

CITY OF MINNEAPOLIS – AHTF CONTRACTING REQUIREMENTS (Updated 6/2/15)

The borrower will be required to comply with all applicable Federal, State and local laws and regulations. These requirements vary depending upon the type of development and the source and amount of public investment, if any, and may include, without limitation, the payment of Prevailing Wages for construction, the preparation of Affirmative Action Plans, competitive bidding, compliance with the Small and Underutilized Business Enterprise program or equivalent federal program, and Business Subsidy Act/Living Wage Ordinance, and reporting requirements for those programs. Some of the standard requirements are further discussed below, but the following list is not exhaustive. The borrower is responsible for compliance with all City contracting requirements. Failure to incorporate the requirements as appropriate in any bidding documents or contracts may make a project ineligible for funding or public assistance.

Proposers unfamiliar with these standard requirements are urged to seek further information. Proposers should be aware that additional project costs may result from some of these requirements.

1. **Equal opportunity (nondiscrimination and affirmative action)** The borrower will be required to submit a written Affirmative Action Plan for the development project. The minimum employment goals for borrower and for any contractor, subcontractor or vendor with a construction contract in excess of \$50,000 shall be as follows: 6% of the total project construction hours are to be performed by females, 32% by minority workers. The borrower also must comply and cause its contractors to comply with applicable provisions of Chapters 139 and 141 (Title 7, Civil Rights), Minneapolis Code of Ordinances, nondiscrimination provisions contained in Chapter 181, Minnesota Statutes, the Americans with Disabilities Act of 1990 (as amended), Section 109 of the Housing and Community Development Act of 1974 (as amended), the Age Discrimination Act of 1975 (as amended) and Executive Order 11246, as amended by Executive Order 12086. The borrower will be required not to discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age (forty (40) to seventy (70)), marital status, or status with regard to public assistance. The borrower also will be required to take affirmative action to ensure that all employment practices are free of such discrimination. These employment practices include, but are not limited, to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The borrower will post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause. The borrower also will be required to, in all solicitations or advertisements for employees placed by or on behalf of the borrower, state that it is an equal opportunity or affirmative action employer. The City requires compliance in demolition, construction and marketing of development projects.
2. In accordance with the CPED **Prevailing Wage Policy**, the borrower (for 8+ unit projects) must covenant and agree that it will cause its general contractor and subcontractors to comply with the wage and hour standards issued by the United States Secretary of Labor pursuant to the Davis Bacon Act, 40 U.S.C. Sections 276a to 276a-5, as amended, and the Contract Work Hours and Safety Standards Act 40 U.S.C. Sections 327-333. All contractors and subcontractors subject to the City's Prevailing Wage Policy must provide monthly certified payroll records to the Minneapolis Department of Civil Rights.

Additional requirements for **federal funds**: construction projects receiving **federal** funds may need to comply with the provisions of the Davis-Bacon Related Act (requirements vary depending on amount and type of funding). The Davis-Bacon Related Act requires that all contractors and subcontractors pay prevailing wages as determined by the federal Davis-Bacon wage decision. All contractors and subcontractors subject to the Davis-Bacon Act must provide weekly certified payroll records to the Minneapolis Department of Civil Rights. The signed construction contract that contains the building specifications for the project must contain a copy of the appropriate United

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States Department of Labor Federal Wage Decision document and the HUD form 4010, Federal Labor Standards Provisions.

