

EXHIBIT 5 (Federal Funds)

CONFLICT OF INTEREST REQUIREMENTS

The Contractor hereby agrees to comply with the provisions of 24 CFR 570.611, 24 CFR 576.404 HOME Investment Partnership Program 24 CFR Part 92 Sec.92.356, 2 CFR 200.318 and

Among the major requirements of these regulations are the following:

1. **Applicability.**
 - a. In the procurement of supplies, equipment, construction, and services by the City and Contractors, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.
 - b. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of 24 CFR 570.611 shall apply. These cases include the acquisition and disposition of real property and the provision of assistance by the City or by its Contractors to individuals, businesses, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation).
2. **Conflicts Prohibited.** No persons described in paragraph 4 below who exercise or have exercised any functions or responsibilities with respect to activities assisted under this Agreement or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDD-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect there to either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
3. No person described in paragraph 4 below may either select or accept gratuities, favors, or anything of monetary value from contractors, potential contractors or parties to sub-agreements.
4. **Persons Covered.** The conflict of interest provisions of paragraph 2 of this Attachment apply to any person, their partner, or any member(s) of their immediate family who is an employee, agent, consultant, officer, or elected official or appointed official of the City, of any designated public agencies, or of Contractors which are receiving funds under this Agreement.
5. If the contractor has a parent affiliated or subsidiary organization the contractor must maintain written standards of conduct covering organizational co-affiliates of interest so that relationships with a parent company affiliated or subsidiary do not appear to be impartial in conducting a procurement action.
6. **Exceptions: Threshold Requirements for HOME, CDBG, and City-ESG.** Upon the written request of the City, HUD may grant an exception to the provisions of paragraph 2 of this Attachment on a case-by-case basis when it determines that such an exception will serve to further the purposes of the CDBG Program and the effective and efficient administration of the City's program or project. An exception may be considered only after the City has provided the following:
 - a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

- b. An opinion of the City's attorney that the interest for which the exception is sought would not violate State or local law.
7. Exceptions: Threshold Requirements for State of Wisconsin-DOA-DEHCR EHH funding. Upon the written request of the City or its Contractors, DEHCR may grant an exception to the provisions of paragraph 2 of this Attachment on a case-by-case basis after full disclosure and where DEHCR determines, in consultation with federal agencies if necessary, that such exception is in the best interests of the State and is not contrary to state or federal laws.
8. Factors to be Considered for Exceptions for HOME, CDBG and City-ESG. In determining whether to grant a requested exception after the City has satisfactorily met the requirements of paragraph 4 of this attachment for federal funds, HUD shall consider the cumulative effect of the following factors, where applicable:
- a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
 - b. Whether an opportunity was provided for open competitive bidding or negotiations;
 - c. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 - d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
 - e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph 2 of this section;
 - f. Whether undue hardship will result either to the City or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
 - g. Any other relevant considerations.
9. Factors to be Considered for Exceptions for State of Wisconsin-DOA- DEHCR EHH funding. In determining whether to grant a requested exception after the City has satisfactorily met the requirements of paragraph 4 of this attachment for funding from DEHCR, DEHCR shall consider the cumulative effect of the following factors, where applicable:
- a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
 - b. Whether an opportunity was provided for open competitive bidding or negotiations;
 - c. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 - d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
 - e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph 2 of this section;
 - f. Whether undue hardship will result either to the City or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
 - h. Any other relevant considerations.

METHOD FOR REQUESTING EXCEPTION FROM CONFLICT OF INTEREST REQUIREMENTS

In order for the City to efficiently deal with a Contractor's request for an exception to the conflict of interest regulations, the Contractor shall submit the following to the Community Development Division (CDD) prior to commitment of federal funds:

1. A cover letter describing the a) perceived conflict, b) the actions taken to resolve the conflict and issues related to Factors to be Considered for Exceptions (paragraph 5 above).
2. A copy of the loan/investment committee and/or Board meeting minutes showing the conflict was publicly disclosed.
3. A letter from the Contractor's attorney stating that in his or her opinion such conflict does not violate State or local law.

Requests from Contractors receiving State of Wisconsin DOA-DECHR EHH funds will be first reviewed by the CDD staff and forwarded to DECHR.

The Contractor shall not commit any federal funds until the conflict has been resolved and the City has received a letter of formal exception from the Department of Housing and Urban Development or DEHCR. Under the terms of this Agreement, any such commitment prior to HUD or DEHCR approval will not be honored by the City.

ADDITIONAL CITY REQUIREMENTS

Annually for the term of the contract:

1. Each Contractor must submit a list of their Board of Directors or investor group to the CDD, and maintain on-site membership lists for any sub-committees to the Board and Conflict of Interest Disclosure Forms completed by each Board or sub-committee member.
2. The Contractor shall:
 - a. Hold a training session with its Board or comparable, appropriate decision-making group, and any sub-committee explaining the Federal requirements regarding Conflict of Interest and each member's responsibilities and rights under those regulations.
 - b. Distribute a copy of this Attachment to each member, subcommittee member, potential loan or investment recipient, supplier or Contractor.
 - c. Maintain, on site, copies of the minutes from each Board or corporate meeting, or any meeting at which the investment or use of CDD funds is discussed.
 - d. Incorporate into each loan or investment information package, application, contract, and closing documents, a full copy of the conflict of interest regulations contained in the contract with the City.

EXHIBIT 6 (Federal Funds)

PROHIBITION ON LOBBYING **PROHIBITION OF USE OF FEDERAL FUNDS FOR LOBBYING**

Certification for Contracts, Grants, Loans and Cooperative Agreements

The Contractor, by entering into this Agreement, hereby certifies to the best of his or her knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement; and
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions; and
3. The Contractor will require that these provisions be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. [Title 31, United States Code, Section 1352]

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

LOBBYING REGULATED

The Contractor agrees to abide by the Madison General Ordinance 2.40, which outlines procedures whereby persons acting as lobbyists are required to provide to the public full information as to their identity, the identity of their principal, their expenditures, and their lobbying activities.

The following language is added to all funding applications:

Notice regarding lobbying ordinance: If you are seeking approval of a development that has over 40,000 gross square feet of non-residential space, or a residential development of over 10 dwelling units, or if you are seeking assistance from the City with a value of over \$10,000 (this includes grants, loans, TIF or similar assistance), then you likely are subject to Madison's lobbying ordinance, sec. 2.40, MGO. You are required to register and report your lobbying. Please consult the City Clerk for more information. Failure to comply with the lobbying ordinance may result in forfeitures of \$1,000 to \$5,000. You may register at <https://www.cityofmadison.com/clerk/lobbyists/lobbyist-registration>.

EXHIBIT 7 (Federal Funds)

ENVIRONMENTAL REVIEW REGULATIONS

The City may not commit federal funds under this Agreement until it has complied with the environmental review regulations at 24 CFR Part 58. The City's environmental review shall include, but not be limited to, ascertaining the project's effect on: historic properties; floodplains; and air and water pollution.

In fulfillment of the above:

1. The City will conduct an environmental review to ascertain the environmental status of the project and the types of procedures (the conditions), if any, the Contractor must follow in order to comply with the intent of the National Environmental Policy Act of 1969, and applicable federal and City regulations.
2. The City will not release funds for projects that require an Environmental Assessment or an Environmental Impact Statement, nor will the Contractor obligate HUD funds, or take any choice-limiting actions on the project until the City has obtained an authorization for the release of funds from HUD. The City will notify the Contractor of such a certification, and will outline any required conditions for environmental compliance within either Exhibit 1 of this Agreement, or in a subsequent written communication.
3. The Contractor agrees to notify the Community Development Division (CDD) Project Manager of newly discovered conditions or changes in the project which would affect the status of the project in regard to applicable federal and City regulations.
4. The Contractor will allow inspection of the project by the City, HUD, or its agents and shall provide the City with requested documentation related to the environmental status of a proposed project and will fully cooperate with the City.

