



# Huntsville, Alabama

305 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 6/27/2024

**File ID:** TMP-4314

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**Department:** Community Development

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to approve a Memorandum of Understand between the City of Huntsville, Alabama Community Development Department, General Services Department, and Dunlap Contracting, Inc. for the use of Community Development Block Grant funds.

Resolution No.

**Finance Information:**

**Account Number:** 515520

**City Cost Amount:** \$ NA

**Total Cost:** \$ NA

**Special Circumstances:**

**Grant Funded:** \$ 1,233,263.69

**Grant Title - CFDA or granting Agency:** CDBG - HUD

**Resolution #:** 24-368

**Location: (list below)**

**Address:** 3730 Russell Brown Drive, Huntsville, AL 35801

**District:** District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☒ District 5 ☐

**Additional Comments:** MOU between the Community Development, General Services, and Dunlap Contracting, Inc. to use CDBG funds for the rehabilitation of a bathroom facility to meet American Disabilities Act (ADA) compliance.

**RESOLUTION NO. 24-\_\_\_\_\_**

**WHEREAS**, the United States Department of Housing and Urban Development, herein after referred to as HUD, has awarded the City of Huntsville a Community Development Block Grant; and

**WHEREAS**, the City desires to pass along a portion of the funds from the Community Development Block Grant to Dunlap Contracting, Inc., in accordance with the terms of the said grant; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor of the City of Huntsville is hereby authorized, requested and directed to approve a Memorandum of Understanding with the City of Huntsville, Alabama Community Development Department, General Services Department, and Dunlap Contracting, Inc., said contract being substantially similar in words and figures to that document identified as “Memorandum of Understand Between the City of Huntsville, Alabama Community Development Department, General Services Department, and Dunlap Contracting, Inc.” consisting of nineteen (19) pages, and the date of June 27, 2024 appearing on the margin of the first page, together with the signature of the President or President Pro-Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville.

**ADOPTED** this the 27th day of June, 2024.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 27th day of June, 2024.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

# **MEMORANDUM OF UNDERSTANDING**

## **BETWEEN**

**CITY OF HUNTSVILLE, Community Development Department**

## **AND**

**CITY OF HUNTSVILLE, General Services Department**

## **AND**

**DUNLAP CONTRACTING, INC.**

### **I. Purpose**

This Memorandum of Understanding (MOU) is entered into between the City of Huntsville, Community Development Department (Community Development), the City of Huntsville, General Services Department (General Services), the City of Huntsville, Parks and Recreation Department (Parks and Recreation), and Dunlap Contracting, Inc. (Dunlap Contracting) for the rehabilitation of a bathroom facility to meet American Disabilities Act (ADA) compliance located at 3730 Russell Brown Drive SW, Huntsville, AL 35801 with Community Development Block Grant (CDBG) funds.

### **II. Responsibilities of the Parties**

Community Development will:

1. Complete the U.S. Department of Housing and Urban Development Department (HUD) required project eligibility and environmental reviews.
2. Review project statement of work, budget, and procurement processes for compliance with CDBG and all federal regulations (Exhibit A).
3. Determine Davis-Bacon applicability, list labor classifications used for the project, obtain wage determination, review wage decision, ensure bid documents include labor standard provisions and appropriate wage decision and verify prime and subcontractor's eligibility.
4. Provide technical assistance as requested by General Services related to meeting CDBG requirements (Exhibit A).
5. Schedule, monitor and evaluate the project's progress at monthly construction meetings and ensure compliance with Section 3, Davis-Bacon Act, BABA Act, and all additional CDBG requirements (e.g., interviews with all trades and review of weekly certified payroll reports, underpayments, misclassification of labor categories and investigations), and other applicable federal requirements (Exhibit A).
6. Ensure and certify all activities meet the Community Development Block Grant (CDBG) National Objective of Area Benefit as defined by 24 CFR 570.

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**President of the City Council**  
**City of Huntsville, Alabama**  
**Date: June 27, 2024**

208(a)(1).

General Services and Dunlap Contracting will:

1. Agree and comply with the terms and conditions approved by Resolution No. 24-368 identified as “Fixed Price Agreement between the City of Huntsville and Dunlap Contracting, Inc., with Architectural Support from Jeffrey S. Alpha A.I.A.”
2. Rehabilitate, according to the CDBG eligible activities as referenced in 24 CFR 570.201(c), the bathroom facilities to meet ADA compliance located at 3730 Russell Brown Drive SW, Huntsville, AL 35801 within the parameters of location map (Exhibit B).
3. Comply with Davis Bacon Act (40 U.S. C. 3141-3148), Section 3, Build America Buy America Act (BABA), and other applicable federal requirements (Exhibit A).
4. Assure that CDBG costs will not exceed \$1,233,263.69 and that project costs are reasonable and consistent with local and federal policies and regulations. Expenses will be substantiated through monthly reports.
5. Comply with all Contractor Payment Procedures (Exhibit C), submit proper invoices provided that services and work performed have been satisfactory, and that any and all project and CDBG documentation such as (Davis-Bacon Act, Section 3, BABA Act, and regulations provided in Exhibit A) have been submitted to the Office of Strategic Initiatives to ensure reimbursement of CDBG eligible project costs.
6. Schedule, monitor and evaluate the project’s progress at monthly construction meetings and ensure compliance with Section 3, Davis-Bacon Act requirements (e.g., interviews with all trades and review of weekly certified payroll reports, underpayments, misclassification of labor categories and investigations), and other applicable federal requirements (Exhibit A).

