



United States Department of Treasury

American Rescue Plan Act

- Coronavirus Local Fiscal Recovery Fund -



CITY OF FLAGSTAFF
GRANT ACCT NUMBER
024-09-402-6321-1-4273

**HOUSING SOLUTIONS
OF NORTHERN
ARIZONA**

**JOJO'S PLACE
TRANSITIONAL HOUSING
PROJECT# CL6321S**

CFDA# 21.027
UEI# J1DTBNWXNZ99

Mayor

Mayor Becky Daggett

Council

Vice-Mayor Austin Aslan
Councilmember Deborah Harris
Councilmember Lori Matthews
Councilmember Miranda Sweet
Councilmember Khara House
Councilmember Jim McCarthy

City Manager

Greg Clifton

Community Development Director

Dan Folke

Housing Director

Sarah Darr

**AGREEMENT BETWEEN THE CITY OF FLAGSTAFF
and
HOUSING SOLUTIONS OF NORTHERN ARIZONA
for the
JOJO’S PLACE TRANSITIONAL HOUSING PROJECT**

THIS AGREEMENT (the "Agreement") is made and entered into by and between the City of Flagstaff, a political subdivision of the State of Arizona (the "City"), and Housing Solutions of Northern Arizona, an Arizona nonprofit corporation with offices at 2304 N. 3rd St., Flagstaff, AZ 86004 (the "Agency" or "Subrecipient").

RECITALS

- A. Sections 602(b) and 603(b) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021), authorizes the U.S. Department of the Treasury ("Treasury") to make payments to certain recipients from the Coronavirus Local Fiscal Recovery Fund ("Recovery Funds").
- B. The City is a recipient of certain Recovery Funds and is authorized to utilize the Recovery Funds in accordance with the rules and regulations promulgated by Treasury. Specifically, the procurement for distribution of the Recovery Funds requiring compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 ("Uniform Guidance").
- C. The City desires to utilize a portion of its Recovery Funds to directly respond to the coronavirus pandemic by providing the Agency Recovery Funds to rehabilitate 44 rooms at the former Travelodge Motel, located at 2919 E. Route 66, Flagstaff, AZ to be used as transitional housing units for sixty-six (66) individuals experiencing homelessness (the "Project"). The Agency is willing and has the resources to implement the Project.
- D. The Project is eligible for expenditure of the Recovery Funds under the Uniform Guidance, "Appendix 1: Expenditure Categories." The procurement of the Project complies with both the Uniform Guidance and Procurement Code provisions.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

1. AGENCY’S SCOPE OF SERVICES

- 1.1 Scope of Services. The Agency agrees to be a subrecipient of the Recovery Funds and complete the Project as described in the Scope of Work attached as **Exhibit A** and incorporated by reference into this Agreement. Recovery Funds will be used for construction costs and change-order construction costs incurred during rehabilitation and reconstruction Project. Rehabilitation of the former motel includes the addition of kitchens to each of the studio apartments (44 units), Americans with Disability Act (ADA) accessibility for three units, addition of a sprinkler system to the facility in compliance with City Fire Codes, the addition of on-site laundry amenities and

remodeling of an onsite office building to provide on-site resources to residents including housing case management, food support and mental health resources. Expenses incurred from July 1, 2022 to the expiration of this Agreement are eligible for reimbursement.

- 1.2 Changes in Scope of Services. No change(s) shall be made to the Scope of Services except by written Agreement amendment. To obtain an Agreement amendment, the Agency must submit a revised Scope of Services with a written request for authorization for a Scope of Services amendment. If authorized, an Agreement amendment shall be drafted pursuant to the Procurement Code and must be approved by the City Council, and executed by duly authorized signatories, before the amendment will become effective.

2. AMOUNT AND NATURE OF ASSISTANCE BY CITY

- 2.1 Agreement Amount. Subject to all of the terms, covenants, and conditions of this Agreement, the City will enter into an Agreement with the Agency for a subaward amount not to exceed **five hundred thousand dollars (\$500,000)** for the services described in **Exhibit A** incurred from July 1, 2022, to the expiration of this Agreement. The City shall serve as the fiscal agent for the Recovery Funds. The Agency agrees to be responsible for all sums in excess of this amount necessary to complete the Project. The Subrecipient agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available. The Agency shall not use the Recovery Funds received from the City in any other manner except as provided in this Agreement. Wrongful expenditure of the Recovery Funds will constitute a breach of this Agreement and the City shall have the right to terminate this Agreement under the terms and conditions specified in this Agreement.
- 2.2 The City shall. Clearly identify every subaward to the Agency as a subaward and include the following information at the time of the subaward and include any changes in subsequent subaward modifications. When the information is not available, the City must provide the best information available to describe the Federal award and subaward:

2.2.1 Federal Award Identification;

- Subrecipient name (which must match Unique Entity Identifier (UEI));
- Subrecipient's UEI;
- Federal Award Identification Number (FAIN);
- Federal Award Date;
- Subaward Period of Performance Start and End date;
- Amount of Federal Funds Obligated by this action;
- Total Amount of Federal Funds Obligated to the Subrecipient;
- Total Amount of the Federal Award;
- Federal award Project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

- Name of Federal awarding agency, pass-through entity, and contact information for awarding official;
- CFDA Number and name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
- Identification of whether the award is Research & Development; and
- Indirect cost rate for the Federal award (including if the de minimis rate is charged. All requirements imposed by the pass-through entity on the Subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award.

2.2.2 Any additional requirements that the pass-through entity imposes on the Subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

2.2.3 Any approved federally recognized indirect cost rate negotiated between the Subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the Subrecipient or a de minimis indirect cost rate as defined in the Code of Federal Regulations.

2.2.4 A requirement that that Subrecipient permit the pass-through entity and auditors to have access to the Subrecipient’s records and financial statements as necessary for the pass-through entity to meet the requirements of 2 C.F.R. §200.331 and § 200.300, “Statutory and national policy requirements,” through 2 C.F.R. § 200.309, “Modifications to Period of performance,” and Subpart F, “Audit Requirements”; and

2.2.5 Appropriate terms and conditions concerning closeout of the subaward.

2.3 Payments.

2.3.1 Payment by the City to the Agency for services and other expenses related to the administration of the Project will be provided on a reimbursement basis. Reimbursement may be requested monthly, quarterly, or a one-time/final reimbursement request. Reimbursement will be paid in dollar amounts approved by the City for completed work.