3. Borrower and its contractors and suppliers must comply with the Small & Underutilized Business Enterprise Program (SUBP) as outlined in Minneapolis City Code Chapter 423 (the "SUBP Provisions"). The SUBP Provisions apply to any development project that receives assistance in excess of one hundred thousand dollars (\$100,000). Any questions about the SUBP Provisions should be directed to the Small & Underutilized Business Enterprise Program, City of Minneapolis Department Civil Rights, 239 City Hall, 350 South 5th Street, Minneapolis, Minnesota 55415, Attention: Contract Compliance Division (612-673-3076) or contractcompliance@minneapolismn.gov.
4. The borrower's contractors will be subject to the City's **Apprenticeship Training Policy** (for 8+ unit projects).
5. The development must be in conformance with the Uniform Federal **Accessibility Standards** as published on April 1, 1988. The borrower must describe the accessibility design for people with disabilities of each of the code required handicapped units, any proposed housing development (e.g. roll-in showers), the mix of accessible units in the project and where they are located, and any appropriate safety features for vision- and hearing-impaired people.
6. The City's **Affordable Housing Policy** applies to any residential development (rental or ownership) with ten units or more, or a project with a residential component of 10 or more units, that receives any public financial assistance. Public financial assistance includes the receipt of Affordable Housing Trust Fund monies.
7. **Rezoning Responsibility:** It is the borrower's responsibility to undertake and finance any rezoning, variance and use permits necessary for approval of proposed development.
8. **Utilities:** It is the borrower's responsibility to identify the locations of and provide for the installation of electricity, gas, water, sewer service and other utilities servicing the site from the public mains to the individual units.
9. **Construction Standards:** Development must meet FHA minimum property standards and all Minneapolis City codes, and projects will be reviewed for energy efficiency.
10. **Residential Sale and Commercial Sale/ Lease:** The completed units must be advertised and offered publicly and must be sold to the general public.
11. **Hold Harmless:** The borrower shall agree to defend, indemnify and hold the City harmless from any and all claims or lawsuits that may arise from the borrower's activities under the provisions of the loan agreement, that are attributable to the acts or omissions, including breach of specific contractual duties of the borrower or the borrower's independent contractors, agents, employees or officers.
12. **Insurance:** The insurance required for projects approved for funding will include general liability, auto, builder's risk, worker's compensation, and any other insurance appropriate to the project.
13. **Payment and Performance Bond:** The borrower must provide payment and performance bonds in the form prescribed by Minnesota Statutes, Section 574.26, covering the faithful performance of the general contractor's obligations under the construction contract, naming the City as a co-obligee, in

the full amount of the construction contract and written by a surety mutually acceptable to the City and the borrower, or an irrevocable letter of credit from a lender approved by the City in the amount of 100% of the construction costs.

14. **Bidding Requirements:** The borrower is required to demonstrate compliance with CPED competitive bidding requirements for general and subcontractor selection.

15. **Interest of Members of City :** No member of the governing body, officer, employee or agent of the City who exercises any function or responsibilities in connection with the carrying out of the project to which this proposal pertains, shall have any personal interest, financial or otherwise, direct or indirect, in the loan agreement.

16. **Transfer of Interest**
The borrower shall not assign any interest in the loan agreement, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City, provided, however, that claims for money due or to income due to the borrower may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy without such approval. Notice of any such assignment or transfer shall be furnished to the City. The borrower shall not subcontract any services under the loan agreement without prior approval of the City's designated Contract Manager.

17. **Performance Monitoring**
The City will monitor the performance of the borrower against goals and performance standards required in the loan agreement. Substandard performance as determined by the City may result in the initiation of contract termination procedures. The City's designated Contract Manager shall review each portion of the work when certified as complete and submitted by the borrower and shall inform the borrower of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

18. **Independent Contractor**
Nothing contained in the loan agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The borrower shall at all times remain an independent contractor with respect to the services to be performed under the loan agreement. Any and all employees of the borrower or other persons engaged in the performance of any work or services required by the borrower under the loan agreement shall be considered employees or sub-contractors of the borrower only and not of the City; and any and all claims that might arise, including worker's compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the borrower.

19. **Retention of Records**
The borrower shall retain financial records, supporting documents, statistical records and all other records pertinent to the expenditures under the loan agreement for a period of six years from the completion of the project, pursuant to the requirements of 24 CFR 84.53(b) as modified by 570.502(b)(3)(ix)(A) and (B). Records that are the subject of audit findings shall be retained for six years after such findings have been resolved. Records for non-expendable property acquired with funds under the loan agreement shall be retained for six years after final disposition of such property. Records for any displaced person must be kept for six years after he or she has received final payment.

20. **Data Practices**

The borrower agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The borrower must immediately report to the City any requests from third parties for information relating to the loan agreement. The City agrees to promptly respond to inquiries from the borrower concerning data requests. The borrower agrees to hold the City, its officers, and employees harmless from any claims resulting from the borrower's unlawful disclosure or use of data protected under state and federal laws.

21. Inspection of Records

All borrower records with respect to any matters covered by the loan agreement shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

22. Applicable Law

The laws of the State of Minnesota shall govern the loan agreement, and the appropriate venue and jurisdiction for any litigation which may arise thereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the borrower.

23. Conflict and Priority

In the event that a conflict is found between provisions in the loan agreement, the borrower's Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) loan agreement; 2) Proposal; and last 3) Request for Proposals.