EXHIBIT 8 (Federal Funds)

**UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES
(PRIVATE, NON-PROFIT AGENCIES)**

The Contractor shall comply with the requirements of the following federal regulations: 24 CFR 570.502; 24 CFR 570.610; the applicable portions of HOME Investment Partnership Program Final Rule 24 CFR 92.505, "Applicability of Uniform Administrative Requirements"; and 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" and its implementing regulations.

It is understood and agreed that the Contractor, or non-Federal entity, is obligated to comply with all of the regulations and subsequent amendments specified above, whether or not they are set forth in this Agreement. HUD and the City have identified the following major requirements for monitoring purposes.

Financial and Program Management

- A. The nonprofit's financial management systems must meet HUD requirements. They must provide:
1. Accurate, current, and complete disclosure. HUD requires reporting on an accrual basis but the Contractor need not establish an accrual accounting system.
 2. Records that identify the source and application of funds for grant-supported activities.
 3. Effective control over, and accountability for, all funds, property, and other assets.
 4. Comparison of actual outlays with budgeted amounts for each grant.
 5. Written procedures to minimize the time elapsing between the transfer of funds from the City of Madison and the disbursement by the Contractor.
 6. Written procedures for determining the reasonableness, allocability (distribution) and allowability of costs, in accordance with 2 CFR 200 Subpart E ("Cost Principles").
 7. Accounting records, including cost accounting records, which are supported by source documentation.
 8. Records Retention. The Contractor shall retain financial records, supporting documents, statistical records, and environmental review records, and all other records pertinent to the services purchased pursuant to this Agreement for a minimum period of either four (4) years (CDBG), five (5) years (ESG) or six (6) years (HOME) from the date of the submission of the City's annual performance report, except as follows:
 - a. Records that are the subject of any litigation, claim or audit findings shall be retained for three years or until such litigation, claim or audit findings have been resolved, whichever is later.
 - b. Records for real property and equipment, which was acquired in whole or part with Federal funds, shall be retained for three years after final disposition of the property.

B. Non-Federal Financial Reports and Audits:

1. Contractor expending \$750,000 or more in Federal funds, from all sources, in a fiscal year shall submit the following to the Community Development Division (CDD) within nine months of the end of its fiscal year:
 - a. A single or program audit conducted in accordance with the requirements of the Government Auditing Standards and 2 CFR 200 Subpart F ("Audit Requirements"), which shall include:
 - I. A schedule of all revenues and expenditures by program and revenue source, that reconciles costs for the contract period, and a schedule of revenues and expenditures of CDD funds by program, including a bridging schedule if the contract year and the Contractor's fiscal year do not coincide. NOTE: This schedule should break out the revenues and expenses by funding source and identify the exact amount of CDD funds expended for a program; other revenue should not be combined within a program description of expenses. A schedule of expenditures of federal awards satisfies this requirement if single audit is performed.
 - II. A schedule of all real property assets if any such property is purchased with CDBG funds; including an itemized list of all debt against each property and the terms of that debt.
 - III. The CDD Schedule of Findings and Questioned Costs. (Exhibit 1 to Attachment 8)
 - b. A copy of the management letter received from the auditor if such letter is issued and the agency response to the management letter.
2. Contractor expending less than \$750,000 in Federal funds, from all sources, in a fiscal year shall submit the following:

For an agency that has an annual certified audit completed:

 - a. A copy of their annual certified audit, within 30 days of completion: which shall include the following schedules:
 - I. Report on the Internal Control structure.
 - II. Report on compliance with Laws, Regulations, Contracts and Grants. The City of Madison requires that the auditor plan the compliance audit such that 2 CFR 200 Subpart E ("Cost Principles") is considered material to the financial statements taken as a whole. The auditor will determine:
 - (A) Whether direct and indirect cost allocation plans are reasonable and acceptable;
 - (B) That costs are necessary and reasonable and were allocated according to the cost allocation plan;
 - (C) That the costs charged to the contract are based on actual costs incurred and are supported by accounting records and documents.
 - b. A schedule of all revenues and expenditures by program and revenue source, that reconciles costs for the contract period, and a schedule of revenues and expenditures of CDD funds by program, including a bridging schedule if the contract year and the Contractor's fiscal year do not coincide. NOTE: This schedule should break out the revenues and expenses by funding source and

identify the exact amount of CDD funds expended for a program; other revenue should not be combined within a program description of expenses.

- c. A schedule of all real property assets if any such property is purchased with CDBG funds; including an itemized list of all debt against each property and the terms of that debt.
 - d. The CDD Schedule of Findings and Questioned Costs in Exhibit 8.
3. A copy of the management letter received from the auditor if such letter is issued, and the agency response to that letter.

Agencies which do not have annual audits completed may be requested by CDD to have an audit completed at CDD expense.

If no annual audit is done, an agency will submit financial statements showing how the funds were expended and a letter signed by the president of the board of directors stating that they approved the financial statement as prepared.

UNDER NO CIRCUMSTANCES WILL CDD REIMBURSE A FUNDED AGENCY FOR ANY COSTS RELATED TO AN AUDIT UNLESS THE AGENCY IS BEING AUDITED IN ACCORD WITH THE SINGLE AUDIT ACT AND 2 CFR 200 SUBPART F.

Property Standards

- A. Real Property means land, including improvements, structures, and appurtenances thereto, but excludes movable machinery and equipment.
 1. Title to real property acquired with Federal funds shall vest in the Contractor subject to the condition that the Contractor uses the property for the authorized purpose of the project as long as it is needed and shall not encumber the property without the approval of the City and/or HUD.
 2. When the real property acquired with Federal funds is no longer needed for the purposes of the agreement the Contractor shall request written disposition instructions from the City.
- B. Equipment means tangible non-expendable personal property including exempt property charged directly to the award and having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
 1. Title to equipment acquired in whole or in part with Federal funds shall vest in the Contractor, subject to the conditions of 2 CFR 200.311.
 2. The Contractor shall use the equipment acquired with Federal funds for the authorized purpose of the project as long as it is needed and shall not encumber the equipment without the approval of the City and/or HUD.
 3. The Contractor's property management records for equipment acquired with Federal funds shall include the following:
 - a. A description of the equipment;

- b. Manufacturer's serial number, model number, or other identification number;
 - c. Source of the equipment, including grant or other agreement number;
 - d. Whether title vests in the agency;
 - e. Acquisition date and cost;
 - f. Percentage of Federal participation in cost of the equipment;
 - g. Location, use, condition of property;
 - h. Unit acquisition cost; and
 - i. Disposition data, including sales price or the method used to determine fair market value.
4. A control system shall be in place to insure adequate safeguards to prevent loss, damage or theft of the equipment.
 5. A physical inventory of the equipment acquired with Federal funds shall be conducted and the results reconciled with the equipment records at least every two years.
 6. When equipment acquired in whole or in part with Federal funds is no longer needed for the purposes of the agreement the contractor shall request written disposition instructions from the City.
 7. The Contractor shall implement adequate maintenance procedures to keep the equipment in good condition.

Procurement Standards, Methods and Procedures

A. Responsibilities

The Contractor must use its own documented procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in 2 CFR 200 – Part D. The Contractor is the responsible authority, without recourse to HUD or the City regarding the settlement of all contractual and administrative issues arising out of the procurement entered into in support of the award or other agreement.

