

RESOLUTION NUMBER __:2020

**A RESOLUTION ACCEPTING THE MOREHEAD INSPIRATION CENTER CDBG GRANT (#19-048)
FROM THE KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT AND AUTHORIZING MAYOR
LAURA WHITE-BROWN TO SIGN ALL DLG REQUESTED EVIDENTIARY FORMS AND
ADMINISTRATIVE DOCUMENTS REQUIRED FOR SAID GRANT**

WHEREAS, the City of Morehead on or about September 30, 2019 submitted a CDBG application to the KY Department for Local Government requesting \$200,000 in CDBG Funds for the 2019 Morehead Inspiration Center (Recovery Kentucky) Project;

WHEREAS, on October 8, 2019 the KY Department for Local Government issued a letter to the City of Morehead giving preliminary approval to the 2019 CDBG application; and

WHEREAS, within the Grant Agreement there are certain required evidentiary materials that must be approved prior to obtaining a release of federal funds; and

NOW THEREFORE BE IT RESOLVED, by the City of Morehead Board of City Council as follows:

1. The Residential Anti-displacement and Relocation Assistance Plan, a copy of which is attached here is approved;
2. The KY Model Procurement Code, a copy of which is attached hereto, is adopted for this project only;
3. The Professional Services Contract, a copy of which is attached hereto, with the Gateway ADD to administer said project in the amount of \$10,000.00 (Ten Thousand Dollars & No Cents) is approved and the Mayor shall have the authority to sign said contract on behalf of the City; and
4. The Legally Binding Agreement between the City of Morehead and Pathways, Inc., a copy of which is attached hereto, is approved and the Mayor shall have the authority to sign on behalf of the City.

Approved this 9th day of March 2020 by the City of Morehead Board of City Council.

Laura White-Brown
Mayor-City of Morehead

Attest:

Crissy Cunningham, City Clerk

**Guideform Residential Antidisplacement and Relocation Assistance Plan
under Section 104(d) of the Housing and Community Development Act of
1974, as amended**

The City of Morehead will replace all occupied and vacant occupiable low/moderate income dwelling units demolished or converted to a use other than low/moderate income housing as a direct result of activities assisted with funds provided under the Housing and Community Development Act of 1974, as amended, as described in 24 CFR 570.488a(c)(1).

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in such demolition or conversion, the (jurisdiction) will make public and submit to the Department of Local Government the following information in writing:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low/moderate income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units; and
6. The basis for concluding that each replacement dwelling unit will remain a low/moderate income dwelling unit for at least 10 years from the date of initial occupancy.

The City of Morehead will provide relocation assistance, as described in 570.488a(c)(1) to each low/moderate income household displaced by the demolition of housing or by the conversion of a low/moderate income dwelling to another use as a direct result of assisted activities.

Consistent with the goals and objectives of activities assisted under the Act, the City of Morehead will take the following steps to minimize the displacement of persons from their home:

No occupied and vacant occupiable low/moderate income dwelling units will be demolished or converted to a use other than low/moderate income housing as a direct result of activities assisted with funds provided under the Housing and Community Development Act of 1974, as amended, as described in 24 CFR 570.488a(c)(1).

ADOPTED THIS ____ DAY OF MARCH 2020.

Laura White-Brown
Mayor-City of Morehead

ATTEST

Crissy Cunningham
City Clerk-City of Morehead

KCDBG PROCUREMENT CODE

All procurements made by the City of Morehead (hereafter referred to as Grantee involving the expenditure of local, state and federal funds on Morehead Inspiration Center (Recovery Kentucky) CDBG Project #19-048 shall be made in accordance with the following procurement standards.

Procurement transactions, regardless of method or dollar value, will maximize open and free competition. The Grantee shall not engage in procurement practices that may be considered restrictive in trade.

Purchases will be reviewed by the Treasurer to prevent duplication and to insure that costs are reasonable.

1. Methods for Procurement

Procurements shall be made by one of the following methods: (a) small purchase procedures, (b) competitive sealed bids, (c) competitive negotiation, (d) non-competitive negotiation.

A. SMALL PURCHASES

For purchases of less than \$50, efforts will be made to get the lowest and best price, but written records of such efforts are not necessary.

Purchases that cost more than \$50 but less than \$20,000 require quotations of rate, price, etc., but no legal advertisement is required. The **Grantee** will solicit responses from at least three vendors. If written responses are not available, a statement explaining the procurement will be prepared and filed. If quotations are obtained via telephone, a memorandum will be prepared setting forth the date the calls were made, parties contacted, and prices obtained.

The **Grantee** will make the award to the lowest responsive and responsible source, and enter into a contract formalizing the scope of work and terms of compensation.

B. COMPETITIVE SEALED BIDS

Bidding will be employed when detailed specifications for the goods or services to be procured can be prepared and the primary basis for award is cost. When the cost of a contract, lease or other agreement for materials, supplies, equipment or contractual services other than those personal or professional exceeds \$20,000, an Invitation for Bids (IFB) notice will generally be prepared. Per KRS 424.120, this notice will be published at least once in a qualifying official newspaper of general circulation within the community. This newspaper notice

will appear not less than seven (7) days and not more than twenty-one (21) days before the due date for bid proposals. In addition, the Grantee must solicit sealed bids from responsible prospective suppliers by distributing a copy of such notice to them.