### **III. CDBG Requirements**

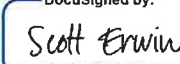
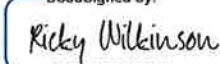
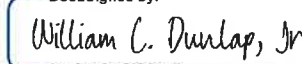
1. HUD Allocation Contingency - The parties expressly understand and agree that Community Development Department’s obligations under this MOU are contingent upon the actual receipt of adequate grant funds from HUD. If adequate grant funds are not received by Community Development, then Community Development shall have no further obligations or liabilities under this MOU. It is expressly understood that this MOU in no way obligates the General Funds or any other monies or credits of the City of Huntsville.
2. Monitoring and Reporting – General Services shall submit throughout the term of this MOU:
  - a. Documentation of the procurement process, including the selection of the contractor and bidding documents for construction;
  - b. Original copies of the legal agreements with the contractor;
  - c. General Services must not release retainage until all Davis-Bacon certified payrolls are submitted; and
  - d. Invoices on a monthly basis.

Upon project completion, General Services shall submit all grant close-out documents, including but not limited to requests for final payments/retainage and release of liens from contractors, within forty-five (45) days after the end of the term of this MOU. The failure of General Services to provide a full accounting of all funds expended, including program income, under this MOU within ninety (90) days shall be sufficient reason for Community Development to deny or terminate any future agreements with General Services.

**IV. Time of Performance**

The Time of Performance shall begin on June 1, 2024 and end on June 1, 2025.

**V. Authorized Signatures and Department Contacts**

<div>DocuSigned by:  <small>4E12A30A4080E46F</small></div>	6/25/2024   2:35 PM CDT
City of Huntsville, Community Development Department, Manager	Date
<div>DocuSigned by:  <small>A53208402F0340C</small></div>	6/25/2024   10:39 AM CD
City of Huntsville, General Services Department, Director	Date
<div>DocuSigned by:  <small>644B48BAE07B41E</small></div>	6/25/2024   8:41 AM PD
Dunlap Contracting, Inc., Authorized Representative	Date

**VI. Approval Signature**

City of Huntsville, Mayor, Tommy Battle	Date
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**EXHIBIT A**  
**COMMUNITY DEVELOPMENT BLOCK GRANT**  
**REGULATIONS**

**I. NATIONAL OBJECTIVES**

All activities funded with the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDGB) funds must meet one of the CDBG program's National Objectives: (a) benefit low- and moderate- income persons; (b) aid in the prevention or elimination of slums or blight; or (c) meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

**II. GENERAL CONDITIONS**

(A). General Compliance

The Contractor agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (HUD regulations concerning CDBG) including subpart K of these regulations, except that (1) the Contractor does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Contractor does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Contractor also agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this contract. The Contractor further agrees to utilize funds available under this Contract to supplement rather than supplant funds otherwise available.

(B). Hold Harmless

The Contractor shall hold harmless, defend, and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor's performance or nonperformance of the services or subject matter called for in this Contract.

(C). Workers' Compensation

The Contractor shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Contract.

(D). Insurance and Bonding

The Contractor shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Contractor shall comply with the bonding and insurance requirements of 2 CFR Part 200.427 and 200.447, Bonding and Insurance.

(E). Grantee Recognition

The Contractor shall ensure recognition of the role of the Grantee in providing services through this Contract. All activities, facilities and items utilized pursuant to this Contract shall be prominently labeled as to funding source. In addition, the Contractor will include a reference to the support provided herein in all publications made possible with funds made available under this Contract.

(F). Amendments

The Grantee or Contractor may amend this Contract at any time provided that such amendments make specific reference to this Contract, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Contract, nor relieve or release the Grantee or Contractor from its obligations under this Contract.

The Grantee may, in its discretion, amend this Contract to conform with Federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Contract, such modifications will be incorporated only by written amendment signed by both Grantee and Contractor.