B. Codes of Conduct

The Contractor shall have a written code of conduct governing the performance of its employees engaged in the award and administration of contracts. The code of conduct shall address the conflict of interest requirements of this contract and the acceptance of gifts.

C. Competition

The Contractor shall conduct all procurement in a manner to provide to the maximum extent practical, open and free competition. Contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals shall be excluded from competing for a project.

D. Procurement Standards

1. The Contractor shall have written procurement procedures in accordance with 2 CFR 200.318 that include, but are not limited to, the following minimum procedural requirements:
 - a. Unnecessary or duplicative items shall not be purchased;
 - b. Where appropriate, an analysis of lease and purchase alternatives is done to assure the most economical and practical procurement.

- c. Solicitations for goods and services shall include:
 - I. A clear and accurate description of the technical requirements for the material, product or service to be procured without unduly restricting competition.
 - II. All requirements and all other factors to be used in evaluating bids or proposals.
 - III. A description of technical requirements including minimum acceptable standards.
 - IV. Detailed product specifications should be avoided if at all possible. When otherwise impractical, a "brand name or equivalent" description may be used as a means to define the performance of procurement. In this instance, the specific features of the named brand which must be met by offers must be clearly stated.
 - V. Acceptance of products and services dimensioned in the metric system, when practical and economically feasible.
 - VI. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment and are energy efficient.
 - d. The Contactor must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the Contactor must not preclude potential bidders from qualifying during the solicitation period.
2. The Contractor shall make positive efforts to utilize small businesses, minority owned businesses and women owned businesses as defined in **Exhibit 9** regardless of the anticipated subcontract amount or procurement method
 3. The Contractor shall not use a "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting.
 4. The Contractor may determine the type of procuring instruments to use (e.g., fixed price contracts, cost reimbursable contracts, or purchase orders) as appropriate for the particular procurement and for promoting the best interest of the program or project involved.
 5. Contracts shall be made only with responsible subcontractors that possess the potential ability to perform successfully. Consideration shall be given to such matters as subcontractors' integrity, compliance with public policy, including where applicable Section 3 of the Housing and Urban Development Act of 1968, record of past performance, and financial and technical resources.
 6. The Contractor shall develop project specifications in sufficient detail to obtain comparable estimates or bids. In the case of construction related contracts, it may be necessary for the Contractor to procure architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups. An architect or engineer is required if the building contains more than 50,000 cubic feet of total volume (state code) or at the CDBG Project Manager's discretion. A project with multiple related components must include the services of an architect or engineer, a general contractor or construction manager. A Project with multiple related components is one that includes a variety of related objectives or types of labor, such as rehab of a bathroom, which includes electrical, plumbing and flooring or one where the work is related or overlaps the same space.

E. Procurement Methods

The Contractor shall conduct competitive procurement by one of the methods listed below or obtain approval from CDD.

1. **Micro-purchases** where the total value of contract(s) to be let is less than \$10,000. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the Contractor must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Contractor considers the price to be reasonable.
2. **Small purchase procedures** where the total value of contract(s) to be let is less than \$250,000. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
3. **Sealed bids (formal advertising).** The Contractor defines selection criteria prior to solicitation of bids or proposals which must include but is not limited to price. Bids are publicly solicited from an adequate number of known suppliers, providing them sufficient response time. A firm fixed price contract (lump sum or unit price) is awarded to the responsive and responsible bidder whose bid or offer, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price and most advantageous to the program or project principally on the basis of price. Other factors such as compliance with federal requirements, the M/W/DBE goal, and quality may be considered when specified in the advertisement. The sealed bid method is the preferred method for procuring construction, in accordance with 2 CFR 200.320(c).
4. **Competitive Request for Proposals (RFP) or Request for Qualifications (RFQ) Process.** The Contractor's selection criteria includes evaluation factors and their relative importance usually via a point system that includes price, compliance with federal requirements and the M/W/DBE goal, and other terms and conditions presented in the RFP. The Contractor conducts a technical evaluation of proposals to determine the offeror who appears to have the greatest potential to satisfy the terms and conditions of the RFP or RFQ. The Contractor may negotiate and award a firm-fixed or cost reimbursement contract to the lowest responsive and responsible proposal that is deemed most advantageous to the program or project. No public disclosure of the contents of the offeror's proposals is made on the final date of receipt. This type of process is generally used when conditions are not appropriate for the use of sealed bids.
5. Procurement by a **noncompetitive proposal** process is permitted only in limited circumstances and must be approved by CDD.

F. Procurement Procedures

1. **Small Purchase/Estimate Process:** The Contractor solicits comparable estimates from an adequate number of qualified sources. At least three price or rate quotations must be obtained unless it can be documented that that only two were obtained following good faith efforts. The Contractor will select the lowest responsive and responsible bid or offer. This process can only be used for services, supplies or other property costing in the aggregate up to the small purchase threshold of \$250,000.

CDD approval is required for Projects where the total value of contract(s) to be let is over \$250,000:

2. At least one week before publically advertising, the Contractor must submit a complete bid document package to CDD for approval. A complete bid document package must include selection criteria, the advertisement, specifications, additional federal requirements, and instructions to bidders with M/W/DBE goal. After obtaining CDD approval, the Contractor publically advertises bidding opportunities including electronic posting at least three weeks before deadline with the third week to allow for submitting bids through one of the three processes below:
 - a. Competitive Sealed Bid/Invitation for Bids (IFB) Process: Sealed bids with "best and final offers" are solicited and publicly opened at a time and place specified in the IFB. The Contractor awards a firm-fixed contract to the lowest responsive and responsible bid or offer that is most advantageous to the program or project principally on the basis of price. Other factors such as compliance with federal requirements, the M/W/DBE goal, and quality may be considered when specified in the RFB.
 - b. Competitive Negotiation/Request for Proposals or Qualifications (RFP or Qualifications) Process: The Contractor's selection criteria includes evaluation factors and their relative importance usually via a point system that includes price, compliance with federal requirements and the M/W/DBE goal, and other terms and conditions presented in the RFP. The Contractor conducts a technical evaluation of proposals to determine the offeror who appears to have the greatest potential to satisfy the terms and conditions of the RFP. The Contractor may negotiate and award a firm-fixed or cost reimbursement contract to the lowest responsive and responsible proposal that is deemed most advantageous to the program or project. No public disclosure of the contents of the offeror's proposals is made on the final date of receipt.
 - c. Value Engineering Process: CDD may allow the Contractor to use a Value Engineering process where the general contractor is selected before the project design is complete. Value Engineering may be used in conjunction with either a sealed bid or competitive negotiation process as specified above. The General Contractor's subcontractors are selected through an open and competitive process using either an approved sealed bid or competitive negotiation process as specified above. A fixed maximum price is set prior to the start of construction. Value Engineering is encouraged for construction projects of sufficient size to offer reasonable opportunities for cost reductions. It will be allowed only for very complex and high priced projects where the expertise of the general contractor is needed before the project design has been completed.
3. For projects involving construction related contracts, the Contractor shall:
 - a. Obtain the attachment from CDD entitled "Additional Federal Requirements" with requirements appropriate to the specifications of the project, (e.g., simplified acquisition threshold currently set at \$250,000, Davis Bacon requirements, Section 3 requirements, etc.). This attachment, the major components of which are listed below, must be attached to both solicitations for bids and construction contracts.
 - b. Submit a list of proposed selected bidders with sufficient information for CDD to determine eligibility for receiving a contract.
 - c. Obtain from the City's Department of Civil Rights (DCR):
 - i. A goal for utilizing minority-owned, women-owned, and disadvantaged businesses (M/W/DBE) in excess of the small purchase threshold.
 - ii. The attachment entitled "Instructions for Bidders" with requirements appropriate to the specifications of the project for attachment to solicitations for bids. This attachment will specify the process for submitting a list of proposed selected

bidders to the Department of Civil Rights with sufficient information to provide an approval of proposed sub-contractors on the basis of compliance with good faith efforts to contract with M/W/DBE and/or achieving the goal set for that project.