The IFB will include a general description of the goods or services to be procured, the bid deposit and bond performance required (if applicable), the location where bid forms and specifications may be secured, the time and place for opening bids, and whether the bid award will be made on the basis of the lowest bid price or the lowest evaluated price. If the lowest evaluated price is used, the measurable criteria to be utilized must be stated in the IFB. The newspaper notice must also contain language that calls to the attention of bidders all applicable requirements that must be complied with such as Section 3 of the 1968 Housing Act, Section 109 of the 1974 Housing and Community Development Act, the Civil Rights Act of 1964, Executive Order 11246 and the Davis-Bacon Act.

Sealed bids will be opened in public at the time and place stated in the IFBs. The Grantee will tabulate the bids at the time of bid opening. The results of the tabulation and the bid documents will be evaluated by the review committee, which will make recommendations to the Grantee. The Grantee will make a firm fixed-price contract award in writing to the lowest responsive and responsible bidder. After the Grantee makes the bid award, a contract will be prepared for execution by the successful bidder. After the contract is signed, all bid deposits will be returned to all unsuccessful bidders.

The Grantee may cancel an Invitation for Bid or reject all bids if it is determined in writing that such is in the best interests of the Grantee. The Grantee may allow a vendor to withdraw a bid if requested at any time prior to the bid opening. Bids received after the time set for bid opening shall be returned to the vendor unopened.

Bid Overages:

The following options are available for awarding a bid following an overage:

- 1) Obtaining additional funds from another source and continuing with the original IFB.
- 2) Rejecting all bids, revising project scope and bid specifications, and issuing a revised IFB (competitive sealed bid) open to the entire public; or

- 3) Conducting competitive negotiations with **all** bidders. **(Grantees must seek pre-approval from DLG for this option).**

Competitive negotiations under option (3) must take place under the following criteria:

1. If discussions pertaining to the revision of the specifications or quantities are held with any bidder, all of the bidders shall be afforded an opportunity to take part in such discussions.
2. After discussions with the bidders, the grantee shall revise the scope of work accordingly and issue an RFP open to all bidders, providing for expedited proposals. No advertisement is required, but the grantee shall allow **at least seven days** for bidders to submit proposals.
3. The RFP shall be awarded on the basis of **lowest bid price**.

C. COMPETITIVE NEGOTIATION

The Grantee may utilize competitive negotiations, regardless of contract amount, upon a written determination that:

1. Specifications cannot be made specific enough to permit the award of a bid on the basis of either the lowest bid price or the lowest evaluated bid price (in other words, bidding is not feasible).
2. The services to be procured are professional or personal in nature.

The use of the competitive negotiations procurement method for contracts other than architectural, engineering, planning or administrative services must be pre-authorized by DLG. With the exception of procurement of certain professional services (principally engineering services), competitive negotiations will proceed as follows:

1. Proposals will be solicited through a qualifying official newspaper advertisement; additionally, a Request for Proposal (RFP) may be prepared and mailed to qualified vendors. The newspaper advertisement must be published at least seven (7) days and not more than twenty-one (21) days

before the date for receipt of the proposals. The RFP will describe services needed and identify the factors to be considered in the evaluation of proposals and the relative weights assigned to each selection factor. The RFP will also state where further details regarding the RFP may be obtained. The RFP will call attention to the same regulations discussed in the bidding process. Requests for proposals will always include cost as a selection factor except for engineering services.

2. Award must be made to the offeror whose proposal is determined by the review committee to be most advantageous to the program, with price and other factors considered. Evaluations must be based on the factors set forth in the Request for Proposal and a written evaluation of each response prepared. The review committee may contact the firms regarding their proposals for the purpose of clarification and record in writing the nature of the clarification. If it is determined that no acceptable proposal has been submitted, all proposals may be rejected. New proposals may be solicited on the same or revised terms or the procurement may be abandoned.

For the procurement of architectural/engineering (A/E) professional services, an alternative to RFPs may be used. The Grantee/Subrecipient may publish a Request for Qualifications. RFQs are handled in a similar method to RFPs with the exception that cost is not a factor in the initial evaluation. A review committee will evaluate the responses and rank them by comparative qualifications. The highest scoring person or firm will be contacted and the selection committee will negotiate cost. If the committee is unable to negotiate a satisfactory cost arrangement, the second highest scoring person or firm will be invited to negotiate. The committee will maintain a written record of all such negotiations.

D. NON-COMPETITIVE NEGOTIATIONS

Non-competitive negotiation is procurement through solicitation of a proposal from one source, and is often referred to as sole source procurement. A contract may be awarded by noncompetitive negotiation only when the award is infeasible under small purchase procedures, competitive sealed bids, or competitive negotiations and one of the following circumstances applies:

1. There is some public emergency that will not permit delay resulting from competitive solicitation (the grantee must declare an emergency as authorized by law); or

2. The results of the competitive negotiations are inadequate;
or
3. The product or service is available only from a single source.

Caution: The use of the non-competitive negotiations procurement method must be authorized by DLG.

The following requirements apply to the non-competitive negotiations procurement process:

1. Negotiations must be conducted with the selected company regarding a scope of work and price; and
2. Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

II. CONTRACTS

Generally, all procurement in excess of \$500 will be memorialized and supported by a written contract. Where it is infeasible or impractical to prepare a contract, a written finding to this effect will be prepared and a purchase order regarding the transaction will also be prepared. The contractual provisions required by "The Common Rule" will be included in all contracts and purchase orders.