24. Billboard Advertising

Through Section 544.120, Minneapolis Code of Ordinances, City and City-derived funds are prohibited from use to pay for billboard advertising as a part of a City project or undertaking.

25. Conflict Of Interest/Code Of Ethics

The borrower agrees to be bound by the City's Code of Ethics, Minneapolis Code of Ordinances, Chapter 15. The borrower will be required to certify that to the best of its knowledge all City employees and officers participating in the loan agreement have also complied with that Ordinance. It is agreed by the parties that any violation of the Code of Ethics constitutes grounds for the City to void the loan agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

Additional Federal Requirements

RELOCATION: The borrower shall comply with Titles I and II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-55) and 49 C.F.R. Part 24, for displacement of persons, businesses, nonprofit organizations, and farms occurring as a direct result of any project receiving federal funds to the extent said statutes apply to the loan agreement.

AFFIRMATIVE MARKETING: Recipients of HOME program funds shall comply with the City's Affirmative Marketing requirements under 24 C.F.R. §92.351.

HUD "SECTION 3 REQUIREMENTS" (24 C.F.R. Part 135) IN THE PROVISION OF TRAINING

EMPLOYMENT AND BUSINESS OPPORTUNITIES: Borrowers receiving more than \$200,000 of federal funds for a project and any contractor or subcontractor with a contract on such a project in excess of \$100,000 are subject to the Section 3 requirements outlined in 24 C.F.R. Part 135. All Section 3 covered contracts shall include the following clause (referred to as the "Section 3 Clause"):

A. The work to be performed under this contract is subject to the requirements of section 3 of the

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Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b) 24.

Any questions about complying with Section 3 should be directed to City of Minneapolis Department Civil Rights - Contract Compliance Division (612-673-3076) or contractcompliance@minneapolismn.gov .

ENVIRONMENTAL COMPLIANCE: The borrower agrees to comply with the National Environmental Policy Act of 1969, and the HUD Environmental Review Procedures (24 C.F.R., Part 58) insofar as they might apply to the performance of the loan agreement.

HISTORIC PRESERVATION: The borrower agrees to comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966 (16 U.S.C. 470) and the Archaeological and Historic Preservation Act of 1974, Public Law 93-291, and the procedures set forth in 36 C.F.R., Part 800, insofar as they apply to the performance of the loan agreement.

ARCHITECTURAL COMPLIANCE: The borrower agrees to comply with any regulations issued by HUD pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, 24 C.F.R. §8.22 (new

construction) and §8.23 (existing building), which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide to the borrower any necessary guidelines for compliance with that portion of the regulations in force during the loan agreement period. The borrower must also comply with the Fair Housing Act 24 C.F.R. §100.205. Section 504 uses Uniform Federal Accessibility Standards (UFAS) and Fair Housing Act uses American National Standards Institute (ANSI – 1986).

LEAD BASED PAINT REMEDIATION: Projects receiving funds from the Program must comply with Federal, State, and City lead-based paint regulations. All projects must have a lead-risk assessment done by an authorized company. The specific regulations are as follows:

Federal Regulations

EPA – 40 C.F.R. Part 745 and any other regulations issued pursuant to Section 403 of the Toxic Substances Control Act (TSCA) as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992.

OSHA – 29 C.F.R. Part 1910 and Part 1926.

HUD – 24 C.F.R. Part 35 especially Subparts B, G, H, J, K & R

State Statute

Department of Health – Minnesota Statutes, Section 144.9501 through Section 144.9509 (The Childhood Lead Poisoning Act).

Section 144.9504 deals with “lead orders” issued by the Commissioner of Health.

Section 144.9508 deals with “rules” prepared or adopted by the Commissioner of Health for addressing lead contamination and its abatement.

City of Minneapolis Ordinance

Chapter 240, Minneapolis Code of Ordinances – Enforcement authority granted to the City’s Department of Regulatory Services-Environmental Health Division, to enforce “lead orders” issued by the State. HUD regulations for lead paint have been in existence for many years, however, on September 15, 2000, new regulations became effective. The regs consolidate all of HUD’s existing regulations in one part of the Code of Federal Regulations (CFR), requires control of lead-contaminated dust associated with the presence of lead-based paint, requires clean up or clearance, and requires trained and certified lead paint professionals to assure that lead hazard control work is done safely.

For more detail information, refer to Attachment 7-A (Summary of Lead-Based Paint Requirements by Activity) and Attachment 7-B (Four Approaches to Implementing Lead Hazard Evaluation and Reduction).