6. Award Amount. The amount of funding dedicated to the Multifamily project is limited to \$20,000,000.00 unless otherwise agreed to by the Parties, in writing.
7. Period of Performance. The Period of Performance of this Agreement will begin on DATE and conclude on or before DATE, unless extended by mutual consent of the parties.
8. Reporting. Contractor agrees to comply with all reporting requirements established by HUD and the City as they relate to this award, including financial, performance, and compliance reporting
  - a. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied.
  - b. Reporting must be consistent with the definition of expenditures in 2 C.F.R. § 200.1.
  - c. Contractor must appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with the appropriate accounting standards and principles.
  - d. Contractor must establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting.
  - e. Contractor must provide the City with the information necessary for the City to produce and submit a quarterly Project and Expenditure Report to HUD.
    - i. Contractor shall provide reports in intervals specified by the HCDD Director.
    - ii. Contractor identifying and demographic information (e.g., DUNS number and location).
    - iii. Award number (e.g., Agreement number, Loan number).
    - iv. Award date, type, amount, and description.
    - v. Award payment method (reimbursable or lump sum payment(s)).
    - vi. For loans, expiration date (date when loan expected to be paid in full).
    - vii. Primary place of performance.
    - viii. Related project name(s).
    - ix. Related project identification number(s) (created by the City).
    - x. Period of performance start date.
    - xi. Period of performance end date.
    - xii. Quarterly obligation amount.
    - xiii. Quarterly expenditure amount.
    - xiv. Project Name and Description (projects should be defined to include only closely related activities directed toward a common purpose; project descriptions must describe the project



in sufficient detail to provide understanding of the major activities that will occur and will be required to be between 50 and 250 words).

- xv. Contractor is responsible for providing any additional information as might be required under future changes to CDBG reporting requirements or subsequently issued policy adopted by the HUD, or as is required by the City, in its sole discretion.
9. Hatch Act. Contractor agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
  10. Pre-Award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding under this Agreement.
  11. Conflicts of Interest. Contractor understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Contractor must disclose in writing to the City any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112, and the City will, in turn, disclose such conflicts to the Treasury Department, as appropriate.
  12. Audits and Monitoring. In accounting for the receipt and expenditure of funds under this Agreement, the Contractor must follow Generally Accepted Accounting Principles (“GAAP”). As defined by 2 C.F.R. § 200.49, “GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).”
  13. Any audit of the Contractor’s performance under this Agreement will use Generally Accepted Government Auditing Standards (“GAGAS”). As defined by 2 C.F.R. § 200.50, “GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.”
    - a. If an audit shows that all or any portion of the funds disbursed under this Agreement were not spent in accordance with the conditions of and strict compliance with this Agreement, the Contractor will be liable for reimbursement to the City of all such funds within 30 days after the City has notified the Contractor of such non-compliance.
    - b. The Contractor must have all audits completed by an independent auditor. The audits must be received by the City no later than nine months from the end of the Contractor’s fiscal year.
    - c. Fund payments are considered to be federal financial assistance subject to the Single Audit Act and the related provisions of the Uniform Guidance (2 C.F.R. Part 200).
    - d. In addition to reviews of audits conducted in accordance with subparagraphs A-E above, monitoring procedures may include, but not be limited to, on-site visits by City staff, limited scope audits, or other procedures. The Contractor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the City. In the event that the City determines that a limited scope audit of the Contractor is appropriate, the Contractor agrees to comply with any additional instructions provided by the City to the Contractor regarding such audit.

**EXHIBIT 1**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER**  
**RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

This Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension) and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to confirm that none of the Contractor, its 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).

**INSTRUCTIONS FOR CERTIFICATION**

- 1) By signing this Agreement, Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Agreement that it shall not knowingly enter any lower tier covered transactions with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
  
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**CERTIFICATION**

- 1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
  
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EXHIBIT 2**  
**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 Contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering 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 Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor 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.

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
RFP, NOFA, ITB, EPO or PO No., or Project Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date