III. DOCUMENTATION

All source documents supporting any given transaction (receipts, purchase orders, invoices, RFP/RFQ data, and bid materials) will be retained and filed in an appropriate manner. Where feasible, source documents pertinent to each individual procurement shall be separately filed and maintained. Where it is infeasible to maintain individual procurement files, source documents will be filed and maintained in a reasonable manner (examples include chronologically, by vendor, by type of procurement, etc.). Whatever form of documentation and filing is employed, the purpose of this section is to insure that a clear and consistent audit trail is established. At a minimum, source document data must be sufficient to establish the basis for selection, basis for cost (including the issue of reasonableness of cost) and basis for payment.

IV. LOCALLY OWNED, MINORITY OWNED, FEMALE OWNED AND SMALL BUSINESSES

The Grantee shall make and document efforts to solicit participation of locally owned, minority owned, female owned and small businesses. Where feasible, evaluation criteria will include a factor with an appropriate weight for these firms. A list of locally owned, minority owned, female owned and small businesses and also minority businesses located within the trade region shall be maintained and utilized

when issuing IFBs, RFPs and RFQs. The Grantee shall also consult this list when making small purchases.

VI. SECTION 3

Grantee shall abide by its Section 3 action plan and shall, to the maximum extent feasible, as required by 24 CFR Part 135, award contracts to businesses that provide economic opportunities for low and very low-income persons residing in the project area.

VII. CODE OF CONDUCT

A. CONFLICTS OF INTEREST

In addition to the prohibitions set forth in 24 CFR 570.489(h) and 24 CFR 85.36(b)(3), the following prohibitions shall apply:

It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter,

pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

B. PENALTIES

Any elected official, employee or designated agent of the **Grantee** who knowingly and deliberately violates the provisions of this code will be open to civil suit without the legal protection of the **Grantee**. Furthermore, such a violation of these procurement standards is grounds for dismissal by the **Grantee**.

Any contractor or potential contractor who knowingly and deliberately violates the provisions of these procurement standards will be barred from future transactions with the Grantee/Subrecipient.

ADOPTED THIS _____ DAY OF MARCH 2020

Laura White-Brown
Mayor-City of Morehead

ATTEST

Crissy Cunningham
Morehead City Clerk

CONTRACT FOR PROFESSIONAL SERVICES

PART I – AGREEMENT

This Contract for Professional Services is by and between the City of Morehead, Kentucky, 40351 (hereinafter called the "City"), Mayor Laura White-Brown, hereunto duly authorized, of 314 Bridge Street, Morehead, KY 40351 and the Gateway Area Development District (hereinafter called the "ADD"), Joshua A. Farrow, Executive Director, hereunto duly authorized, of 110 Lake Park Drive, Morehead, KY 40351

WITNESSETH THAT:

WHEREAS, the City has entered into an agreement with the Kentucky Department for Local Government (DLG) for the implementation and administration of a \$200,000 (Two Hundred Thousand Dollars and No Cents) Kentucky Community Development Block Grant (Morehead Inspiration Center (Recovery Kentucky)(CDBG #19-048) and,

WHEREAS, the City desires to engage the ADD to render certain services in connection with its Kentucky Community Development Block Grant;

NOW, THEREFORE, the parties do mutually agree as follows:

1. Employment of ADD

The City hereby agrees to engage the ADD and the ADD hereby agrees to perform the following Scope of Services:

2. Scope of Services

The ADD shall, in a satisfactory and proper manner, perform the following services in regard to the current Kentucky Community Development Block Grant and contingent upon the grant agreement. Services in each of the above work areas shall be performed under and at the direction of the City. The ADD shall:

1. Prepare a Format II Environmental Assessment and prepare the necessary legal or public notices and publish as required by DLG if applicable
2. Prepare Environmental Certification per 24 CFR, Part 58 and submit to DLG to obtain Environmental Clearance
3. Coordinate the Format II Environmental Assessment findings with the project engineering/architectural firm(s), the City and other funding agencies or partners if applicable
4. Prepare and submit, to DLG, the required Evidentiary Materials to obtain a Release of Funds
5. Establish and maintain Project Implementation files
6. Prepare all Affirmative Action, Equal Opportunity and Fair Housing, Drug-free Workplace, Section 504 and similar required documents as required by DLG
7. Review and monitor procurement procedures prior to the expenditure of Federal funds
8. Prepare and submit all special financial reporting requirements to DLG as requested

9. Assist the City in Contract Administration and monitoring requirements of the project, including enforcement of labor standards (if applicable) and conducting of pre-construction conferences as required
10. Attend meetings and prepare reports as may be necessary to provide information regarding project progress
11. Serve as liaison with HUD, DLG or local representatives (utility companies, contractors, sub-contractors, Inspectors), coordinate and be available for all HUD or State monitoring visits and/or on-site reviews
12. Monitor all weekly/monthly payrolls and time sheets, if applicable
13. Monitor Workforce Utilization Plan and Section 3 requirements
14. Attend the Project Monitoring as requested by HUD, DLG or the City's auditors and make all project files available for the monitoring
15. Assist, if applicable, in clearing any outstanding monitoring or audit findings
16. Finalize all project files and transfer to the City for storage for a period of five (5) years after closeout
17. Preparation and submittal of the Project Completion Report as required by DLG

Any programs resulting from additional funding would require negotiation and contract addendum.