2.3.2 To request reimbursements, the Agency shall submit a Payment Request, attached as **Exhibit B** and incorporated by reference in this Agreement. The Agency must submit a final reimbursement request for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL and include a copy of the Property Control Form. All reports shall be submitted to the contact persons as described in the

Notice Section of this Agreement. The Agency may use funds to reimburse allowable costs of activities for expenses incurred from January 1, 2023, to the expiration of this Agreement. Final payment invoices must be received no later than sixty (60) days after completion of the Scope of Work or Agreement time-period, whichever comes first. No payments shall be made on invoices received after that date.

- 2.3 Changes in Budget. Any variance from the Budget must be made through a budget amendment. To obtain a budget amendment, the Agency must submit a new budget to the City with a written request for authorization for a budget amendment. The City Housing Director or her designee is authorized to approve budget amendments as long as the amendment does not increase the total budget of the Project.
- 2.4 Indirect Costs. If indirect costs are charged, the Agency will develop an indirect cost allocation plan for determining the Agency's appropriate share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

3. CERTIFICATION OF COMPLETION

Upon satisfactory completion of the Close-Out Report and submission of all required documentation, the City shall provide the Agency with a letter that certifies completion. The certification is conclusive determination that the Agency has satisfactorily completed its contractual obligations. The City shall not unreasonably withhold such certification.

4. ADMINISTRATIVE REQUIREMENTS

- 4.1 Accounting. The Agency shall comply with the requirements and standards of Office of Management and Budget (OMB) and guidance in subparts A through F of 2 C.F.R. part 200 and shall adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Agency's financial management system shall include, at a minimum, accurate, current, and complete disclosures of expenditures of the Recovery Funds; records which adequately identify the source and application of Recovery Funds provided for financially assisted activities; effective control over and accountability for Recovery Funds, real and personal property, and other assets; comparison of actual outlays with budgeted amounts; and records supported by source documentation. The Agency shall maintain Recovery Funds received under this Agreement in separate ledger accounts and not mix funds with other sources; manage funds according to applicable Federal regulations for administrative requirements, cost principles, and audits; and maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Managements, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).
- 4.2 Procurement. The Agency shall procure all materials, property, or services in

accordance with the requirements of the Uniform Guidance and 2 C.F.R. § 200.317 through 2 C.F.R. § 200.327. The Agency's procurement outreach and documentation shall be governed by the price limits set forth in the Procurement Code, notwithstanding OMB Circular A-110. All procurement undertakings must make an effort to utilize Minority and Women Owned Business Enterprises. The Agency shall maintain an inventory of all equipment, furniture, and non-expendable personal property purchased with Recovery Funds.

- 4.3 Internal Controls. The City will evaluate the Agency to determine if there is a risk that the Agency will not comply with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate Subrecipient monitoring including the factors listed in 2 C.F.R. § 200.331(b)(1-4). The Agency will operate according to a written set of policies and procedures that define staff qualifications and duties, lines of authority, separation of functions, and access to assets and sensitive documents. Included in these policies and procedures will be written accounting procedures for approving and recording transactions and the control of cash receipts, disbursements, and cash balances. The Agency's financial policies and lines of authority shall be reviewed during monitoring visits defined in this Agreement.
- 4.4 Monitoring. The City shall monitor the use of the Recovery Funds, including reviewing the Payment Requests and Performance Reports provided by the Agency. The City shall follow-up and ensure that the Agency takes timely and appropriate action on all deficiencies pertaining to the Federal award detected through audits, on-site reviews, and other means. The City shall issue a management decision for audit findings pertaining to the Recovery Funds provided to the Agency from the City as required by 2 C.F.R. § 200.521, "Management decision." The Agency agrees to cooperate and provide all information necessary for the City to monitor the Agency periodically to ensure compliance with this Agreement, compliance with federal regulations and laws, fiscal responsibility, adequate performance, and any other item of concern relating to the use of Recovery Funds and the provisions defined in this Agreement, including by permitting the pass-through entity and auditors to have access to the Subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of 2 C.F.R. § 200.300, "Statutory and national policy requirements," 2 C.F.R. § 200.309, "Modifications to period of performance," 2 C.F.R. § 200.331, "Subrecipient and contractor determinations," and Subpart F, "Audit Requirements." The monitoring will take the form of at least one site visit of the Agency's place of business and/or construction site and other various requests for information. During the term of this Agreement, the Agency shall be monitored periodically by the City, both programmatically and financially, to ensure that the program's goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed. All

on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the Agency and the City.

- 4.5 Documentation, Record-Keeping and Other Requirements Specific to Expenditure Categories. The Agency shall maintain all records required by federal and state law that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
- 4.5.1 All additional reporting requirements specific to expenditure categories as identified by Treasury attached as **Exhibit C** and incorporated by reference in this Agreement.
 - 4.5.2 Records providing a full description of each activity undertaken;
 - 4.5.3 Records demonstrating that each activity undertaken meets one of the Expenditure Categories identified in the U.S. Department of Treasury Compliance and Reporting Guidance, Appendix 1: Expenditure Categories;
 - 4.5.4 Records required to determine the eligibility of activities;
 - 4.5.5 Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with Recovery Funds;
 - 4.5.6 Financial records as required by 2 C.F.R. Part 200 Performance and Financial Monitoring and Reporting, Sections 200.328, 329, and 331; and
 - 4.5.7 Other records necessary to document compliance with 2 C.F.R. Part 200 Performance and Financial Monitoring and Reporting, Sections 200.328, 329, and 331.
- 4.6 Records Retention. The Agency will retain all records pursuant to the City's record retention policy and Federal requirements, whichever period is longer. Records must be retained longer if any litigation, claim, or audit is started before the expiration of the record retention period. Other extensions to the record retention period may apply as specified in 2 C.F.R. § 200.333.
- 4.7 Client Data. The Agency shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, ethnicity, special needs, family size, elderly status, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
- 4.8 Disclosure. The Agency understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or the Agency's responsibilities with respect to services provided under this Agreement, is prohibited by Arizona State

law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent or guardian.