G. Cost and Price Analysis

The Contractor shall make and document some form of cost or price analysis with every procurement action. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

H. Procurement Records

The Contractor shall maintain procurement records and files for purchases in excess of the small purchase threshold which include at a minimum the following:

1. Basis for subcontractor selection or rejection (including price and other pre-determined criteria),
2. Justification for lack of competition when competitive bids or offers are not obtained, and
3. Basis for cost or price of the subcontract.

Contract Provisions

A. The Contractor certifies compliance with the contract provisions below as applicable. For the purposes of this section, the term recipient means the City of Madison.

B. In accordance with 2 CFR Part 200 Appendix II, the Contractor further certifies that all contracts and subcontracts related to federally funded programs and grant agreements contain the following provisions in writing as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.
3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally

Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)*—Where applicable, all contracts awarded by the recipient or Contractor in excess of \$100,000 for contracts that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704 of the Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 3702 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
5. *Rights to Inventions Made Under a Contract or Agreement*— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.
6. *Clean Air Act (42 U.S.C. 7401 et seq.)* and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended—Contracts and subgrants of amounts in excess of \$150,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).
7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*— Contractors and sub-contractors certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient or Contractor.
8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24. This list contains the

names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors shall provide the required certification regarding registration in the System for Award Management (SAM), exclusion status and that of its principal employees. The Federal Debarred Contractors List and registration information can be accessed via the Internet at <https://www.sam.gov>.

9. *Drug-Free Workplace Requirements*—The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.
10. Compliance with City's DCR Affirmative Action requirements including a requirement to take affirmative steps to use minority-owned, women-owned, and disadvantaged businesses (M/W/DBE's) whenever possible as well as procedures to document compliance with federal, state and local regulations pertaining to the employment of women, minorities, and low income individuals on programs and projects when required by the City.
11. The requirements of the Energy Policy and Conservation Act (Pub. L 94-163) for Wisconsin.
12. Records retention and access requirements.
13. Notice and adequate explanation of related Contractor, city and or federal Reporting Requirements.
14. Subcontracts in excess of \$100,000 shall include provisions that allow for administrative, contractual and legal remedies when the subcontractor violates the contract terms.
15. Subcontracts in excess of \$100,000 shall include provisions for termination for cause, termination by the Contractor, and termination for circumstances beyond the Contractor's control.
16. For construction, rehabilitation and facility improvement contracts in excess of \$100,000, a bid guarantee equal to 5% of the bid price, and a payment bond and a performance bond each for 100% of the construction contract price. The Contractor may submit a written request for determination of an exception to the payment and performance bond requirement in limited circumstances where it can be demonstrated that the City's interest is adequately protected.

COMMUNITY DEVELOPMENT DIVISION (CDD) REQUIRED
 Schedule of Findings and Questioned Costs
 For Year Ended _____

Name of Agency _____

Summary of Auditor's Results

- | | | | |
|-----|---|------------------------------|--|
| 1. | Was a Single Audit required? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | What dollar threshold was used to distinguish between Type A and Type B programs as defined by the Single Audit? (If applicable.) | \$ _____ | |
| 2. | Type of auditor's report issued? | _____ | |
| 3. | Internal control over financial reporting: | | |
| | a. Were material weakness(s) identified? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If yes, describe.) |
| | b. Were reportable condition(s) identified not considered to be material weaknesses? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If yes, describe.) |
| | c. Was noncompliance material to the financial statements noted? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If yes, describe.) |
| 4. | Internal control over major programs: | | |
| | a. Were material weakness(s) identified? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If yes, describe.) |
| | b. Were reportable conditions(s) identified not considered to be material weaknesses? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If yes, describe.) |
| 5. | Was the indirect cost allocation plan reasonable and acceptable per 2 CFR 200 Subpart E ("Cost Principles")? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If no, describe.) |
| 6. | Were the actual costs reasonable and allocated appropriately per 2 CFR 200 Subpart E ("Cost Principles")? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If no, describe.) |
| 7. | Were the costs allocated to the CDD contracts based on costs incurred, and are they supported by records and documents? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If no, describe.) |
| 8. | Were any audit findings disclosed that are required to be reported in accordance with 2 CFR 200 Subpart F ("Audit Requirements")? (Include Assistance Listing/CFDA No. and amount.) | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 9. | Does the audit include an identification of all federal revenue sources and dollar amounts by program? (Include State of WI pass-through funds.) | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If no, describe.) |
| 10. | Does the audit list any financial statement findings? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 11. | Does the audit list any federal and state award findings and questioned costs? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 12. | Does the auditor have substantial doubt as to the auditee's ability to continue as a going concern? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If yes, describe.) |
| 13. | Does the audit report identify any additional audit issues related to the Agency's CDD grants/contracts? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If yes, describe.) |
| 14. | Does the audit include the schedule of revenues and expenditures by program and revenue source? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If no, describe why not.) |
| 15. | Does the audit include the schedule of CDD funds expended by program? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If no, describe why not.) |
| 16. | Does the audit include the schedule of real property assets and the debt recorded against each property? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If no, describe why not.) |
| 17. | Was a Management Letter or other document conveying audit comments issued as a result of this audit? | Yes <input type="checkbox"/> | No <input type="checkbox"/> (If yes, provide a copy.) |

Name and signature of partner: _____

Date of report: _____

EXHIBIT 8A (Federal Funds)

**BUILD AMERICA, BUY AMERICA (BABA)
REQUIREMENTS**

The Contractor shall comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended; as well as with the OMB guidance provided at 2 CFR Part 184, "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure"; if applicable to the Contractor's infrastructure project.

Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates are subject to BABA requirements, unless excepted by a waiver.

EXHIBIT 9 (Federal Funds)

**NON-DISCRIMINATION, EQUAL OPPORTUNITY AND FAIR HOUSING,
MINORITY/WOMEN BUSINESS ENTERPRISES,
NON-DISCRIMINATION ON THE BASIS OF DISABILITY, AND SECTION 3 REQUIREMENTS**

Non-Discrimination

Consistent with Federal regulations and City ordinance, the Contractor may not, directly or through contractual licensing or other arrangements, take any of the following actions on the grounds of race, national origin or ancestry, citizenship status, color, religion or atheism, sex, age, handicap/disability, marital status, source of income, arrest record (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), conviction record (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), social security number (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), less than honorable discharge, physical appearance, sexual orientation, gender identity, genetic identity, political beliefs, familial status, student status, domestic partnership status, receipt of rental assistance, homelessness, unemployment status (limited to actions regarding employment but not applicable to actions regarding housing or public accommodations), credit history (limited to actions regarding employment but not applicable to actions regarding housing or public accommodations), status as a victim of domestic abuse, sexual assault or stalking, as defined in MGO 39.03:

1. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity;
2. Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity;
3. Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to receipt of any service or benefit under the program or activity;
4. Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
5. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions which individuals must meet in order to be provided any facilities, services or other benefit provided under the program or activity;
6. Deny an individual an opportunity to participate in a program or activity as an employee;
7. Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;
8. Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;
9. Use criteria or methods of administration that have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing

accomplishment of the objectives of the program or activity with respect to persons who are members of the protected classes defined in MGO 39.03; or

10. Deny a person the opportunity to participate as a member of planning or advisory boards.

In determining the site or location of housing, accommodations, or facilities, the Contractor may not make selections that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, national origin or ancestry, citizenship status, color, religion or atheism, sex, age, handicap/disability, marital status, source of income, arrest record (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), conviction record (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), social security number (limited to actions regarding employment or public accommodations but not applicable to actions regarding housing), less than honorable discharge, physical appearance, sexual orientation, gender identity, genetic identity, political beliefs, familial status, student status, domestic partnership status, receipt of rental assistance, homelessness, status as a victim of domestic abuse, sexual assault or stalking, as defined in MGO 39.03. The Contractor may not make selections that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Section 109 of Title I of the Housing and Community Development Act of 1974, 24 CFR part 6 and of this Attachment.