3. Time of Performance

The services of the ADD shall commence on February 10, 2020 and be provided on a per-project basis as requested by the City. The services of the ADD under this contract will conclude with DLG's concurrence or acceptance of the submitted Project Close Out Report(s) (PCR) relating to the Morehead Inspiration Center (Recovery Kentucky) Project, CDBG #19-048 project. Such services shall be continued in such sequence as to assure their relevance to the purposes of this Contract.

4. Access to Information

It is agreed that all information, data, reports, records and maps as are existing, available and necessary for the carrying out of the work outlined above, shall be furnished to the City by the ADD. No charge will be made to the City for such information and the ADD will cooperate with the City in every way possible to facilitate the performance of the work described in this Contract. The ADD shall have a computer, software and printer made available to facilitate the work.

5. Compensation and Method of Payment

The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$10,000.00 (Ten Thousand Dollars and No Cents) for all contract services. Of the compensation and reimbursement amount \$.00 (No Dollars and No Cents) is for Planning Expenses and the remaining \$10,000.00 (Ten Thousand Dollars and No Cents) is for Administration Expenses.

6. Ownership Documents

All documents, including original drawings, estimates, specifications, field notes and data are the property of the City. The ADD may retain reproducible copies of drawings and other documents.

The ADD shall be responsible for the use of reasonable skill and care befitting the profession in the day-to-day activity of this project.

The ADD shall comply with the requirements of all applicable laws, rules and regulations in connection with the services of the City, and shall exonerate, indemnify and hold harmless the City, its officers, agents and all employees from and against them, and local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and Income Tax laws.

9. Terms and Conditions

10. Address of Notices and Communications

Joshua A. Farrow
Gateway A.D.D.
110 Lake Park Drive
Morehead, KY 40351

Each paragraph of this Contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application

By: _____
Joshua A. Farrow, Executive Director Date

By: _____ Date _____
Laura White-Brown, Mayor

CONTRACT FOR PROFESSIONAL SERVICES

PART II – TERMS AND CONDITIONS

1. Termination of Contract for Cause

If, through any cause, the ADD shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the ADD shall violate any of the covenants, agreements or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the ADD of such termination and specifying the effective date thereof, at least ten days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the ADD shall, at the option of the City, become its property and the ADD shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. In the event that the City is not successful in obtaining funding through the Kentucky Community Development Block Grant Program, that portion of this Contract shall be terminated.

In the event that the Kentucky Department for Local Government terminates the Contract between the Kentucky Community Development Block Grant (KCDBG) Program and the City, the agreement between the City and the ADD shall also be terminated. The City shall have the same termination rights as listed between the ADD and the City.

Notwithstanding the above, the ADD shall not be relieved of liability to the City for damages sustained by the ADD by virtue of any breach of the Contract by the ADD, and the City may withhold any payments to the ADD for the purpose of set-off until such time as the exact amount of damages due the City from the ADD is determined.

2. Termination for Convenience of the LPA

The City may terminate this Contract at any time by giving at least ten (10) days notice in writing to the ADD. If the Contract is terminated by the City as provided herein, the ADD will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the ADD, Paragraph 1 hereof relative to termination shall apply. In the event the Kentucky Community Development Block Grant (KCDBG) Program uses this termination clause, the City shall pass same terms to the ADD.

3. Changes

The City may, from time to time, request changes in the scope of services of the ADD to be performed hereunder. Such changes, including any increase or decrease in the amount of the ADD's compensation, which are mutually agreed upon by and between the City and the ADD, shall be incorporated in written amendments to this Contract. These changes could result in contract addendum with the ADD.

4. Personnel

- A. The ADD represents that they have, or will secure at their own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.

- B. All of the services required hereunder will be performed by the ADD or under the supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

5. Assignability

The ADD shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto: provided, however, that claims for money by the ADD from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

6. Reports and Information

The ADD, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. Findings Confidential

All of the reports, information, data, etc. prepared or assembled by the ADD under this Contract are confidential and the ADD agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

8. Copyright

No reports, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the ADD.

9. Compliance with Local Laws

The ADD shall comply with all applicable laws, ordinances and codes of the State and local governments, and the ADD shall hold the City harmless with respect to any damages arising from any actions committed in performing any of the work embraced by this Contract.

10. Access to Records

The ADD shall maintain accounts and project records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds.

These records will be made available to the City, the Kentucky Department for Local Government, U.S. Department of Housing and Urban Development and the Comptroller General of the United States or any of their duly authorized representatives.

These parties shall have access to any books, documents, papers and records of the ADD, which are directly pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions. All records shall be maintained for three years after the project closeout.

11. Title VI Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

12. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

13. Conflict of Interest Clauses

Interest of Members of a City

No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the ADD shall take appropriate steps to assure compliance.

Interest of Other Local Public Officials

The ADD covenants that they presently have no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The ADD further covenants that in the performance of this Contract, no person having any such interest shall be employed.

"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities (contracts less than \$10,000)

- A. The work to be performed under this Contract 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. 1701u. 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 area of the project.
- B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
- C. The ADD will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in

conspicuous places available to employees and applicants for employment or training.