- 4.9 Audits and Inspections. All of the Agency's records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees, or the Federal Government (including but not limited to Treasury, the Comptroller General of the United States, or any of their duly authorized representatives), unless otherwise protected by law, at any time during normal business hours, as often as the City or grantor agency deems necessary until all required records are turned over to the City of Flagstaff to audit, examine, and make excerpts or transcripts of all relevant data, provided. Any deficiencies noted in audit reports must be fully cleared by the Agency within thirty (30) days after receipt by the Agency. Failure of the Agency to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Agency agrees to have an annual Agency financial audit conducted in accordance with current City policy and, as applicable, subject to the Single Audit act of 1984 and all relevant OMB guidance, including, 2 C.F.R. § 200, Subpart F, "Audit requirements." The Agency will conduct an annual audit conducted in accordance with 2 C.F.R. 200, Subpart F, "Audit requirements," if the Agency expends more than seven-hundred fifty thousand dollars (\$750,000) from Federal awards, in compliance with the Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156).
- 4.10 Monthly Reports to City. During the entire Agreement period, the Agency shall prepare and submit to the City by the second (2nd) Friday of each month a Performance Report, attached as **Exhibit D** and incorporated by reference in this Agreement. If the scope of the Project has been fully completed and implemented, and there will be no further updates, then the monthly Performance Report for the month in which the Project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the Project as deemed necessary by the City. Notwithstanding anything to the contrary, the Agency shall not be required to provide any of the Agency's confidential or proprietary information in reports provided to the City, including without limitation, any information regarding research collaborators, research plans, or any data, results, or other information resulting from the Agency's performance of research or any other activities relating thereto. The Agency agrees to submit other reports and records as may be required by the City from time to time, which are related to the implementation of the Project, adherence to the Agreement, and adherence to federal, state, and local laws and regulations.
- 4.11 Close-Out Report. The Agency is responsible for the close out of the Recovery Funds. The Agency's obligation to the City 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 City), and determining the custodianship of

records. The City will send the Agency written notification that a Close-Out Report is due when one of the following contractual obligations have been met, and the Agency shall submit the Close-Out Report attached in that letter within sixty (60) days of receiving this notification:

4.11.1 The Recovery Funds have been expended and the Scope of Work has been completed;

4.11.2 The Agreement period has expired; or

4.11.3 The Scope of Work has been completed.

4.12 Subrecipient Obligations. The Agency shall perform all obligations required of subrecipients under the rules governing Recovery Funds.

5. ACKNOWLEDGEMENT

The Agency shall acknowledge during the term of the Agreement the contribution of the City of Flagstaff Recovery Funds toward the Project in all instances where the Project is advertised. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as receiving Recovery Funds. In addition, the Agency will include a reference to the support provided herein in all publications made possible with Recovery Funds made available under this Agreement.

6. PROJECT IMPLEMENTATION

The Agency shall have responsibility for day-to-day management and implementation of the Project.

7. UNFORESEEN DELAY IN PERFORMANCE

Neither the Agency nor the City shall be considered in breach or default of its obligations to make satisfactory progress toward the completion of the Project in the event of unforeseen delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. The time for performance of the obligations and length of period of restriction on use shall be extended for the period of the unforeseen delay, as determined by the City, if the party seeking the extension shall request it in writing of the other party within ten (10) days after the beginning of the unforeseen delay.

8. INSURANCE

The Agency and its sub-agencies shall procure and maintain insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Agency, its agents, representatives, employees, or sub-agencies, until all of their obligations have been discharged, including satisfaction of any warranty periods under this Agreement.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the

minimum limits contained herein are sufficient to protect the Agency from liabilities that might arise out of the performance of the work under this Agreement by the Agency, its agents, representatives, employees, or sub-agencies, and the Agency is free to purchase additional insurance as may be determined necessary.

8.1 Minimum Scope and Limits of Insurance. The Agency shall provide coverage at least as broad and with limits of liability not less than those stated below.

8.1.1 Commercial General Liability - Occurrence Form

General Aggregate	\$ 2,000,000
Products-Completed Operations Aggregate.....	\$ 1,000,000
Each Occurrence	\$ 1,000,000

8.1.2 Umbrella Coverage \$ 2,000,000

8.1.3 Automobile Liability - Any Auto or Owned, Hired, and Non-Owned Vehicles

Combined Single Limit Per Accident or Bodily Injury and Property Damage	\$ 1,000,000
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8.1.4 Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 1,000,000
Disease-Each Employee.....	\$ 1,000,000
Disease-Policy Limit.....	\$ 1,000,000

8.2 Self-Insured Retentions/Deductibles. Any self-insured retentions and deductibles shall be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. The Agency shall be solely responsible for any self-insured retention amounts. City at its option may require the Agency to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

8.3 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

8.3.1 Commercial General Liability and Automobile Liability Coverages

8.3.1.1 The City of Flagstaff, its officers, officials, agents, employees, and volunteers are to be listed as additional insureds with respect to liability arising out of: activities performed by, or on behalf of, the Agency, including the City's general supervision of the Agency; products and completed operations of the Agency; and automobiles owned, leased, hired, or borrowed by the Agency.

- 8.3.1.2 The Agency's insurance shall contain broad form contractual liability coverage.
- 8.3.1.3 The Agency's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, or volunteers shall be in excess to the coverage of the Agency's insurance and shall not contribute to it.
- 8.3.1.4 The Agency's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 8.3.1.5 Coverage provided by the Agency shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 8.3.1.6 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from work performed by the Agency for the City.
- 8.3.2 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from work performed by the Agency for the City.
- 8.3.3 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Risk Manager, 211 W. Aspen Avenue, Flagstaff, AZ, 86001, and shall be sent by certified mail, return receipt requested.
- 8.3.4 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Agency from potential insurer insolvency.
- 8.3.5 Verification of Coverage. The Agency shall furnish the City with Certificates of Insurance as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance. The Project name/description and City contract number shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Agency commences work.

8.3.5.1 Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall be a material breach of Agreement.

8.3.5.2 All Certificates of Insurance required by this Agreement shall be sent directly to: Stacey Brechler-Knaggs, Grants & Contracts Manager, 211 West Aspen Avenue, Flagstaff, Arizona, 86001. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement, at any time.

8.3.6 Sub-agencies. The Agency's Certificates of Insurance shall include all sub-agencies as insureds under its policies, or the Agency shall furnish to the City separate Certificates of Insurance for each sub-agency. All coverages for sub-agencies shall be subject to the minimum requirements identified above.

8.3.7 Approval. Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the Flagstaff City Attorney's Office and the Risk Manager, whose decision shall be final. Such action shall not require a formal Agreement Amendment but may be made by administrative action.

9. INDEBTEDNESS TO INTERNAL REVENUE SERVICE OR OTHER PUBLIC ENTITY

9.1 Delinquent Taxes. Any judgment, lien, levy, or outstanding amount owed to the Internal Revenue Service, State, County, City, or other public entity by the Agency may constitute an event of default or breach of this Agreement, unless previously approved by the City in writing, and may constitute sufficient reason for cancellation of this Agreement by the City according to the procedures contained in this Agreement.

9.2 Disclosure of Delinquent Taxes. Before entering into this Agreement, and during the time-period covered by this Agreement, the Agency shall disclose any information related to this Section. This shall also include the immediate reporting of breaches in payback arrangements or breaches in other Agreements related to the above. Failure to comply with any disclosure provision in this Section may also constitute sufficient reason for cancellation of this Agreement by the City according to the procedures contained in this Agreement.