The Contractor may classify employees or applicants for employment, volunteers or applicants for volunteer service, applicants for or consumers of services, or applicants for board or committee membership in the Contractor's organization on the basis of membership in any of the protected classes defined in the MGO 39.03, only in those certain instances where such classification is a bona fide qualification reasonably necessary to the proper performance of the services contracted for.

Equal Opportunity and Fair Housing

Specifically, the Contractor hereby agrees to comply with the following as applicable:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-et seq) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 USC 2000d (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;
2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;
3. The requirements of Executive Order 11246 (Equal Employment Opportunity), as amended by Executive Order 13279 and 12086, and the implementing regulations issued at 41 CFR Chapter 60;
4. The requirements of City of Madison Equal Opportunities Ordinance 39.03; and
5. The requirements of City of Madison Landlord and Tenant Law, MGO Chapter 32, where appropriate.

Minority and Women Business Enterprises

Specifically, the Contractor hereby agrees to comply with the following as applicable:

1. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), and of 24 CFR 85.36; and

Accordingly, the Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- a. Including qualified women's business enterprises and small and minority businesses on solicitation lists;
- b. Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;
- c. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women's business enterprises;
- d. Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business;
- e. Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and
- f. If any subcontracts are to be let, requiring the prime Contractor to take the affirmative steps in a through e above.

For the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. A Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women. The City of Madison maintains an online directory of W/MBE businesses, which can be accessed at: <http://www.cityofmadison.com/dcr/aaTBDDir.cfm>.

2. For CDBG funded Agreements, submit the CDBG Contractor, Subcontractor and Vendor Report Form to the CD Office on a quarterly or annual basis covering the period from October 1 to September 30 (Exhibit 9, Form A) by October 5th of each year. Exhibit 9, Form A can be accessed at: http://www.cityofmadison.com/cdbg/doc_library.htm#Z
3. For HOME funded Agreements with contracts to be let that are valued below \$200,000, submit the HOME Contractor and Subcontractor Report Form to the CD Office on an annual basis covering the period from January 1 to December 31 (Exhibit 9, Form B) with Project/Activity Completion Report for Housing Development Projects or by January 10th of each year for Subrecipient activities. Exhibit 9, Form B can be accessed at: http://www.cityofmadison.com/cdbg/doc_library.htm#Z . For HOME funded Agreements with construction contracts to be let valued at \$200,000 or more, Contractor may request to meet relevant federal completion reporting requirements via reports also submitted to the City's Department of Civil Rights (DCR).

Nondiscrimination on Basis of Disability

Nondiscrimination Based on Disability. Contractor shall comply with Section 39.05, Madison General Ordinances, “Nondiscrimination Based on Disability in City-Assisted Programs and Activities.” Under section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance.

Contractor hereby makes the following assurances: Contractor assures and certifies that it will comply with section 39.05 of the Madison General Ordinances, “Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities,” and agrees to ensure that any subcontractor who performs any part of this agreement complies with sec. 39.05, where applicable. This includes but is not limited to assuring compliance by the Contractor and any subcontractor, with section 39.05(4) of the Madison General Ordinances, “Discriminatory Actions Prohibited.”

Contractor may not, in providing any aid, benefit or service, directly or through contractual, licensing or other arrangements, violate the prohibitions in Section 39.05(4), listed below:

Discriminatory Actions Prohibited: Contractor assures that, in providing any aid, benefit, or service, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

1. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
3. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient’s program;
6. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Contractor shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

A. Employment Provisions

1. No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.
2. A Contractor shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the Contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its program.
3. A Contractor may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or any class of individuals with handicaps unless the Contractor demonstrates that the test score, or other selection criteria, as used by the Contractor is job related for the position in question.

B. Accessibility

The Contractor agrees to comply with the provisions of local, State and Federal law regarding accessibility including, but not limited to the Rehabilitation Act, the Fair Housing Amendments Act, the Architectural Barriers Act, the Americans with Disabilities Act, Madison General Ordinance 39.05, the Wisconsin Open Housing Law and all applicable implementing regulations thereto. The primary provision of Section 504 of the Rehabilitation Act of 1973, as amended, requires the following:

1. Existing facilities

A Contractor shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not:

- a. Necessarily require a Contractor to make each of its existing facilities accessible to and usable by individuals with disabilities;
- b. In the case of historic preservation programs or activities, require the Contractor to take any action that would result in a substantial impairment of significant historic features of a historic property; or
- c. Require a Contractor to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the Contractor shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.
- d. A Contractor may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as redesign of equipment, location of programs or services to accessible facilities or accessible portions of facilities, assignment of aides to beneficiaries, home visits, the addition or redesign of equipment (e.g., appliances or furnishings) changes in management policies or procedures, acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis, or any other methods that result in making its program or activity accessible to individuals with disabilities. A Contractor is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the

Contractor shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

2. Non-Housing Facilities

- a. New construction - New non-housing facilities shall be designed and constructed to be readily accessible to and usable by individuals with disabilities.
- b. Alterations to facilities - Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a Contractor make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and administrative burdens on the operation of the Contractor's program or activity.

3. Housing Facilities

In addition, where housing units are being constructed or renovated the following provisions apply in the appropriate situation:

a. New Construction

- i. New multifamily housing projects (including public housing projects as required by 24 CFR 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with disabilities.
- ii. Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments. In addition, the entire project must comply with the design requirements of the Wisconsin Open Housing Law.
- iii. The City and HUD may prescribe a higher percentage or number than that prescribed in paragraph (2) of this section for any area upon request therefore by any affected Contractor or by any State or local government or agency thereof based upon demonstration to their reasonable satisfaction of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Consolidated Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD or the City shall take into account the expected needs of eligible persons with and without disabilities.

b. Substantial Rehab

If alterations are undertaken to a project (including a public housing project as required by 24 CFR 8.25(a)(2) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22 shall apply. In addition, any project of 3 or more units, where more than 50% of the interior square footage is to be remodeled, must comply in total with the design requirements of the Wisconsin Open Housing Law.

c. Other Rehab

- i. Alterations to dwelling units in a multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with disabilities. For purposes of this paragraph, the phrase *to the maximum extent feasible* shall not be interpreted as requiring that a Contractor make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project. In addition, any project of 3 or more units must comply with the design requirements of the Wisconsin Open Housing Law.
- ii. The City and HUD may prescribe a higher percentage or number than that prescribed in paragraph a. above for any area upon request therefore by an affected Contractor or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Consolidated Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD and the City shall take into account the expected needs of eligible persons with and without disabilities.