- D. The ADD will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The ADD will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issues hereunder prior to the execution of the contract, shall be a condition if the Federal financial assistance provided the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

Executive Order 11246, Section 202 Equal Opportunity Clause (contracts above \$10,000)

During the performance of this Contract, the ADD agrees as follows:

- A. The ADD will not discriminate against any employee or applicant for employment because of race, creed, sex, color, or national origin. The ADD will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, 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 of training, including apprenticeship. The ADD agrees to 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.

- B. The ADD will, in all solicitation or advertisements for employees placed by or on behalf of the ADD, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
- C. The ADD will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not

apply to contracts or subcontracts for standard commercial supplies or raw material.

- D. The ADD 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.
- E. The ADD will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the City's Department of Housing and Community Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the ADD's non-compliance with the non-compliance clause of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the ADD may be declared ineligible for further government 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.
- G. The ADD will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

The ADD will take such action with respect to any subcontract or purchase order as the City's Economic Development Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the ADD becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City's Department of Housing and Community Development, the ADD may request the United States to enter such litigation to protect the interests of the United States.

Special Equal Opportunity Provisions (Applicable to Federally assisted construction contracts and related subcontracts \$10,000 and under)

Three paragraph Equal Opportunity Clause for activities and contracts not subject to Executive Order 11246, as amended.

During the performance of this Contract, the ADD agrees as follows:

1. The ADD shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The ADD shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without

regard to their race, color, religion, sex 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.

2. The ADD shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause.

The ADD shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. The ADD shall incorporate foregoing requirements in all subcontracts.

Section 3 Plan Format (for contracts \$10,000 and above)

Gateway Area Development District, Inc. agrees to implement the following specific affirmative action steps directed at increasing the utilization of low-income residents and business within the City of Morehead.

- A. To ascertain from the locality's housing official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the City the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. *To insert this Section 3 Plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. *To ensure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.

- G. To insure that all appropriate project area business concerns are notified of pending sub-contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 Plan.
- J. To list all projected workforce needs for all phases of this project by occupation, trade, skill level and number positions.

*Loans, grants, contracts and subsidies for less than \$10,000 will be exempt.

Rehabilitation Act of 1973, Section 504 Handicapped (if \$2,500 or over)

Affirmative Action for Handicapped Workers

- A. The ADD will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The ADD agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The ADD agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the ADD's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The ADD agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the ADD's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The ADD will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the ADD is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

- F. The ADD will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor.

The ADD will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

Age Discrimination Act of 1975 (for contracts over \$2,000)

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination receiving Federal financial assistance.

Energy Efficiency

The ADD shall recognize 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.

As officers and representatives of this Contract, we the undersigned, have read and fully agree to this Affirmative Action Plan, and become a part to the full implementation of this program.

Joshua A. Farrow
Gateway Area Development District

Date

Mayor Laura White-Brown
City of Morehead

Date

LEGALLY BINDING AGREEMENT

THIS AGREEMENT, entered into this ____ day of March 2020 by and between the **City of Morehead**, hereinafter referred to as the Recipient and **Pathways, Inc.**, hereinafter called the Subrecipient. This agreement is being executed in two (2) original contracts, each of which is deemed an original.

WHEREAS, the Recipient has entered into Grant Agreement Number 19-048 with the Commonwealth of Kentucky, Department for Local Government (DLG) and

WHEREAS, the payment of funds to the Recipient under the terms of Grant Agreement Number 19-048 is contingent upon the Subrecipient contracting to undertake certain responsibilities, and

WHEREAS, the funds made available under the terms of the Grant Agreement Number 19-048 will directly benefit the Subrecipient,

NOW, THEREFORE, for and in further consideration of the mutual promises and covenants hereinafter contained, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

ITEM 1: The Recipient and Subrecipient do hereby agree to carry out and perform all of the activities required of it under the terms and conditions of the Grant Agreement Number 19-048, which agreement is incorporated herein by reference as if copied in full.

The Recipient agrees to perform project activities as enumerated in Exhibit B of the Grant Agreement Number 19-048 and summarized below:

1. The Recipient agrees to perform activities as stated in the CDBG Application and given preliminary approval on October 8, 2019 as summarized below:
 - a) The Recipient shall provide that Subrecipient with CDBG Funds in the amount of \$190,000.00 (One Hundred Ninety Thousand Dollars and No Cents) for the Morehead Inspiration Center for Men (Recovery Kentucky) operational costs, which are limited to staff salaries, staff benefits, stipends, and shared staff costs.
 - b) The Recipient shall ensure that the Subrecipient implements the social recovery program model as outlined in the Recovery Kentucky Guidelines.
 - c) The Recipient shall ensure that the Subrecipient meets the National Objective of 51 percent low and moderate-income (LMI) benefit during the CDBG funding period.
 - d) The Recipient shall be responsible for determining the objectives of each activity, measuring the outcomes of each activity funded with

CDBG funds utilizing a performance measurement system provided by DLG. This data shall be reported to DLG on an annual basis and/or made available upon request until the project is closed.

2. The Recipient shall provide necessary administration of the project to assure compliance with all applicable State, Federal and Local Statutes, as set forth in the KCDBG Statement of Assurances signed by Mayor Laura White-Brown, on September 30, 2019 and submitted on or about that date as part of the project application.
3. The Recipient shall expend no more than \$10,000.00 (Ten Thousand Dollars and No Cents) program year in CDBG Funds to cover costs of providing Administration of the project.