(G). Suspension or Termination

In accordance with 2 CFR Part 200.338 – 200.342, the Grantee may suspend or terminate this Contract if the Contractor materially fails to comply with any terms of this Contract, which include (but are not limited to), the following:

- i. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- ii. Failure, for any reason, of the Contractor to fulfill in a timely and proper manner its obligations under this Contract;
- iii. Failure of the Contractor to submit monthly performance reports;
- iv. Ineffective or improper use of funds provided under this Contract; or
- v. Submission by the Contractor to the Grantee reports that are incorrect or incomplete in any material respect.
- vi. In accordance with 2 CFR Part 200 Appendix II, this Contract may also be terminated for convenience by either the Grantee or the Contractor, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

### **III. ADMINISTRATIVE REQUIREMENTS**

#### **(A). Financial Management**

##### **i. Accounting Standards**

The Contractor agrees to comply with 2 CFR Part 200 Subpart D and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

##### **ii. Cost Principles**

The Contractor shall administer its program in conformance with 2 CFR part 200 Appendix IV, “Cost Principles for Non-Profit Organizations,” or 2 CFR Part 200 Appendix III, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

#### **(B). Documentation and Record Keeping**

##### **i. Records to be Maintained**

The Contractor shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Contract. Such records shall include but not be limited to:

- (a) Records providing a full description of each activity undertaken;
- (b) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- (c) Records required to determine the eligibility of activities;
- (d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- (e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- (f) Financial records as required by 24 CFR 570.502, and 2 CFR Part 200.333; and
- (g) Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

##### **ii. Retention**

The Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Contract for a period of five (5) years. The retention period begins on the date of the submission of the Grantee’s annual performance and evaluation report to HUD



in which the activities assisted under the Contract are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

iii. Close-Outs

The Contractor's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Contract shall remain in effect during any period that the Contractor has control over CDBG funds.

iv. Audits and Inspections

All Contractor records with respect to any matters covered by this Contract shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Contractor within 30 days after receipt by the Contractor. Failure of the Contractor to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Contractor hereby agrees to have an annual agency audit conducted in accordance with the current Grantee policy concerning contractor audits and 2 CFR Part 200.333.

(C). Reporting and Payment Procedures

i. Program Income

The Contractor shall not retain any Program Income.

ii. Indirect Costs

If indirect costs are charged, the Contractor will develop an indirect cost allocation plan for determining the appropriate Contractor's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

iii. Payment Procedures

The Grantee will pay to the Contractor funds available under this Contract based upon information submitted by the Contractor and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Contractor, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Contractor accounts. In addition, the Grantee reserves the

right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Contractor. Payments are made as a reimbursement to the Contractor; no grant funds advances are allowable.

iv. Progress Reports

The Contractor shall submit monthly Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

(D). Procurement

i. Compliance

The Contractor shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Contract.

ii. Standards

The Contractor shall procure services and materials in accordance with the requirements 2 CFR Part 200.317 – 200.326. Copies of said regulations are provided and by execution of this Contract, the Contractor acknowledges their receipt.

iii. Travel

The Contractor shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Contract.

iv. Use and Reversion of Assets

The use and disposition of real property and equipment under this Contract shall be in compliance with the requirements of 2 CFR Part 200.310 – 200.316 and 24 CFR 570.503, and 570.504, as applicable, which include but are not limited to the following:

- (a) The Contractor shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Contract at the time of expiration, cancellation, or termination.
- (b) Real property under the Contractor's control that was acquired or improved, in whole or in part, with funds under this Contract in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Contract [or such longer period of time as the Grantee deems appropriate]. If the Contractor fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Contractor shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the

Grantee. The Contractor may retain real property acquired or improved under this Contract after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].

- (c) In all cases in which equipment acquired, in whole or in part, with funds under this Contract is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Contract were used to acquire the equipment). Equipment not needed by the Contractor for activities under this Contract shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

#### **IV. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Contractor agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Contractor shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The Contractor also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

#### **V. PERSONNEL AND PARTICIPANT CONDITIONS**

##### **(A). Civil Rights**

##### **i. Compliance**

The Contractor agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

##### **ii. Nondiscrimination**

The Contractor agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders. In addition, the Contractor agrees to comply with 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

##### **iii. Land Covenants**

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Contractor, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

iv. Section 504

The Contractor agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Contract.

(B). Affirmative Action

i. Approved Plan

The Contractor agrees that it shall be committed to carry out, pursuant to the Grantee's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

ii. Women- and Minority-Owned Businesses (W/MBE)

The Contractor will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Contractor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

iii. Access to Records

The Contractor shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

iv. Notifications

The Contractor will send to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

v. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

vi. Subcontract Provisions

The Contractor will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own contractors or subcontractors.