10. DEFAULT/REMEDIES

In the event of any default in or breach of this Agreement or any of its terms or conditions by either party, such party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach. In any event, such breach or default shall be remedied within thirty (30) days

after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach not cured or remedied within thirty (30) days, the aggrieved party may terminate this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. Notwithstanding the foregoing, in the event of a breach of any term of this Agreement by the Agency, the City, at its sole election and in addition to any other remedy, may immediately withhold payment of funds until such default is cured and may initiate suspension or termination as set forth below.

11. INDEPENDENT AGENCY STATUS

The Agency is an independent entity in the performance of all activities and functions pursuant to this Agreement. The Agency and City are not and shall not be considered as joint ventures, partners, or agents of each other and neither shall have the power to bind or obligate the other. The Agency's officers, employees, agents, and subcontractors shall not be considered as officers, employees, agents, or subcontractors of the City. The Agency hereby agrees not to represent to anyone that the Agency is an agent of the City or has any authority to act on behalf of the City. The Agency shall be responsible for all employment compensation claims for Workers' Compensation benefits, or other claims by employees arising as a result of activities funded in whole or in part from the proceeds of this Agreement, and the Agency shall hold the City harmless for any and all such claims.

12. INDEMNIFICATION AND HOLD HARMLESS PROVISIONS

To the fullest extent permitted by law, the Agency shall defend, indemnify, and hold harmless the City, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, or services of the Agency, its employees, agents, or any tier of subcontractors in the performance of this Agreement. The Agency's duty to defend, hold harmless, and indemnify the City, its agents, representatives, officers, directors, officials, and employees shall arise in connection with the claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work, or services in the performance of this Agreement including any employee of the Agency or any tier of subcontractors or any other person for whose acts, errors, mistakes, omissions, work, or services the Agency may be legally liable.

13. NONDISCRIMINATION AND AFFIRMATIVE ACTION REGARDING EMPLOYMENT

- 13.1 Nondiscrimination. The Agency shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, and/or familial status, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In addition, if the Agency operates within City of Flagstaff limits, the Agency shall comply with the City Code, Chapter 14-02, "Civil Rights," which also

prohibits discrimination based on sexual orientation, or gender identity or expression.

- 13.2 Incorporation of Nondiscrimination Clause into the Agency Activities. The Agency further agrees that the Section 14.1 clause will be incorporated in all supplier contracts or other agreements entered into in connection with this Agreement.
- 13.3 Certifications from Subcontractors and Suppliers. The Agency assures that its authorized agent will obtain all supplier and subcontractor certifications contained in the Agreement documents and that those suppliers and contractors will adhere to all affirmative action requirements.

14. COMPLIANCE WITH ALL LAWS

- 14.1 Federal, State, and Local Laws. The Agency shall give all notices and comply with all laws, ordinances, rules, building codes, regulations, and lawful orders of any public authority bearing on the performance of activities pursuant to this Agreement. If the Agency observes that any of the Agreement documents are in conflict with any laws, statutes, building codes, or regulations, it shall promptly notify the City, in writing, and the parties shall execute any appropriate written modification.
- 14.2 Liability. Should the Agency perform any work knowing it to be contrary to applicable laws, ordinances, rules, building codes, or regulations, and not give proper notice to the City, it shall assume full responsibility therefore and shall bear all cost incurred due to its negligence.
- 14.3 Agency Adherence to Federal Regulations and Laws. The Agency agrees to comply with the following laws related to the receipt of Recovery Funds:
 - 14.3.1 The Agency shall comply with the Grant Provisions for the U.S Department of Treasury, American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery Funds, attached as **Exhibit E** and incorporated by reference in this Agreement.
 - 14.3.2 The Agency shall carry out its responsibilities in compliance with the requirements of Executive Order 11063, as amended by Executive Order 12259; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the prohibitions against age discrimination under the Age Discrimination Act of 1975 (42 U.S.C. § 6101-07); and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (19 U.S.C. § 794).
 - 14.3.3 The Agency shall comply, as applicable, with the requirements of the Davis-Bacon Act (40 U.S.C. § 276a-276a-5), as supplemented by Department of Labor regulations (29 C.F.R. Part 5); and comply with Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. § 327-330), as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

- 14.3.4 The Agency shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations. (41 C.F.R. chapter 60).
- 14.3.5 The Agency agrees to comply with the Copeland "Anti-Kick Back" Act (18 U.S.C. § 874), as supplemented in Department of Labor regulations (29 C.F.R. part 3).
- 14.3.6 The Agency agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368m Executive Order 11738), and Environmental Protection Contract regulations (40 C.F.R. part 15).
- 14.3.7 The Agency agrees to comply with all applicable standards, orders, or regulations issued under Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification.
- 14.3.8 The Agency agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.
- 14.3.9 The Agency agrees to comply, as applicable, with 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principle, and Audit Requirement for Federal Awards.
- 14.4 Suspension or Debarment. Submittal of an offer or execution of a contract shall attest that the Subrecipient or contractor is not currently suspended or debarred to contract in local, state, or federal jurisdictions. If the Subrecipient or any of its contractors become suspended or debarred, the Subrecipient shall immediately notify the City. The City may, by written notice to the Subrecipient, immediately terminate this Agreement if the City determines that the Subrecipient or their contractors have been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.
- 14.5 Contracts and Subawards to Debarred and Suspended Parties. Pursuant to 2 C.F.R. subpart C § 200.213, grantees and subrecipients must not make an award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." By entering into this Agreement, Subrecipient agrees to comply with all relevant codes including 2 C.F.R. subpart C, "Responsibilities of Participants Regarding

Transactions.” The Agency must verify that any sub-agencies are not excluded or disqualified.

The Agency does this by:

(a) Checking the SAM Exclusions: System for Award Management (SAM) – www.sam.gov.

(b) Collecting a certification from that person.

(c) Adding a clause or condition to the covered transaction with that person.

15. DISPUTES

The laws of the State of Arizona, without regard to any otherwise applicable choice or conflict of law provisions, will govern this Agreement.

16. AVAILABILITY OF FUNDS

It is expressly understood by the parties hereto that this Agreement has been negotiated and executed in anticipation of receipt of funds by the City from the federal government, and that the terms, conditions, and sums payable under this Agreement are subject to any changes or limitations which may be required by the terms of the City’s agreement with the federal government.

17. CONSULTATION

The Agency and the City hereby agree to consult one another on a timely basis regarding the applicability of this Agreement to any condition which may impact the execution of this Agreement, and which may arise during the Agreement period.

18. CONTINUING LIABILITY

The Agency shall have continuing liability after the term of this Agreement for any breach of this Agreement, including failure to perform in accordance with required Federal law, rules, and regulations until after all complaints, investigations, and sanctions, including those arising out of audits performed by Treasury, the City, or other authorized agencies are resolved. The Agency shall be liable for any sanctions or requirements imposed at any time upon the City arising out of the Agency's activities performed pursuant to this Agreement.

