

CONTRACTING REQUIREMENTS

The selected developer will be required to comply with all applicable Federal, State and local laws and regulations. These requirements vary depending upon the type of development and the source and amount of public investment, if any, and may include, without limitation, the payment of Prevailing Wages for construction, the preparation of Affirmative Action Plans, competitive bidding, compliance with the Small and Underutilized Business Enterprise program or equivalent federal program, and Business Subsidy Act/Living Wage Policy, and reporting requirements for those programs. Some of the standard requirements are further discussed below, but the following list is not exhaustive. Proposers unfamiliar with these standard requirements are urged to seek further information. Proposers should be aware that additional project costs may result from some of these requirements.

1. **Equal opportunity (nondiscrimination and affirmative action)** The selected developer and contractor will be required to submit a written Affirmative Action Plan for the development project and to comply and cause its contractors to comply with applicable provisions of Chapters 139 and 141 (Title 7, Civil Rights), Minneapolis Code of Ordinances, nondiscrimination provisions contained in Chapter 181, Minnesota Statutes, the Americans with Disabilities Act of 1990 (as amended), Section 109 of the Housing and Community Development Act of 1974 (as amended), the Age Discrimination Act of 1975 (as amended) and Executive Order 11246, as amended by Executive Order 12086. The selected developer will be required to agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability or other handicap, age (40 – 70), marital status, or status with regard to public assistance. The selected developer also will be required to take affirmative action to ensure that all employment practices are free of such discrimination. These employment practices include, but are not limited, to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The developer will post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause. The selected developer also will be required to, in all solicitations or advertisements for employees placed by or on behalf of the developer, state that it is an equal opportunity or affirmative action employer. CPED will require compliance in demolition, construction and marketing of development projects. (See attached MDCR Contract Compliance fact sheet for further Affirmative Action and other compliance requirements.)
2. In accordance with the City's **Prevailing Wage Policy**, the selected developer (for 8+ unit projects) covenants and agrees that it will cause its general contractor to comply with the wage and hour standards issued by the United States Secretary of Labor pursuant to the Davis Bacon Act, 40 U.S.C. Sections 276a to 276a-5, as amended, and the Contract Work Hours and Safety Standards Act 40 U.S.C. Sections 327-333. The developer shall maintain appropriate payroll documentation for a 3-year period after completion of the project.

Additional requirements for **federal funds**: all construction projects receiving **federal** funds must comply with the provisions of the Davis-Bacon Act (requirements vary depending on funding source – see attached compliance requirement summary). The Davis-Bacon Act requires that all contractors and subcontractors pay prevailing wages as determined by the Federal Davis-Bacon wage decision. All contractors and subcontractors subject to the Davis-Bacon Act must provide weekly certified payroll records to the Minneapolis Department of Civil Rights. The signed contract that contains the building specifications for the project must contain a copy of the appropriate United States Department of Labor Federal Wage Decision document and the HUD form 4010, Federal Labor Standards Provisions.

3. All development projects that receive any type of public financial assistance in excess of \$100,000 must establish contract goals for the utilization of **Small and Underutilized Businesses**.
4. The developer's contractor will be subject to the City's **Apprenticeship Training Policy** for development projects where public financial assistance is provided to the developer/owner.
5. The development must be in conformance with the Uniform Federal **Accessibility Standards** as published on April 1, 1988. Developers must describe the accessibility design for people with disabilities of each of the code required handicapped units, any proposed housing development (e.g. roll-in

showers), the mix of accessible units in the project and where they are located, and any appropriate safety features for vision- and hearing-impaired people.

6. The City's **Affordable Housing Policy** applies to any residential development (rental or ownership) with ten units or more, or a project with a residential component of 10 or more units, that receives any public financial assistance. Public financial assistance includes the receipt of City-wide resources through the normal, competitive RFP funding processes established by the City, or the receipt of non-City resources that are either passed through the City or requires the City to be a co-applicant.