Equal Opportunity for Businesses and Lower Income Persons
(HUD Act of 1968 Section 3)

The purpose of Section 3 of the Housing and Urban Development Act of 1968, {12U.S.C.1701u}(section3)} and implementing regulations at 24 C.F.R.135}, “is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low-and very low-income persons.”

Section 3 Clause Requirement

For housing and community development financial assistance, Section 3 covered contracts applies to any contracts or subcontracts providing assistance for housing rehabilitation, housing construction, or other public construction projects in excess of \$200,000. These projects shall include the following clause (referred to as the Section 3 clause in 24 CFR 135.38):

- A. 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 U.S.C. 1701u (section 3). 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.

- B. The parties to this contract will 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.
- C. The contractor will 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.
- D. The contractor will 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.
- E. 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.
- F. Noncompliance with HUD's 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.

City of Madison Section 3 Reporting

The City of Madison has established employment and training goals that subrecipients, contractors, and subcontractors should meet in order to comply with Section 3 requirements outlined in [24 CFR Part 75.19 for housing and community development financial assistance].

The safe harbor benchmark goals for housing and community development financial assistance are as follows:

- 1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

Section 3 Labor Hours/Total Labor Hours = 25%; and

- 2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.

Targeted Section 3 Labor Hours/Total Labor Hours = 5%

It is the responsibility of the Contractor to implement efforts to achieve Section 3 compliance. Any Contractor that does not meet the Section 3 benchmarks must demonstrate Good Faith Efforts as to why meeting the benchmarks were not feasible. All Contractors submitting bids or proposals for projects with Section 3 covered financial assistance are required to certify that they will comply with the requirements of Section 3.

Specifically, the Contractor hereby agrees to comply with Section 3 Requirements as follows:

1. Prior to bidding construction work, Contractor shall contact the City's Department of Civil Rights (DCR) at contractcompliance@cityofmadison.com to schedule a meeting with its General Contractor (GC) to review contract compliance requirements at least 30 days before bidding. Prior to commencing construction, GC shall invite DCR to any pre-construction meetings with its sub-contractors.
2. By executing this Agreement, Contractor acknowledges receipt and thorough review of the Section 3 Worker and Section 3 Monthly Report Forms supplied by DCR and related contracting requirements.

CDBG CONTRACTOR, SUBCONTRACTOR, VENDOR REPORT

AGENCY NAME: _____

IRS FEIN #: _____

Contract Name: _____

Contract #: _____

Please submit this report quarterly or annually by October 5 for the period covering October 1 to September 30.

NOTE: Report is due September 30th each year.

Indicate X if No Contract Activity During Report Period

Report Period: From: _____

_____ 20 _____
MONTH, DATE YEAR

To: _____ 20 _____
MONTH, DATE YEAR

Report the following whenever CDBG funds are used to purchase goods or services or pay a contractor or subcontractor:

- a. From a **Minority-owned vendor or business (Minority Business Enterprise: MBE);**
- b. From a **Female-owned vendor or business (Women Business Enterprise: WBE);** OR
- c. Valued at **more than \$10,000 from ANY vendor or business.**

Contractor or Subcontractor Name	Address	City	State	Zip	Type of Trade Code (See below)	Racial/Ethnic Code (See below)	Woman owned Business (Y/N)	Section 3 Contractor (Y/N)	Prime Contractor	Subcontractor	Contract or Subcontract Amount
									IRS FEIN #	IRS FEIN # (Leave blank if no subcontractor)	
1.											
2.											
3.											
4.											
5.											
6.											
7.											
8.											

Type of Trade Code:

- 1 = New Construction
- 2 = Education/Training
- 3 = Other (Rehabilitation, supply, professional services, etc.)

Racial/Ethnic Code of Business Ownership:

- 1 = White Americans
- 2 = Black Americans
- 3 = Native Americans
- 4 = Hispanic Americans
- 5 = Asian/Pacific Americans
- 6 = Hasidic Jews

Woman-owned business

- Y- Yes
- N- No

Section 3 Business
(Certified by DCR)

- Y- Yes
- N- No

Consult the City's M/WBE, Disadvantaged or Section 3 Business Directories here:
<http://www.cityofmadison.com/dcr/aaTBDDir.cfm>

For **Racial/Ethnic Code**, enter the numeric code which indicates the racial/ethnic or gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic category, enter the code which seems most appropriate. (Instructions from HUD Form 2516.)

For **Type of Trade**, enter the numeric codes which best indicates the contractor's/subcontractor's service. The "other" category includes supply, professional services (e.g., accounting, cleaning) and all other activities except rehab/construction and education/training activities.

HOME CONTRACTOR AND SUBCONTRACTOR REPORT

AGENCY NAME: _____

PROJECT NAME: _____

Indicate X if No Contract Activity During Report Period

PROJECT #: (e.g., DN 025 2013) _____

DATE SUBMITTED: _____

Please submit one report for each HOME Project/Contract COMPLETED during the period covering January 1 to December 31.

Report the following whenever a HOME funded project or program contracts or subcontracts with business enterprises including vendors and suppliers:

Contract Firm Name	Address	City	State	Zip	Racial/Ethnic Code (Enter code from below)	Woman owned Business (Y/N)	IRS/ FEIN #	Contract Amount
1.								
2.								
3.								
4.								
5.								
Sub-contract Firm Name	Address	City	State	Zip	Racial/Ethnic Code (Enter code from below)	Woman owned Business (Y/N)	IRS/ FEIN #	Contract Amount
1.								
2.								
3.								
4.								
5.								

Racial/Ethnic Code of Business Ownership:
 1 = Alaskan Native or American Indian
 2 = Asian/Pacific Islander
 3 = Black
 4 = Hispanic
 5 = White, Non-hispanic

Woman-owned business
 Y- Yes
 N- No

Consult the City's M/WBE or Disadvantaged Business Directories here:
<http://www.cityofmadison.com/dcr/aaTBDDir.cfm>

For **Racial/Ethnic Code**, enter the numeric code which indicates the racial/ethnic or gender characteristic of the owner(s) and controller(s) of 51% of the business enterprise. When 51% or more of the business enterprise is not owned and controlled by any single racial/ethnic category, enter the code which seems most appropriate.

EXHIBIT 10

AFFIRMATIVE ACTION

A. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c):

The Contractor agrees that, within thirty (30) days after the effective date of this Contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the Contract is still in effect, or if the City enters into a new Agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this Contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from the above requirements (Sec..A) at the time the Request for Exemption in B.(2) is made.

B. Articles of Agreement, Request for Exemption, and Release of Payment:

The "ARTICLES OF AGREEMENT" beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$50,000	\$50,000 OR MORE
	Aggregate Annual Business with the City*	Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the Finance Director

**As determined by the Department of Civil Rights

- (1) Exempt Status: In this section, "Exempt" means the Contractor is exempt from the Articles of Agreement in section B.(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights ("Department") makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec.B.(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.
- (2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.b.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.
- (3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)2.c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$50,000 in annual aggregate business with the City for the calendar year in which the contract is in effect. CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC.B.(5) UPON REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR, BEGINNING IN 2019.
- (4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.

(5) Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to ensure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. 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 insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other Contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true (**check one**):

- A. Contractor has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this Contract, Contractor will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.
- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract is in effect is less than fifty thousand dollars (\$50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies to public works contracts only.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the Contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this Contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the Contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the Contract price, or ten thousand dollars (\$10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this Contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

EXHIBIT 11 (Federal Funds)

REQUIREMENTS REGARDING LEAD-BASED PAINT

Applicable City, State and Federal Laws

Contractors must comply with the provisions of lead paint work from State of Wisconsin, City of Madison and other federal regulations imposed by HUD

City of Madison MGO 7.49: Applies whenever exterior painting or remodeling is being done to any property built before 1978.