19. TERMINATION

19.1 Transactional Conflicts of Interest. The parties acknowledge that this Agreement is subject to cancellation by the City of Flagstaff under the provisions of A.R.S. § 38-511.

19.2 Termination. In accordance with 2 C.F.R. part 200, subpart D, the City may suspend or terminate this Agreement if the Agency materially fails to comply with any term or condition of this Agreement, or if the Agency fails to maintain a good faith effort

to carry out the purpose of this Agreement. If the Agency fails to materially comply with any term of the award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, City may take one or more of the following actions, as appropriate in the circumstances:

19.2.1 Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency;

19.2.2 Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

19.2.3 Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

19.2.4 Withhold further awards for the program; or

19.2.5 Take other remedies that may be legally available.

19.3 Termination for Convenience. The City or the Agency may terminate this Agreement for convenience in accordance with 2 C.F.R. part 200 and the Procurement Code if both parties agree upon the termination and termination conditions. The party initiating the termination shall notify the other party in writing stating the reasons for such termination. The Agency may unilaterally terminate this Agreement upon written notification to the City 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 City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the City may terminate the award in its entirety.

20. NOTICE

Notice shall be provided as follows:

City of Flagstaff

Stacey Brechler-Knaggs
Grants & Contracts Manager
211 W. Aspen Ave.
Flagstaff, AZ 86001
(928) 213-2227

Agency

Devonna McLaughlin
Chief Executive Officer
PO Box 30134
Flagstaff, AZ 86003
(928) 214-7457

Copy to:

Kristine Pavlik
Housing and Grants Administrator
2323 N. Walgreens St. Suite 2
Flagstaff, AZ 86004
(928) 213-2749

Sarah Darr
Housing Director
3481 N. Fanning Dr.
Flagstaff, AZ
(928) 213-2745

Such written notices, demands, and communications may be sent to such other addresses as either party may from time to time designate by mail as provided in this Section.

21. LIST OF EXHIBITS

- Exhibit A: Scope of work
- Exhibit B: Payment Request
- Exhibit C: Expenditure Specific Reporting Requirements
- Exhibit D: Performance Report
- Exhibit E: Grant Provisions

(Signatures appear on following page)

IN WITNESS WHEREOF, the parties acknowledge that they have read, understand, approve, and accept all of the provisions of this Agreement and the attached Exhibits.

DATED this _____ day of _____, 20__.

City of Flagstaff

Agency

Greg Clifton, City Manager

Devonna McLaughlin, Chief Executive Officer

Attest:

Attest:

City Clerk

Corporate Secretary

Approved as to form:

City Attorney

EXHIBIT A
SCOPE OF WORK
(Attached)

- 1. JoJo's Place Transitional Housing Project Scope of Work**
- 2. JoJo's Place Transitional Housing Project Budget**
- 3. JoJo's Place Transitional Housing Project Schedule of Completion**

**EXHIBIT A
SCOPE OF WORK
SPECIAL CONDITIONS OF THE AGREEMENT**

1. PROGRAM ELIGIBILITY CRITERIA

The Housing Solutions of Northern Arizona (“Agency”) JoJo’s Place Transitional Housing Project (“Project”) will allow the Agency to rehabilitate 44 rooms at the former Travelodge Motel, located at 2918 E. Route 66, Flagstaff, AZ 86004, into transitional housing units for individuals experiencing homelessness.

- 1.1 Eligibility for the Project administered by the Agency requires that the units:
 - 1.1.1 Serve homeless and/or low-income individuals/households, as defined by HUD.
- 1.2 Agency shall document and retain all client records with regards to Project eligibility.

2. SCOPE OF WORK

The Agency will provide services as set forth in detail in its December 19, 2022, proposal submitted in response to the City of Flagstaff American Rescue Plan Act (ARPA) Housing Assistance Local Recovery Funds Notice of Funding Available, hereby incorporated by reference, and as described herein.

The Agency will utilize ARPA Local Recovery Fund dollars for constructions costs and change-order construction costs incurred during the rehabilitation and reconstruction Project. Rehabilitation of the former motel includes the addition of kitchens to each of the studio apartments (44 units), ADA accessibility for three units, addition of a sprinkler system to the facility in compliance with City Fire Codes, the addition of on-site laundry amenities and remodeling of an onsite office building to provide on-site resources to residents including housing case management, food support and mental health resources.

- 2.1 The Agency agrees to serve sixty (66) individuals experiencing homelessness and/or low-income.
- 2.2 Agency will provide the necessary personnel, equipment, office space, meeting space, supplies, and services to conduct the services as described herein.
- 2.3 Agency’s responsibilities include:
 - 2.3.1 Hiring and training staff involved in the program operations.
 - 2.3.2 Providing the services as described herein.

EXHIBIT A
SCOPE OF WORK
SPECIAL CONDITIONS OF THE AGREEMENT

3. PROJECT ADMINISTRATION


The Agency will provide all of the necessary services to carry out the daily tasks of ensuring that the project progresses satisfactorily and that all of the administrative functions associated with the project are properly executed in accordance with the contract and the requirement of the Federal ARPA CLFRF program.

3.1 Agency responsibilities include:

- 3.1.1 Maintain project files detailing expenses, procurement, project information, and correspondence, in addition to any other necessary information.
- 3.1.2 Submit applicable grant reports to the Housing Section.
- 3.1.3 Maintain client files detailing income eligibility and back up documentation, ethnicity, age, and special needs, in addition to any other necessary information.
- 3.1.4 Maintain project accounting records, including documentation of expenditures and receipts.
- 3.1.5 Manage personnel.
- 3.1.6 Complete audits and other submissions.
- 3.1.7 Ensure a cost-effective, timely and efficient delivery of services.
- 3.1.8 Ensure that an open process is conducted in all outreach activities and equal opportunity is provided to all persons regardless of race, color, sex, sexual orientation, religion, handicap, familial status, or national origin.