Under the Affordable Housing Policy, three options are available:

- 20% of the units in the development must be affordable, or
- A comparable number of affordable units must be legally committed by the developer to be built elsewhere in the City, or
- A payment equal to the number of required affordable housing units times \$80,000 must be made into the City's Affordable Housing Fund.

Units are considered affordable if the rent (and/or the combined PITI with utilities) is no more than 30% of 50% of the Twin Cities Standard Metropolitan Statistical Area monthly household income, by family size. Affordable units must be occupied by households with incomes <50% MMI. Units must be affordable for a minimum of 15 years after completion.

7. **Rezoning Responsibility:** It is the selected developer's responsibility to undertake and finance any rezoning, variance and use permits necessary for approval of proposed development.
8. **Utilities:** It is the selected developer's responsibility to identify the locations of and provide for the installation of electricity, gas, water, sewer service and other utilities servicing the site from the public mains to the individual units.
9. **Construction Standards:** Development must meet FHA minimum property standards and all Minneapolis City codes, and projects will be reviewed for energy efficiency.
10. **Residential Sale and Commercial Sale/ Lease:** The completed units must be advertised and offered publicly and must be sold to the general public.
11. **Hold Harmless:** The Respondent shall agree to defend, indemnify and hold CPED harmless from any and all claims or lawsuits that may arise from the Candidate's activities under the provisions of the development agreement, that are attributable to the acts or omissions, including breach of specific contractual duties of the Respondent or the Respondent's independent contractors, agents, employees or officers.
12. **Insurance:** The following insurance information applies to projects approved for Program funding. Types of insurance required include general liability, auto, builder's risk, worker's compensation, and any other insurance related to the project. The policies of insurance required shall provide protection against claims which may arise out of or result from the rendering of or the failure to render services under the Agreement.
13. **Payment and Performance Bond:** Payment and performance bonds in the form prescribed by Minnesota Statutes, Section 574.26, covering the faithful performance of the Contractor's obligations under the Construction Contract, naming Lender as a co-obligee, in the full amount of the Construction Contract and written by a surety mutually acceptable to Lender and Borrower, or an irrevocable letter of credit from a lender approved by Lender in the amount of 100% of the Construction Costs.
14. **Bidding Requirements:** Developers are required to demonstrate compliance with CPED competitive bidding requirements for general and subcontractor selection.
15. **Interest of Members of City :** No member of the governing body, officer, employee or agent of the City who exercises any function or responsibilities in connection with the carrying out of the project to which this proposal pertains, shall have any personal interest, financial or otherwise, direct or indirect, in the Agreement.

16. Transfer of Interest

The Developer shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City, provided, however, that claims for money due or to income due to the Developer may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice to any such assignment or transfer shall be furnished to the City. The Developer shall not subcontract any services under this contract without prior approval of the City Department Contract Manager designated herein.

17. Performance Monitoring

The City will monitor the performance of the Developer against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Developer within a reasonable period of time after being notified by the City, contract termination procedures will be initiated. All work submitted by Developer shall be subject to the approval and acceptance by the City Department Contract Manager designated herein. The City Department Contract Manager designated herein shall review each portion of the work when certified as complete and submitted by the Developer and shall inform the Developer of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

18. Independent Contractor

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

19. Retention of Records

The Developer shall retain all records pertinent to expenditures incurred under this contract for a period of six years after the resolution of all audit findings, with the exception that such records shall be kept for a period of ten years after both the terms of a monitoring agreement have been fulfilled and all audit findings have been resolved for abatement programs. Records for non-expendable property acquired with funds under this contract shall be retained for three years after final disposition of such property.

20. Data Practices

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

All Proposals shall be treated as non-public information until the Proposals are opened for review by the City. At that time, the names of the responders become public data. All other data is private or non-public until the City has completed negotiating the contract with the selected vendor. At that time, the Proposals and their contents become public data under the provisions of the Minnesota Government Data Practices Act, Minn. Stat. C. 13 and as such are open to public review.