ITEM 2: The Recipient and Subrecipient do hereby agree to carry out and perform all of the activities required of it under the terms and conditions of the Grant Agreement Number 19-048, which agreement is incorporated herein by reference as if copied in full. "Subrecipient Activities" agrees for this project shall consist of the following:

The Subrecipient also agrees to perform project activities as enumerated in Exhibit B-2 of the Grant Agreement Number 19-048 and summarized below:

1. The Subrecipient shall perform activities as stated in the CDBG Application and given preliminary approval on October 8, 2019 as summarized below:
 - a) The Subrecipient shall use CDBG Funds for the Morehead Inspiration Center for Men (Recovery Kentucky) operational costs, which are limited to Morehead Inspiration Center for Men staff salaries, staff benefits, stipends and shared staff costs.
 - b) The Subrecipient shall implement the social recovery program model as outlined in the Recovery Kentucky Guidelines and application.
 - c) The Subrecipient shall collect and compile the necessary client income data and provide evidence that the project meets the National Objective of 51 percent low and moderate-income (LMI) benefit during the CDBG funding period. This information must be reported to DLG on an annual basis and/or made available upon request.
 - d) The Subrecipient shall collect and compile the necessary data (payrolls, receipts and performance measures) and provide evidence that the CDBG Funds were used as stated in paragraph a. The Subrecipient shall also measure the outcomes of each activity funded with CDBG Funds utilizing a performance measurement system provided by DLG. This data shall be reported to DLG on an annual basis and/or made available upon request until the project is closed.

- e) The Subrecipient shall provide necessary administration of the project to assure compliance with all applicable State, Federal and Local Statutes, as set forth in the KCDBG Statement of Assurances signed by Mayor Laura White-Brown on September 30, 2019 and submitted on or about that date as part of the project application.

Item 3: The Recipient shall expend no more than \$10,000/program year in CDBG Funds to cover costs of providing administration of the project.

The Recipient and Subrecipient further agrees as follows:

- A. To maintain for a period of five (5) years following project closeout all financial records and documents relative to disbursement of any CDBG or other funds identified in and required by the Grant Agreement. Such records include, but are not limited to, ledgers, bank statements, contracts, invoices and reports.
- B. To grant access to inspect, copy, audit and examine at all reasonable times employment and financial records to any duly authorized representative of the Commonwealth, HUD, Inspector General and General Accounting Office of the United States for a period up to five (5) years following completion of closeout procedures.
- C. To comply with all State and Federal laws and regulations pertinent to the project.
- D. That no transfer of grant funds by the Recipient to the Subrecipient shall be or be deemed an assignment of grant funds, and that the Subrecipient shall neither succeed to any rights, benefits or advantages of the Recipient under the terms of the hereinabove described Grant Agreement Number 19-048 nor attain any rights, privileges, authorities or interest in or under the said agreement.
- E. That the Subrecipient acknowledges nothing contained in the said agreement, nor in any contract between the parties hereto, nor any act of the Commonwealth, the Recipient or any other party shall be deemed or construed to create any relationship or third-party beneficiary, principal and agent, limited or general partnership or joint venture, or of any association or relationship involving the Commonwealth.
- F. That the Recipient shall not be liable to the Subrecipient or any party except the Commonwealth, for the completion of, or the failure to complete, any activities which are a part of the project herein contemplated, except those specified in Exhibit B-2 of the said Grant Agreement Number 19-048.
- G. None of the Subrecipient's designees, agents, members, officers or employees, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be performed in connection with the project herein contemplated at any time during or after such person's tenure with the Subrecipient.
- H. The obligations of the parties are totally contingent upon the obtaining of a Release of Funds from the Kentucky Department for Local Government

(DLG) and no project activities other than environmentally exempt activities may occur until the release is achieved.

- I. Recipient and Subrecipient agree and accept that all applicable provisions of the Grant Agreement Number 19-048 are incorporated into and made a part of this Legally Binding Agreement.
- J. The Legally Binding Agreement Standard Provisions attached to this Agreement as Exhibit 1 are considered to be an integral part of this Agreement. These provisions are subject to change from time to time as Federal laws and regulations are promulgated. The Subrecipient will be notified in writing if any changes occur.
- K. Either party may cancel this Legally Binding Agreement at any time for cause or may cancel without cause on thirty (30) days written notice.
- L. The Recipient and Subrecipient further agrees that at no time will the facility (Morehead Inspiration Center) be utilized for general governmental purposes.

Recipient: City of Morehead

Examined as to form and legality:

Laura White-Brown, Mayor

Recipient Attorney

Commonwealth of Kentucky, County of Rowan

Subscribed, sworn to and acknowledged before me by James Thomas Trent, Mayor by and through its resolution on this _____ day of March 2020.

My Commission expires:

Notary Public

Subrecipient: Pathways, Inc.

Kimberly K. McClanahan, CEO

Commonwealth of Kentucky, County of Boyd

Subscribed, sworn to and acknowledged before me by Kimberly K. McClanahan, CEO by and through its resolution on this _____ day of March 2020.

My Commission expires:

Notary Public

**LEGALLY BINDING AGREEMENT
EXHIBIT I
STANDARD PROVISIONS**

NOTE: The following CDBG Provisions should be used with all Legally Binding Agreements where CDBG funds are being used in whole or in part.