EXHIBIT A

PROJECT BUDGET

 Housing Solutions <small>OF NORTHERN ARIZONA</small>	
Project Description:	JoJo's Place Transitional Housing
Implementing Agency:	Housing Solutions of Northern Arizona
Project Number:	
Persons Served:	66 (44 households)
Date:	5/1/2023

Item and Activity	Item/Activity Description	Source 1	Source 2	Source 3	Source 4	Source 5	Source 6	
		City of Flagstaff	Federal/State	State of Arizona	Coconino County	Private Donations	HSNA	Project
		Local Recovery Funds	CDBG-CV	ADEQ	ARPA	Various Donors	Developer Fee	TOTALS
1	Program or Project Related Expenses							
A	Acquisition of Property		\$3,700,000					\$3,700,000
B	Asbestos Removal			\$250,000				\$250,000
C	Pre-development		\$121,120					\$121,120
D	Construction (original contract)		\$1,304,722		\$66,000	\$438,500	\$456,778	\$2,266,000
E	Construction Change Orders to Date	\$500,000			\$184,000			\$684,000
F	Contingency		\$100,000					\$100,000
2	Administration							
A	Course of Construction Insurance		\$5,000					\$5,000
B	Construction Oversight						\$6,500	\$6,500
C	Capitalized Reserves		\$160,249					\$160,249
Totals		\$500,000	\$5,391,091	\$250,000	\$250,000	\$438,500	\$463,278	\$7,292,869

EXHIBIT A

PROJECT SCHEDULE OF COMPLETION

Project Schedule														
Project Description:		JoJo's Place Transitional Housing												
Implementing Agency:		Housing Solutions NAZ, Inc.												
Project No.:														
Date:		5/1/2023												
Households Served:		44 households (66 people)												
		YEAR 1st month begins with notice to proceed												
Item No.	Item Description	Prior to Notice to Proceed	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
1	Acquisition of Property													
2	Architectual & Engineering													
3	Identify general contractor through competitive bid process													
4	Rehabilitation/construction of the property													
5	Hire Staff: Property Manager & Housing Case Manager													
6	Lease-up of units; referrals from Front Door													
7	Report progress to City staff													
8	Close out report and monitoring													

CITY OF FLAGSTAFF
ARPA CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS (CLFRF)
HOUSING ASSISTANCE

PAYMENT REQUEST

Business Name: _____
Pay Request Period: _____ **Request Number:** _____ **Amount Requested:** _____

EXPENDITURES

Description of Expenditures	Total Award	Previous Expenditures	Current Amount Requested	Remaining Balance

CERTIFICATION

I/we certify that this Request for Payment has been drawn in accordance with the terms and conditions of the Contract cited above.

Signature: _____ **Name & Title:** _____ **Date:** _____
Signature: _____ **Name & Title:** _____ **Date:** _____

FOR CITY USE ONLY

Vendor #: _____ PO #: _____ Project#: _____	Fiscal Year & Amount: _____ Fiscal Year & Amount: _____ Total Approved: _____
<u>Management Services</u>	<u>Community Development</u>
_____ Stacey Brechler-Knaggs Grants, Contracts, & Emergency Management Director	_____ Kristine Pavlik Housing & Grants Administrator
Date	Date

CITY OF FLAGSTAFF
ARPA - CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS

EVIDENCE-BASED INTERVENTION REPORT

SUBRECIPIENT: _____

PROJECT TITLE: _____ PROJECT NUMBER: _____

REPORTING PERIOD: _____ REPORT NUMBER: _____

FUNDS ALLOCATED TO EVIDENCE-BASED INTERVENTIONS: _____

1. Please describe the obstacle(s) being addressed: _____

2. Please describe the goal(s) set for this project: _____

3. Please describe the method(s) used to reach the goal(s): _____

4. Please describe the outcome of the project so far: _____

CITY OF FLAGSTAFF
ARPA - CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS

IMPACTED & DISPROPORTIONATELY IMPACTED COMMUNITIES

SUBRECIPIENT: _____

PROJECT TITLE: _____

PROJECT NUMBER: _____

NATIONAL CENTER FOR EDUCATION STATISTICS (NCES) SCHOOL ID OR DISTRICT ID (If applicable): _____

What population(s) does this project primarily serve? Please select up to three (3) impacted or disproportionately impacted communities below:

IMPACTED COMMUNITIES:

_____ Low- or moderate-income households or populations*

_____ Households that experienced unemployment

_____ Households that experienced increased food or housing insecurity

_____ Households that qualify for certain federal programs**

_____ For services to address lost instructional time in K-12 schools: any student that lost access to in-person instruction for a significant period of time

_____ Other households or populations that experienced a negative economic impact of the pandemic other than those listed above (please specify):

DISPROPORTIONATELY IMPACTED COMMUNITIES:

_____ Low-income households and populations***

_____ Households and populations residing in Qualified Census Tracts

_____ Households that qualify for certain federal programs****

_____ Households receiving services provided by Tribal governments

_____ Households residing in the U.S. territories or receiving services from these governments

_____ For services to address educational disparities, Title I eligible schools*****

_____ Other households or populations that experienced a disproportionate negative economic impact of the pandemic other than those listed above (please specify):

IMPACTED & DISPROPORTIONATELY IMPACTED COMMUNITIES

Please provide a brief description of structure and objectives of assistance program(s), including public health or negative economic impact experienced:

Please provide a brief description of how your project is related, reasonable, and proportional to a public health or negative economic impact of COVID-19:

* Low- or moderate-income households and communities are those with income at or below 300% of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS), or income at or below 65% of the Area Median Income for the county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).

** For Impacted households, these programs are Children's Health Insurance Program ("CHIP"); Childcare Subsidies through the Child Care and Development Fund ("CCDF") Program; Medicaid; National Housing Trust Fund ("HTF"), for affordable housing programs only; Home Investment Partnerships Program ("HOME"), for affordable housing programs only.

*** Low-income households and communities are those with income at or below 185% of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by HHS or income at or below 40% of Area Median Income for its county and size of household based on the most recently published data by HUD.

**** For Disproportionately Impacted households, these programs are Temporary Assistance for Needy Families ("TANF"), Supplemental Nutrition Assistance Program ("SNAP"), Free- and Reduced-Priced Lunch ("NSLP") and/or School Breakfast Programs ("SBP"), Medicare Part D Low-IncomeSubsidies, Supplemental Security Income ("SSI"), Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Section 8 Vouchers, Low-Income Home Energy Assistance Program ("LIHEAP"), and Pell Grants.

***** For educational services and other efforts to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school service as eligible. "Title I eligible schools" means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

CITY OF FLAGSTAFF
ARPA - CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS

PERFORMANCE REPORT

SUBRECIPIENT NAME:	_____	UEI NUMBER:	_____
CONTACT NAME:	_____	EMAIL ADDRESS:	_____
ADDRESS:	_____	PHONE NUMBER:	_____
START DATE:	_____	EXPIRATION DATE:	_____
BRIEF PROJECT SUMMARY:	_____		

REPORTING PERIOD (MM/YY - MM/YY):	_____
PERCENTAGE OF PROJECT COMPLETENESS:	_____
SUMMARY OF THIS PERIOD'S PROGRESS:	_____

SUMMARY OF ACTIVITIES PLANNED FOR NEXT PERIOD:	_____
--	-------

CERTIFIED BY:	LIST OF ATTACHMENTS, IF APPLICABLE: (ie. Additional reports, photos, etc)
SIGNATURE _____	_____
DATE _____	_____
NAME AND TITLE _____	_____



GRANT PROVISIONS

Sponsor: City of Flagstaff

Funding Agency: U.S. Department of the Treasury

Grant Project Title: American Rescue Plan Act (ARPA)
Coronavirus State and Local Fiscal
Recovery Funds

Grant Number: ARPA-LRF-6321

FEDERAL - GRANT PROVISIONS

The Contractor and its Subcontractor shall comply with the following grant provisions;

Applicable Laws

Compliance with all applicable Federal, State, and Local laws and regulations.