Federal Lead Paint Regulation 24 CFR, Part 35: Applies to any HUD-CPD funded activity with requirements as listed below based on type of activity and dollar amount associated with rehabilitation of the unit. HUD passed the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 3535 (d), 4821 and 4851.

State of Wisconsin Code DHS 163: Applies to any person performing, supervising, or offering to perform or supervise a lead-based paint activity involving housing or a child occupied facility constructed prior to 1978 (unless the property is occupied by elderly or the disabled or is a zero-bedroom dwelling unit). The Code requires certification of all inspectors, supervisors, workers and the company, and established work practice standards.

City of Madison Ordinance

1) Scope.

Owners of buildings and structures built before 1978 shall paint or remodel or cause to be painted or remodeled any painted exterior surface of such buildings or structures in conformity with the standards set forth in this section. These standards also apply if the age of the building or structure cannot be established by the owner to the satisfaction of Public Health Madison and Dane County.

- (a) Painting or remodeling includes but is not limited to work involving construction, alteration, repair, painting, paint removal or decorating.
- (b) A painted exterior surface means an exterior surface covered with a paint or other surface coating material.
- (c) An exterior surface may include but is not limited to walls; windows, window assemblies and trim; soffit; fascia; doors, door assemblies and trim; porch and balcony floors and ceilings; columns; handrails, and guardrails; and foundations.

2) Standards for Paint Removal Methods.

- (a) The following methods shall not be used to remove paint or other surface coating materials without the use of adequate engineering controls:
 - 1) Open flame burning;
 - 2) Power tool cleaning including but not limited to machine sanding or machined grinding;
 - 3) Open-air abrasive blasting or stripping using sand, steel grit, steel shot, aluminum oxide, water or other abrasive media.
- (b) The methods listed in Subdivision (a) above may be used only with adequate engineering controls to the extent feasible to reduce public exposure to lead. Adequate engineering controls include but are not limited to vacuum

attachments equipped with high efficiency particulate accumulator (HEPA) filters, partial containment structures, total containment structures under negative pressure or other method approved by the Director of Public Health Madison and Dane County.

3) Safety Procedures.

- (a) All windows, doors, HVAC intake vents and other entry ways into the building or structure shall be kept closed, or sealed if necessary, while work is being performed.
- (b) Plastic sheeting shall be used to prevent accumulation of dust and debris on the soil, vegetation or other surfaces adjacent to the work area. At a minimum, plastic sheeting shall be securely attached to the building or structure and extend the length of the work area.
- (c) All visible dust and debris in and around the work area and all waste work materials such as tape, plastic sheeting, mop heads, cleaning cloths, sponges, disposable clothing, filters and other disposable work materials must be cleaned up at the end of each work day during the entire painting or remodeling project. The dust, debris and disposable work materials must be placed in double 4 mil or single 6 mil plastic bags.
- (d) Waste generated during the project shall be disposed of in conformance with all applicable local, state and federal laws and regulations. Waste shall be transported and disposed of in such a manner as to prevent lead from becoming airborne.

4) Warning Notice.

At least two warning signs shall be conspicuously posted adjacent to the work area. The signs shall be posted at the beginning of the project and remain posted until the project has been completed. The signs shall measure at least eleven (11) inches by eight (8) inches and display the following wording:

**Caution – Paint Removal Work Area
Danger to Children and Pregnant Women**

5) Exemption.

Persons are exempt from this ordinance if there is no lead-bearing paint present on the surfaces to be painted or remodeled or if there is no lead-bearing paint disturbed by the painting or remodeling process. Lead-bearing paint means any paint or other surface coating material containing more than 0.06% lead by weight, or showing a lead concentration of more than 0.7 milligrams of lead per square centimeter (0.7 mg/cm²) of surface area. This determination must be made prior to removing or disturbing the paint by a laboratory certified to do lead analysis through the Environmental Lead Laboratory Accreditation Program. Paint chip samples must be collected according to instructions provided by the accredited laboratory. Acceptable paint chip samples must include all layers of paint and omit any surface material such as wood, masonry, etc. A finding of no lead-bearing paint must be supported with written documentation showing who performed the testing specifying the company or lab name and address and technician name, the date of testing, the test method used, the location and type of surface tested and the test result for each sample.

6) Penalties.

Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) and each day or fraction of a day on which any provision of this ordinance is violated shall be deemed a separate offense.

State Laws

1. The State of Wisconsin Department of Health Services (DHS) adopted rules to reduce lead paint hazards. A summary of the major State requirements are as follows:
 - A. All lead inspectors, project designers, risk assessors, workers, supervisors and the company employing them must be accredited by DHS.
 - B. A person certified as a supervisor of lead hazard reduction must be on the site at all times when work designed to reduce lead-based paint hazards is being performed and must have her/his certification card on the premises.
 - C. All workers must be individually certified and have their certification cards on the premises.
 - D. The supervisor of the lead hazard reduction work must notify the Wisconsin DHS a minimum of 2 working days prior to commencing the work.
 - E. When rehabilitation work involves occupied dwellings, *“Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and School”* must be provided prior to rehab beginning. Signed certificate of delivery is required.
2. The Contractor shall conform to any local rules, including MGO 7.49, which establishes standards for paint removal and safety procedures.

Federal Regulations

Level of Activity: Less than or equal to \$5,000 per unit rehabilitation on pre-1978 housing

Testing Requirements

- Paint testing performed on surfaces to be disturbed by a certified lead paint assessor. (Federal mitigation requirements apply only to those areas on the property where chipping or peeling paint has tested positive for lead, and/or where lead-positive paint chips have fallen.)

-OR-

- May presume lead paint exists. (Federal mitigation requirements apply to any areas on the property where paint is chipping or peeling and/or where paint chips may have fallen.)

Work Requirements

- Repair surfaces disturbed during work,
- Use safe work practices when working on areas identified as lead based paint.
- Clearance of work site, or entire home if site was not contained. Clearance is not required if rehab did not disturb painted surfaces of greater than 20 square feet on the exterior, 2 square feet in any interior room, or greater than 10% of the surface area in any interior or exterior component.

Notification Requirements

- Pamphlet- “Protect Your Family from Lead in Your Home”
- Disclosure of available information or knowledge regarding presence of lead paint

- Disclosure of test results within 15 calendar days of receiving report or a disclosure of presumption of lead
- Notice of hazard reduction activities within 15 calendar days after reduction activities are completed (including clearance results)
- Following all State of Wisconsin and City of Madison codes

Level of Activity: Between \$5,000 and \$25,000 per unit rehabilitation on pre-1978 housing

Testing Requirements

- Full risk assessment on unit receiving assistance, related common areas and exterior painted surfaces by a certified risk assessor.

-OR-

- May presume lead paint and perform standard treatments.

Work Requirements

- Perform interim controls on identified hazards
- Safe work practices unless rehab did not disturb painted surfaces of greater than 20 square feet on the exterior, 2 square feet in any interior room, or greater than 10% of the surface area in any interior or exterior component.
- Clearance on unit, related common areas and exterior painted surfaces

Notification Requirements

- Pamphlet- “Protect Your Family from Lead in Your Home”
- Disclosure of available information or knowledge regarding the presence of lead paint.
- Disclosure of test results within 15 calendar days of receiving report or a disclosure of presumption of lead.
- Notice of hazard reduction activities within 15 calendar days after completed, including clearance results.
- Following all State of Wisconsin and City of Madison codes

Level of Activity: More than \$25,000 per unit rehabilitation on pre-1978 housing

Testing Requirements

- Full risk assessment on assisted unit, related common areas and exterior painted surfaces using a certified assessor.