(C). Employment Restrictions

i. Prohibited Activity

The Contractor is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

ii. Labor Standards

The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Contract. The Contractor agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Contractor agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

iii. “Section 3” Clause

(a) Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Contractor and any of the Contractor’s contractors and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Contractor and any of the Contractor’s contractors and subcontractors, their successors, and assigns, to those sanctions specified by the Contract through which Federal assistance is provided. The Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Contractor further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Contract:

“The work to be performed under this Contract is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Contractor further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Contractor certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

(b) Notifications

The Contractor agrees to send to each labor organization or representative of workers with which it has a collective bargaining contract or other contract or understanding, if any, a notice advising said labor organization or worker’s representative of its 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.

(c) Subcontracts

The Contractor will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Contractor will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(D). Conduct

i. Assignability

The Contractor shall not assign or transfer any interest in this Contract without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Contractor from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

ii. Subcontracts

(a) Approvals

The Contractor shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such contract.

(b) Monitoring

The Contractor will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(c) Content

The Contractor shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Contract.

(d) Selection Process

The Contractor shall undertake to ensure that all subcontracts let in the performance of this Contract shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.



iii. Hatch Act

The Contractor agrees that no funds provided, nor personnel employed under this Contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

iv. Conflict of Interest

The Contractor agrees to abide by the provisions of 2 CFR Part 200.112 and 570.611, which include (but are not limited to) the following:

- (a) The Contractor shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- (b) No employee, officer, or agent of the Contractor shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- (c) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or contract with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Contractor, or any designated public agency.

v. Lobbying

The Contractor hereby certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative contract;
- (b) 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 contract,



it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

- (c) It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative contracts) and that all Contractors shall certify and disclose accordingly:
- (d) Lobbying Certification: This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. 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.

vi. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

vii. Religious Activities

The Contractor agrees that funds provided under this Contract will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**VI. ENVIRONMENTAL CONDITIONS**

(A). Air and Water

The Contractor agrees to comply with the following requirements insofar as they apply to the performance of this Contract:

- i. Clean Air Act, 42 U.S.C., 7401, et seq.;
- ii. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- iii. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

(B). Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Contractor shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

(C). Lead-Based Paint

The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Contract shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

(D). Historic Preservation

The Contractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this contract.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

**VII. BUILD AMERICA, BUY AMERICA**

The Contractor must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Contractors of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

**EXHIBIT B  
LOCATION MAP**



## **EXHIBIT C**

### **CONTRACTOR PAYMENT PROCEDURES**

Contractors may request up to four (4) draws per project. At least 20% of the work must be completed to receive the first payment. A minimum of 10% of the total project cost will be retained for the final draw until all contract items are complete, all permits are final, and all requirements stated in Paragraph 6 have been satisfied.

For each draw, the Contractor must submit the following documents:

1. Contractor Payment Request Form provided by Community Development (with all required signatures)
2. Valid Invoice

A Valid Invoice requires the following information:

1. Name and Address of Contractor
2. Name of Project
3. Address of Project
4. Date of Invoice
5. Date of Services
6. Individual line items stating work completed and cost
7. Total Amount Due (must match the amount on Payment Request)

Payment Requests will not be processed until such time that all documents submitted are accurate and complete and include all required signatures. Additionally, all work must be verified and approved as completed in accordance with all applicable codes and program standards by Community Development prior to processing.

### **CONDITIONS OF PAYMENT**

The Contractor acknowledges and agrees that the City will not begin to process a payment request, nor will it be obligated to make disbursements, unless and until the following conditions are satisfied:

1. There is no default under the Contract.
2. All required documents are submitted and are accurate and complete. This includes accurate calculations, invoice information and all required signatures.
3. All work included on the invoice has been verified and approved by Community Development Staff.
4. Community Development has received any additional required documentation, which could include one or all of the following:
  - a. Proof of paid and unpaid construction bills for materialmen and subcontractors which show full payment (except for holdbacks) of such bills then due and payable, except those covered under the current draw request.
  - b. Lien waivers/releases from any potential lienor that has performed work on the Project.

- c. Any inspection reports, architectural certificates with respect to the stage of completion of the Project, and such other proof as the City may reasonably require establishing that construction progress has been made in compliance with the plans and specifications.
  - d. The current status of accounts of Contractor and its subcontractors, materialmen, and laborers furnishing labor, materials, or services in the construction of the Project.
- 5. The City will not be obligated to make the final disbursement unless and until it has received the following:
  - a. Approval by local governmental authorities having jurisdiction of the Property or the Project that the Project has been completed in accordance with all applicable laws, rules, ordinances, and regulations. All permits must be final by the Building Inspection Division.
  - b. Advice from the City that the Project has been completed in accordance with the plans and specifications.
  - c. Final lien waivers and Contractor's affidavits.
  - d. A complete release of all liens arising out of the Contract or receipts in full covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactorily to the City indemnifying the City against any lien arising under the Lien Law in connection with the Project.
  - e. All warranties.