

CITY OF DETROIT ARPA REGULATIONS

The City has obtained federal funding to augment its response to the COVID-19 pandemic. This Exhibit includes several regulatory provisions and clauses as required under 2 C.F.R. 200 and other federal regulations associated with the federal funding being provided under the Agreement and is attached and incorporated by reference herein to Agreement.

All capitalized terms used herein and not otherwise defined in this Exhibit, shall have the meanings as designated in the Agreement.

I. Procurement Policy

The City of Detroit has provided a transparent, open, and fair opportunity for all eligible developers to participate in the NOFA. Developer's response to the NOFA was made without collusion with any other person, firm or corporation making any bid or proposal, or who otherwise makes a proposal. Developer must have a development and loan agreement and unconditional promissory note with the required approvals to receive disbursement of the loan funded with the ARPA funds.

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

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council as authorized by 41 U.S.C. § 1908, must address administrative, contractual, or legal remedies in instances where Beneficiaries 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 affected and the basis for settlement.

II. Equal Employment Opportunity

1. In addition to the fair employment practices agreed to by the Developer in Section Error! Reference source not found. of the Agreement, the Developer hereby agrees as follows:

Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order

11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. 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 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor".

(a) Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

(d) The Developer will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Developer commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

(g) In the event of the Developer's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Developer may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Developer will include the provisions of this Paragraph I(1) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each contractor or vendor. The Developer will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event Developer becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the administering agency, the Developer may request the United States to enter into such litigation to protect the interests of the United States.

2. The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the City so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement. The City agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Developer with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Developer debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Beneficiaries by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails

or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this contract; refrain from extending any further assistance to the City under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such City; and refer the case to the Department of Justice for appropriate legal proceedings.

III. Federal Compliance -Per City of Detroit staff, Davis-Bacon is N/A for this project.

1. If applicable, and consistent with the **Davis-Bacon Act (40 U.S.C. §§ 3141-3148)**, the parties agree all transactions regarding this Agreement shall be done in compliance with the Davis- Bacon Act (40 U.S.C. §§ 3141- 3144, and §§ 3146-3148) and the requirements of 29 C.F.R. Part 5 as may be applicable. The Developer shall comply with 40 U.S.C. §§ 3141-3144, and §§ 3146-3148 and the requirements of 29 C.F.R. Part 5 as applicable.

(a) 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 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

(b) In accordance with the statute, Developer 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, Developer must be required to pay wages not less than once a week.

(c) 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.

(d) The Act provides that the Developer 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) This subsection is applicable only to the extent the Agreement pertains to construction work and the projected capital costs of the contemplated project exceed \$10,000,000.

2. Consistent with the **Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708)**, the parties agree as follows:

(a) 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 C.F.R. Part 5).

(b) Under 40 U.S.C. § 3702 of the Act, Developer 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.

(c) 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.

(d) No Developer contracting for any part of the Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

3. In the event of any violation of the clause set forth in paragraph 1 or paragraph 2 of this Section III, Developer shall be liable for the unpaid wages. In addition, Developer shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this Section III, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this Section III.

4. The City of Detroit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Developer under the Agreement or any other Federal Contract with Developer, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Developer, such sums as may be determined to be necessary to satisfy any liabilities of such Developer for unpaid wages and liquidated damages as provided in paragraph III(3).

5. The Developer shall, as applicable, insert in any contracts the clauses set forth in paragraphs 1 through paragraph 4 of this Section III, and also a clause requiring the contractors to include these clauses in any lower tier subcontracts.

6. Consistent with the **Clean Air Act (42 U.S.C. §§ 7401-7671q.)** and the **Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387)**, the parties agree as follows:

(a) The Developer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The Developer agrees to report each violation to the City and understands and agrees that the Developer or will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The Developer agrees to include these requirements in each contract in excess of \$150,000. The Developer shall ensure each subcontract include provisions 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).

(d) The Developer agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

(e) The Developer agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

This subsection III(6) is applicable only to the extent the Agreement is for a sum greater than One Hundred Thousand and 00/100 Dollars (\$100,000.00)

7. Consistent with the **Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended)**, and for contracts greater than \$100,000, the parties agree as follows:

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

(b) Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal awardee.

8. **Debarment and Suspension** (Executive Orders 12549 and 12689). A contract award (see 2 C.F.R. 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 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. 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.

(a) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Developer is required to verify that none of the Developer's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) The Developer must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

(c) This certification is a material representation of fact relied upon by the Developer. If it is later determined that the Developer did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Developer, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The Developer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Agreement. The Developer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Procurement and Recovered Materials.

(a) In the performance of this Contract, the Developer shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (i) competitively within a timeframe providing for compliance with the Contract performance schedule; (ii) meeting Contract performance requirements; or (iii) at a reasonable price.

(b) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

10. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §401.2 (a) and the Developer 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 must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

General Contractor Signature

Contractor Name: _____

By: _____

Print: _____

Its: _____

Date: _____