1. **Unexpended Grant Funds:** The Subrecipient agrees that it will return to the Recipient any unexpended grant funds provided by the Recipient under this Agreement.
2. **Program Income:** Briefly describe how the program income generated from CDBG funded activities will be handled. No Program Income will be generated from this project as a result of CDBG funded activities.
3. **Limitation of Liability:** The Subrecipient will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the Recipient.
4. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG funds for use on this project, shall be vested in the unit of local government. When the unit of local government determines that the property is no longer required for the purposes of this project, the unit of local government must notify the Department of Local Government (DLG) and obtain approval for disposition of the property in accordance with applicable guidelines.
5. **Agreement/Contract:** If any provision in this agreement/contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this agreement/contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.

The failure of either party to insist upon strict performance of any terms, conditions and covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

Federal, State and local laws, ordinances and codes are subject to change from time to time as they are promulgated. The Subrecipient shall be notified in writing of any such changes when they occur and they shall be incorporated in writing into this contract/agreement upon concurrence by both parties unless such changes are considered to have an essential impact upon the intent of this agreement/contract and then they shall be incorporated upon notification to the Subrecipient.

6. **Terms and Conditions:** DLG reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the Community Development Block Grant Program.
7. **Reporting Requirements:** The Recipient and Subrecipient agrees to complete and submit all reports, in such form and according to such schedule, as may be required by DLG.

8. **Maintenance of Records:** Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close-out. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five (5) years after the final close-out report.

However, if any litigation, claim, or audit is started before the expiration of the five (5) year period, then records must be retained for five (5) years after the litigation, claim or audit is resolved.

9. **Access to Records:** Records with respect to all matters covered by this agreement shall be made available for audit and inspection by DLG, HUD or their representatives.
10. **Sanctions:** If the Subrecipient fails or refuses to comply with the provisions set forth herein, then DLG or the Recipient may take any or all of the following sanctions: cancel, terminate or suspend in whole or in part this agreement, or refrain from extending any further funds to the Subrecipient until such time as the Subrecipient is in full compliance.
11. **Applicable Law:** In addition to the applicable Federal Laws and Regulations, this agreement is also made under and shall be construed in accordance with the laws of the Commonwealth of Kentucky. By execution of this agreement, the Recipient and Subrecipient agrees to submit to the jurisdiction of the Commonwealth of Kentucky for all matters arising or to arise hereunder, including but not limited to performance of said agreement and payment of all licenses and taxes of whatever kind or nature applicable hereto.
12. **Uniform Administrative requirements:** The Recipient and Subrecipient shall adhere to the following administrative requirements:

Financial: Guidelines for financial and compliance audits of Federally assisted programs which are OMB Circular A-133, and OMB Circular A-87.

Procurement: The following provisions regarding "conflicts of interest" apply to the use and expenditure of CDBG funds by the Recipient and the Subrecipient.

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the Commonwealth of Kentucky or a unit of general local government or any designated public agencies or subrecipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to CDBG activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the Department for Local Government on a case-by-case basis as requested upon full disclosure in writing.

Should any governmental entity, recipient, subrecipient, employee or official know or perceive any breach of ethical standards or conflict of interest involving any other CDBG grant, they shall immediately notify the Department for Local Government.

Personnel: All contractors and subcontractors engaged in the project shall be fully qualified and properly licensed under State and local law to perform such services.

The Recipient and Subrecipient shall insure that all Prime Contractors/Subcontractors are bonded and insured in accordance with State and Federal requirements.

Other Program Requirements: All activities by the Recipient and Subrecipient shall be carried out in compliance with all Federal laws and regulations except for environmental responsibilities and review process under Executive Order 12372, which are the responsibility of the Recipient.

Suspension and Termination: In accordance with 24 CFR 85.43 suspension or termination may occur if the Recipient and/or Subrecipient fails to comply with any terms of this Agreement, and that the Agreement may be terminated for convenience in accordance with 24 CFR 85.44.

Debarment Certification: The Recipient must verify that all contractors and subcontractors are not listed in the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions", prior to receiving Federal funds. The Recipient must require that any prime contractor or lower tier contractor with a contract valued at more than \$100,000 must also complete a debarment certification and the Recipient will keep it on file for review as outlined in records and reports. The Recipient must also check the eligibility on all contractors and subcontractors who perform work under this Agreement regardless of dollar amount.

Use of Real Property and Reversion of Assets: Upon expiration or termination of this Agreement the Subrecipient shall transfer on behalf of the Recipient, to the Department for Local Government, or the Department for Local Government's Assignee, any CDBG funds on hand at that time and any accounts receivable attributable to the use of CDBG funds.

Any real property acquired or improved in whole or in part with CDBG funds must continue to be used for the purpose for which it was acquired or improved. Any changes in its use must be approved by the Department for Local Government in writing.

Amendments: Any changes in the scope of the project, as outlined in this Agreement, including cost increases, must be submitted in writing by the Subrecipient to the Recipient as a request for an award adjustment. Any adjustment granted by the Recipient shall be appended to this Agreement as an amendment.

13. **Copyright:** Except as otherwise provided in the terms and conditions of this contract, the Recipient and Subrecipient paid through this contract is free to copyright any books, publications or other copyrightable materials developed in the course of and under this contract. However, the U. S. Department of Housing and Urban Development and DLG reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for Federal Government and State Funded Agencies (SFA) purposes:

- A. the copyright in any work developed under this contract; and

- B. any rights of copyright to which a Recipient and Subrecipient purchases ownership with grant support.