Awards to debarred and suspended parties

The City will not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, ``Debarment and Suspension."

Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall 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 business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Equal Employment Opportunity

Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

Clean Water and Air Act

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Energy Policy and Conservation Act

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 (Pub. L. 94-163, 89 Stat. 871).

Resource Conservation and Recovery Act

Compliance with the Resource Conservation and Recovery Act (RCRA) requires federal agencies to assess the impact that debris, debris removal, hazardous wastes, and hazardous waste clean-up projects will have on air and water quality and take actions to prevent degradation. RCRA gives EPA the authority to control hazardous waste from the "cradle-to-grave" to facilities that generate hazardous materials and sets forth a framework for the management of non-hazardous waste (42 USC, 6901).

Conflicts of Interest

The City (grantee) and Contractor (subgrantees) will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in 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. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Copyrights

Reports, maps or other documents produced in whole or in part are works for hire and shall not be the subject of any application for copyright by or on behalf of the Contractor or its Subcontractor. The Contractor shall advise the City or its designee at the time of delivery of any copyrighted or copyrightable work furnished under this Agreement, or any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

Patent Fees and Royalties

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in Funding Agency Contracting Provisions for Construction Projects the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

Responsible Contractors

The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Access and Retention of Records

Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

CODE OF FEDERAL REGULATION (CFR) - Title 2: Grants and Agreements

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of

mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must 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 non-Federal award.

(J) See §200.322 Procurement of recovered materials.

AMERICAN RESCUE PLAN ACT (ARPA) – CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS (CLFRF) GRANT PROVISIONS

Funds are received from the U.S. Department of Treasury, Coronavirus Local Fiscal Recovery Fund (CLFRF) respectively (referred to as “Coronavirus State and Local Fiscal Recovery Funds” or “SLFRF”), Assistance Listing, CFDA Number 21.027.

Recipients under the State and Local Fiscal Recovery Funds (SLFRF) program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the “SLFRF statute”) that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury’s Interim Final Rule, and reporting requirements, as applicable.

All Subrecipients, Contractors and Subcontractors are required to comply with the statutory and regulatory requirements and the terms and conditions of the award.

Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per Memorandum M-21-20 and Memorandum M-20-21.

Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;

3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID–19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an Interim Final Rule to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.¹ It is the recipient’s responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

Treasury’s Rule

Treasury’s Interim Final Rule details recipients’ compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury’s Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

Eligible and Restricted Uses of SLFRF Funds

As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project’s eligibility, recipients are also responsible for determining subrecipient’s or beneficiaries’ eligibility and must monitor use of SLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury’s Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury’s Interim Final Rule establishes:

- A framework for determining whether a project “responds to” a “negative economic impact” caused by the COVID-19 public health emergency;
- Definitions of “eligible employers”, “essential work,” “eligible workers”, and “premium pay” for cases where premium pay is an eligible use;
- A definition of “general revenue” and a formula for calculating revenue lost due to the COVID-19 public health emergency;
- A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency’s Drinking Water and Clean Water State Revolving Funds; and
- A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

Treasury's Interim Final Rule also provides more information on four important restrictions on use of SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative interpretation; and, recipients may not use SLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's Interim Final Rule for more information on these restrictions.

Applicable Federal Policies

- Recipients, Subrecipients, Contractors and Subcontractors must follow the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) and the Terms and Conditions of the SLFRF assistance.
- American Rescue Plan Act (P.L. 117-2)
- U.S. Department of the Treasury
 - SLFRF Regulations (31 CFR 35)
 - Compliance and Reporting Guidance
 - Frequently Asked Questions
 - Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR 1000)
 - OMB "Uniform Guidance" 2 CFR 200, adopted by reference
 - Award Terms and Conditions
 - Assistance Listing Number 21.027 (Formerly CFDA Number)

SAM.gov Requirements

All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>).

Contracts and Subawards to Debarred and Suspended Parties

Pursuant to Code of Federal Regulations 2 CFR Subpart C §200.213, grantees and subrecipients must not make an award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension". By entering into this agreement Subrecipient agrees to comply with all relevant codes including 2 CFR Subpart C, "Responsibilities of Participants Regarding Transactions". When entering into a covered transaction with another person at the next lower tier, Subrecipient must verify that the person with whom you intend to do business is not excluded or disqualified.

Civil Rights Compliance

Recipients and Subrecipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do 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 CFR 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 CFR 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 CFR part 23.

Davis-Bacon Act Requirements (If Applicable)

Overview

Section 1606 of the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009) (the "Recovery Act"), requires grant award recipients, subrecipients, contractors, and subcontractors to comply with the wage requirements of the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and related acts, stating:

Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

Scope of the Davis-Bacon Act

The Davis-Bacon Act prevailing wage requirements apply to laborers and mechanics employed under contracts or subcontracts in excess of \$2,000 for construction, alteration, or repair activities (including but not limited to painting and decorating) that are funded, in whole or in part, under BTOP grant awards. In general:

- Laborers and mechanics – Are workers whose duties are manual or physical in nature, including apprentices, trainees and helpers, but do not include workers whose duties are primarily managerial, administrative, executive, or clerical. See 29 C.F.R. § 5.2(m).
- The \$2,000 threshold – Pertains to the amount of the prime construction contract, not to the amount of individual subcontracts. Accordingly, if the prime construction contract exceeds \$2,000, all construction work on the project (including subcontracts) is covered by the Davis-Bacon Act. See 29 C.F.R. § 5.5(a)(6).
- Construction, alteration, or repair activities – Are those occurring at the "site of the work" that involve the alteration, remodeling, or installation of items fabricated off-site; painting and decorating; manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work; and, in certain cases, transportation between the site of the work and other points. See 29 C.F.R. § 5.2(j).
- Site of the work – Is the physical place or places where the building or work called for in the contract will remain, and any other site where a significant portion of the building or

work is constructed, provided that such site is established specifically for the performance of the contract or project, and includes job headquarters, tool yards, batch plants, borrow pits, etc., if they are dedicated exclusively, or nearly so, to performance of the contract or project, and are adjacent or virtually adjacent to the site of the work. The site of the work does not include permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continued operation are determined wholly without regard to a particular Federal or Federally-assisted contract or project. See 29 C.F.R. § 5.2(l).