21. Inspection of Records

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

22. Living Wage Policy

All Developer employees will be paid at least a living wage. The definition of a Living Wage is at a minimum 110 percent of the current year federal poverty level for a family of four as provided by the federal Department of Health & Human Services for a Developer that does not supply employer-paid health insurance and 100 percent for a Developer that does supply employer-paid health insurance.

23. Applicable Law

The laws of the State of Minnesota shall govern all interpretations of this contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Developer.

24. Conflict and Priority

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

25. Travel

If travel by the Developer is allowable and approved for this contract, then Developer travel expenses must be reimbursed in accordance with the Contractor Travel Reimbursement Conditions, available from the City.

26. Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the City upon final approval of the final report or upon request by the City at any time before then. The City may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to the Developer.

27. Billboard Advertising

Through Ordinance 109.470, City and City-derived funds are prohibited from use to pay for billboard advertising as a part of a City project or undertaking.

28. Conflict Of Interest/Code Of Ethics

Developer agrees to be bound by the City's Code Of Ethics, Minneapolis Code Of Ordinances, Chapter 15. Developer certifies that to the best of its knowledge all City employees and officers participating in this Agreement have also complied with that Ordinance. It is agreed by the Parties that any violation of the Code Of Ethics constitutes grounds for the City to void this Agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

29. Termination

The City may cancel this Contract for any reason without cause upon thirty (30) days written notice, except that if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract, the other party shall have the right to terminate this Contract, if the default has not been cured after a ten (10) days written notice has been provided. If termination shall be without cause, the City shall pay Developer all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Developer, the City shall pay Developer all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Developer under this agreement shall, at the option of the City, become the property of the City, and the Developer shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Developer shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Developer. The City may, in such event, withhold payments due to the Developer for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Developer, from asserting any other right or remedy allowed by law, equity, or by statute.

ADDITIONAL FEDERAL REQUIREMENTS:

RELOCATION: If the Applicant's project is selected for funding, the Borrower shall comply with Titles I and II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-55) and 49 C.F.R. Part 24, for displacement of persons, businesses, nonprofit organizations, and farms occurring as a direct result of any acquisition of real property utilizing Community Development Block Grant (CDBG) funds to the extent said statutes apply to this agreement.

AFFIRMATIVE MARKETING: The Applicant shall agree to comply with Affirmative Marketing requirements.

COMPLIANCE WITH "SECTION 3" IN THE PROVISION OF TRAINING EMPLOYMENT AND BUSINESS

OPPORTUNITIES: The Borrower agrees to comply with the provisions of the Section 3 clause as set forth in 24 C.F.R. 135.20(b), and agrees to include the following language in all subcontractors executed under this program: The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.

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

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

ARCHITECTURAL COMPLIANCE: The Borrower agrees to comply with any regulations issued by HUD pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, 24 CFR 8.22 (new construction) and 8.23 (existing building), which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide to the Borrower any necessary guidelines for compliance with that portion of the regulations in force during the Agreement period. The Borrower must also comply with the Fair Housing Act 24 CFR 100.205. Section 504 uses Uniform Federal Accessibility Standards (UFAS) and Fair Housing Act uses American National Standards Institute (ANSI – 1986).

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

Federal Regulations

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

OSHA – 29 CFR Part 1910 and Part 1926.

HUD – 24 CFR Part 35 especially Subparts B, G, H, J, K & R

State Statute

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

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

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

City of Minneapolis Ordinance

Chapter 240 – Enforcement authority granted to the City's Department of Regulatory Services- Environmental Health Division, to enforce "lead orders" issued by the State. HUD regulations for lead paint have been in existence for many years, however, on September 15, 2000, new regulations became

effective. The regs consolidate all of HUD's existing regulations in one part of the Code of Federal Regulations (CFR), requires control of lead-contaminated dust associated with the presence of lead-based paint, requires clean up or clearance, and requires trained and certified lead paint professionals to assure that lead hazard control work is done safely.

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

EQUAL HOUSING OPPORTUNITY