The Federal Government's rights and the DLG's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

14. **Compliance with Air and Water Acts:** Applicable to construction contracts and related subcontracts exceeding \$100,000: This contract is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended from time to time.

- A. A stipulation by the Contractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities, issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. Agreement by the Contractor to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 USC 1857c-8-0 and section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said section 114 and 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition of award of contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract under consideration is to be listed on the EPA list of Violating Facilities.
- D. Agreement by the Recipient and Subrecipient that they will include or cause to be included the criteria and requirements in paragraph (A) through (D) of this agreement, in every nonexempt subcontract and requiring that the Contractor will take such action as the State may direct as a means of enforcing such provisions.

In no event shall any amount of assistance provided under this agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

15. **Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas:** It is national policy to award a fair share of contracts to small and minority and women's owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- A. Including qualified small and minority businesses on solicitation lists;
- B. Assuring that small, minority and women owned businesses are solicited whenever they are potential sources;
- C. Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned businesses' participation;

- D. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and
 - E. Using the services and assistance of the Small Business Administration, the Kentucky Cabinet for Economic Development, the U. S. Department of Commerce and the Community Services Administration as required.
16. **Confidential Information:** Any reports, information, data, etc., given to, prepared by, or assembled by the Recipient and Subrecipient under this agreement, which DLG requests to be kept confidential, shall not be made available to any individual or organization by the Recipient and Subrecipient without prior written approval of DLG.
 17. **Prime Non-Profit (and/or) Participating Party Responsibilities:** The Recipient and Subrecipient is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this agreement. The Recipient will consider the Subrecipient to be the sole point of contact with regard to contractual matters.
 18. **Subcontracting:** If any part of the work covered by this agreement is to be subcontracted, the Subrecipient shall identify the subcontracting entity and the contractual arrangements made therewith to the Recipient. All subcontracts must be approved by the Recipient to insure they are not debarred or suspended by the Federal or State Government and to insure the Recipient understands the arrangements.
 19. **Legal Services:** No attorney-at-law shall be engaged through the use of any funds provided under this contract in suits against the State, Local Public Body or any political subdivision.
 20. **Political Activity:** None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of the "Hatch" Act.
 21. **Reporting of Fraudulent Activity:** If at any time during the term of this agreement anyone has reason to believe by whatever means that, under this or any other program administered by DLG, a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this or any other contract, such information shall be immediately reported to the appropriate authorities.
 22. **Age Discrimination:** In accordance with 45 CFR, parts 90 and 91, the Recipient and Subrecipient agrees there shall be no bias or age discrimination as to benefits and participation under this agreement.
 23. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part pursuant to agreement.
 24. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities:** The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as

amended, 12 USC 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

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

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

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

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

The contractor agrees to submit such reports as required to document compliance with Part 135. Noncompliance with the regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

25. **Section 504 of the Rehabilitation Act of 1973:** The Recipient and Subrecipient agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, in any program or activity that receives the benefits from the Federal financial assistance.
26. **Lead-Based Paint:** The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. Any grants or loans made by the Non-Profit (and/or) Participating Party for the rehabilitation of residential structures with assistance provided under this Agreement shall be made subject to the provisions for the elimination of lead-base paint hazards under subpart B of said regulations, and the Non-Profit (and/or)

Participating Party shall be responsible for the inspections and certifications required under section 35.14(f) thereof.

27. **Debarment Certification:** The Recipient and Subrecipient must comply with Federal Debarment and Suspension regulations prior to entering into a financial agreement for any transaction as outlined below.
 - A. Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$25,000 and is cumulative amount from all Federal funding sources).
 - B. Any procurement contract for goods and services, regardless of amount, under which the Recipient and Subrecipient will have a critical influence on or substantive control over the transaction.
28. **Equal Employment Opportunity:** In carrying out the program, the Recipient and Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Recipient and Subrecipient must take affirmative action to insure that applicants for employment 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 Recipient and Subrecipient shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Recipient and Subrecipient shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. The Recipient and Subrecipient shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for project or program.

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

The Recipient and Subrecipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State advising the said labor union or workers' representatives of the Recipient and Subrecipient commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Recipient and Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the State.

The Recipient and Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the State, or pursuant thereto, and will permit access to its books, records,

and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Recipient and Subrecipient noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Recipient and/or Subrecipient may be declared ineligible for further Government contracts or Federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rules, regulations, or order of the State, or as otherwise provided by law.

The Recipient and Subrecipient will include the above provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 25, 1965, as amended, so that such provisions will be binding upon each Recipient and Subrecipient or vendor. The Recipient and Subrecipient will take such action with respect to any subcontract or purchase order as DLG may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Recipient and Subrecipient becomes involved in, or is threatened with, litigation with an entity as a result of such direction by DLG, the Recipient and/or Subrecipient may request DLG to enter into such litigation to protect the interest of the State.

The Recipient and Subrecipient 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.

29. **Federal Labor Standards Provisions:** The project or program to which the work covered by this agreement pertains is being assisted by the United States of America and the Federal Labor Standards Provisions are applicable to any construction contracts in excess of \$2,000 or residential rehabilitation contracts involving more than eight units entered into by the Recipient and Subrecipient. The Recipient and Subrecipient shall include the required Federal language covering Davis-Bacon, Copeland Anti Kickback, and Contract work and Safety Standard Acts in any such contract.