- Application to Governmental Agencies – Governmental agencies, such as states or their political subdivisions, are not subject to the Davis-Bacon Act requirements when construction work is being performed by their own employees on a "force account" basis. See 29 C.F.R. § 5.2(h).

Davis-Bacon Act prevailing wage requirements are likely to apply to construction and related activities undertaken in connection with Infrastructure Round 1 and Comprehensive Community Infrastructure (CCI) Round 2 projects. In many cases, Davis-Bacon Act prevailing wage requirements will also apply to activities under BTOP grants for Sustainable Broadband Adoption (SBA) and Public Computer Centers (PCC), when construction and related activities (including minor renovation of facilities) can be segregated from the other work contemplated by the grant. See 29 C.F.R. § 4.116; F.A.R. § 22.402(b).

Davis-Bacon Act Requirements

Required contract provisions (appearing at 29 C.F.R. § 5.5) and the applicable wage determination(s) for the activities contemplated by a construction project must be included in any contract or subcontract to which the Davis-Bacon Act applies providing, among other items, that:

- Laborers and mechanics must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) at least once a week;
- No paycheck deductions or rebates are permitted, except as permitted under Department of Labor (DOL) regulations (29 C.F.R. §§ 3.5-3.6); and
- Wage and fringe benefit rates must be no less than those contained in DOL wage determination for the labor classification for the work actually performed.

The recipient is responsible for ensuring that the required contract provisions appear in all contracts and subcontracts entered into by recipients, subrecipients, contractors, and subcontractors for construction, alteration and repair activities covered by the Davis-Bacon Act and related acts. Applicable wage determinations included in the contract must be verified by the recipient within 10 days of the contract date.

In cases where state wage rates (determined under state statutes often called "Mini-Davis-Bacon Acts") are higher than the Federal wage rates, the state wage rates take precedence and should be included in contracts in lieu of the lower, Federal wage rates. In cases of construction projects on tribal lands, the recipient should contact its assigned Federal Program Officer (FPO) for guidance on the interplay among the Davis-Bacon Act, state Mini-Davis-Bacon acts and the Tribal Employment Rights Ordinance (TERO).

Contracts for amounts over \$100,000 that are covered by the Davis-Bacon Act must include additional standard clauses (also appearing in 29 C.F.R. § 5.5) providing, among other things,

that overtime for laborers and mechanics must be paid at a rate 1.5 times the basic rate of pay for time worked in excess of 40 hours per week.

In addition, the DOL Davis-Bacon poster (WH-1321) must be prominently posted at the site of the work. Refer to: www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf.

Davis-Bacon Wage Rate Determinations

DOL conducts statewide surveys seeking payment data on wage and fringe benefit rates from construction contractors and other interested parties, such as labor unions. Wage determinations are issued by locality, typically on a county-by-county basis. Davis-Bacon Act wage determinations are published on DOL's Wage Determinations OnLine (WDOL) website accessible at: www.wdol.gov. The Davis-Bacon Act prevailing wages are determined by DOL based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area.

If DOL has not published a wage determination for work that is needed to complete a BTOP construction project, the recipient may seek a Conformance. The recipient must submit a Conformance request using Standard Form (SF) 1444. Please go to www.wdol.gov/library.aspx to obtain a copy of the form and instructions.

To complete the form, the recipient must describe the work to be done (identified with a classification that is used in the subject area in the construction industry) and propose a wage rate that bears a reasonable relationship to existing wage determinations. Typically, the rate must not be less than the wage determination for an unskilled laborer and, for a skilled craft, must be at least equal to the lowest wage determination for any other skilled craft.

Infrastructure and CCI recipients should submit the completed SF-1444 through Grants Online as an "Other Action Request." The SF-1444 will be routed to the National Oceanic and Atmospheric Administration (NOAA) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

SBA and PCC recipients should submit completed SF-1444 Conformance requests through the Post-Award Monitoring (PAM) System. To do so, the recipient should create a report package of the type "POR: PAM Other Request." After filling out and attaching the Request Template, the recipient should attach the completed SF-1444 form using the "Add File" button. The SF1444 will be routed to the National Institute of Standards and Technology (NIST) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

Recordkeeping and Monitoring Obligations

Recipients, subrecipients, contractors, and subcontractors must prepare weekly certified payroll documentation using Form WH347 (available at: www.dol.gov/whd/forms/wh347.pdf), properly completed for laborers and mechanics performing activities covered by the Davis-Bacon Act requirements of the Recovery Act. Subrecipients, contractors, and subcontractors must submit this information to the BTOP grant award recipient on a weekly basis within seven days of the regular payment date of the subrecipient's, contractor's or subcontractor's payroll period.

A recipient must review the weekly certified payroll documentation it receives from its subrecipients, contractors and subcontractors on an ongoing basis. See 29 C.F.R. §§ 3.3-3.4. If a subrecipient receives the original payroll documents, the subrecipient should review these documents and forward the original documents to the recipient on a weekly basis within the time period described above.

The recipient must maintain in its files the original Davis-Bacon Act payroll records it prepares for itself, as well as those prepared by subrecipients, contractors, and subcontractors. The recipient is not required to submit any of the payroll documents to the BTOP Grants Office unless the assigned Grants Officer makes a request for such records. The payroll records must be maintained so as to be easily accessed by BTOP Grants Officers and by other duly authorized officials. The recipient must retain these records as provided in the Department of Commerce (DOC) Uniform Administrative Requirements for Grants and Cooperative Agreements, 15 C.F.R. § 14.53 or 24.42, as applicable, generally for the later of three years after closeout of the award, or until any litigation, claim, or audit is resolved.

Enforcement and Penalties

Violation of the requirements of Section 1606 of the Recovery Act and the Davis-Bacon Act and related acts is a serious offense. Compliance is subject to audit during OMB Circular A-133 audits (including program-specific audits) of BTOP grant recipients and subrecipients, as well as audits and investigations by the DOC Office of Inspector General, the Government Accountability Office (GAO), the DOL Wage and Hour Division, and other duly authorized officials. A violation of the Davis-Bacon Act wage requirements may lead NTIA to impose appropriate enforcement action in connection with a BTOP grant award, up to and including suspension or termination of the award. In addition, contracting parties are subject to payment of back wages, and suspension or debarment from future contracts for a period of up to three years. Monetary damages may also apply. Falsification of certified payroll records or the required kickback of wages may subject a violator to civil or criminal prosecution, the penalty for which may include fines and/or imprisonment.