-OR-

- May presume lead and abate all applicable surfaces.
-

Work Requirements

- Abate all interior and exterior identified hazards that have been disturbed.
- Interim controls performed on identified hazards on exterior that are not disturbed by rehab.
- Safe work practices unless rehab did not disturb painted surfaces of greater than 20 square feet on the exterior, 2 square feet in any interior room, or greater than 10% of the surface area in any interior or exterior component.
- Clearance on unit, related common areas and exterior painted surfaces

Notification Requirements

- Pamphlet- “Protect Your Family from Lead in Your Home”
- Disclosure of available information or knowledge regarding the presence of lead paint.

- Disclosure of test results within 15 calendar days of receiving report or a disclosure of presumption of lead.
- Notice of hazard reduction activities within 15 calendar days after completed, including clearance results.
- Following all State of Wisconsin and City of Madison codes

NOTE: Safe work practices must be completed by a State certified worker. All clearance must be done by a State certified inspector. Keep on file State DHS license number for company and supervisor.

EXHIBIT 12 (Federal Funds)

CERTIFICATE OF EXEMPTION FROM FEDERAL LABOR STANDARDS

The City hereby finds that the Contractor meets the criteria for exemption from the Federal Fair Labor Standards requirements on one of the following grounds:

For CDBG funded projects:

- A. The Agreement does not involve payment for construction activities or does not involve construction on eight or more residential units at any one site.
- B. The project does not exceed \$2,000 of construction work and hence, does not fall under the provisions of the Davis-Bacon Act.

For HOME funded projects:

- A. The Agreement does not involve payment for construction activities on a project involving construction on twelve or more HOME-assisted residential units.

The Contractor agrees to notify the City within five (5) days if the above circumstances change, such that the Contractor no longer meets one of the qualifying criteria; the Contractor further hereby agrees to comply with the Federal Fair Labor Standards, as detailed in EXHIBIT 12A where and when they become applicable. EXHIBIT 12A effectively replaces this Exhibit when and where it is determined that Federal Fair Labor Standards apply.

Federal Labor Standards Provisions

**U.S. Department of Housing
and Urban Development
Office of Labor Relations**

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH- 1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, W Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215- 0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis- Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Use of Volunteers

24 CFR Part 70 implements section 955 of the National Affordable Housing Act which provides for an exemption from the requirement to pay prevailing wage rates for volunteers utilized on projects funded by the Community Development Block Grant programs.

Volunteers are defined as individuals who perform service for a public or private entity for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered, on a HUD-assisted or insured project which is subject to a requirement to pay prevailing wage rates. Individuals shall be considered volunteers only when their services are offered freely and without pressure and coercion, direct or implied from an employer.

An individual shall not be considered a volunteer if the individual is otherwise employed at anytime in the construction or maintenance work for which the individual volunteers.

24 CFR Part 70.4 has established procedures for implementing prevailing wage exemptions for volunteers. The procedures include:

- a. Local or State agencies or private parties whose employees are otherwise subject to Davis-Bacon or HUD-determined prevailing wage rates which propose to use volunteers and wish to pay the volunteer's expenses, reasonable benefits, or nominal fees shall request a determination from HUD that these payments meet the criteria established by HUD. A written determination shall be provided to the requester by the Department within ten days of receipt by the Department of sufficient information to allow for the determination.
- b. A determination under paragraph (a) shall not be construed in any way as limiting the use of bona fide volunteers on HUD-assisted construction, but rather is required to ensure that the Department performs its appropriate responsibilities under Reorganization Plan No. 14 of 1950 and related Department of Labor Regulations in title 29 CFR part 5, regarding the administration and enforcement of the Davis-Bacon and related Acts, and its responsibility for the administration and enforcement of HUD-determined or adopted wage rates in the operation of public housing assisted under the United States Housing Act of 1937.
- c. For a project covered by prevailing wage rate requirements in which all the work is to be done by volunteers and there are no paid construction employees, the local or State funding agency (or, if none, the entity that employs the volunteers) shall record in the pertinent project file the name and address of the agency sponsoring the project, a description of the project (location, cost, nature of the work), and the number of volunteers and the hours of work they performed. The entity responsible for recording this information shall also provide a copy of this information to the City for forwarding to HUD.
- d. For a project covered by prevailing wage rate requirements in which there is to be a mix of paid workers and volunteers, the local or State funding agency (or, if none, the entity responsible for generating certified payrolls) shall provide HUD the information in paragraph (c) of this section, along with the names of the volunteers.
- e. Volunteers who receive no expenses, benefits or fees described in (b) and are otherwise bona fide shall be recorded as in (c) or (d).

EXHIBIT 13 (Federal Funds)

**PARTICIPATION IN HUD PROGRAMS BY
FAITH-BASED ORGANIZATIONS**

The Contractor hereby agrees to comply with provisions of the regulations at 24 CFR 570.200j (CDBG), 24 CFR 576.406 (ESG), or 24 CFR 92.257 (HOME) to wit:

- A. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in HUD-funded programs. Neither the federal government nor a state or local government receiving funds under these federal programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.
- B. Organizations that are directly HUD-funded may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this Agreement. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this Agreement, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.
- C. A religious organization that participates in the HUD-funded program will retain its independence from federal, state, and local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs provided that it does not use direct HUD funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide City-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a City-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- D. An organization that participates in HUD-funded programs shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- E. HUD funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this Agreement. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to these funds. Sanctuaries, chapels, or other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, are ineligible for HUD-funded improvements. Disposition of real property after the term of the grant, or any change

in use of the property during the term of the grant is subject to government-wide regulations governing real property disposition (24 CFR parts 84 and 85).

- F. If a state or local government contributes its own funds to supplement federally funded activities, the state or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

- G. If a program participant or prospective program participant of the HOME program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and sub-recipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of Section 92.508(a)(2)(xiii).

EXHIBIT 14 (Federal Funds)

DISPLACEMENT, RELOCATION AND ACQUISITION

The Contractor hereby agrees to comply with the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and its regulations at 49 CFR Part 24; Department of Housing and Urban Development Regulations 24 CFR 570.606, 24 CFR, Part 42, 104(d) One-for-One Replacement., HOME Investment Partnerships Program 24 CFR Part 92, Sec 92.353, Wis. Stats., and Ch. COMM 202 of Wisconsin Administrative Codes.

Highlights of the requirements are as follows:

A. *Minimizing displacement.*

Consistent with the other goals and objectives of this part, the Contractor must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with City or HUD funds.

B. *Relocation assistance for displaced persons.*

(1) *General.*

A displaced person (defined in paragraph (b)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655) and 49 CFR Part 24 and Chapter COMM 202 of the Wisconsin Administrative Codes (whichever is greater).

(2) *Displaced Person.*

- a. For purposes of paragraph (b) of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property or moves his or her personal property from real property as a direct result of:
 - i. The acquisition of or written notice of intent to acquire, or initiation of negotiations to acquire, real property for a project assisted with City funds; or
 - ii. The rehab or demolition of such real property for a project assisted with City funds; or
 - iii. The rehab, demolition, acquisition of, or written notice of intent to acquire all or a part of other real property on which the person conducts a business or farm operation, for a project assisted with City funds.

(3) *Person Not Displaced.*

The following is a nonexclusive listing of persons who do not qualify as displaced persons:

- a. A person who moves before the initiation of negotiations unless the Contractor determines that the person was displaced as a direct result of the program or project;
- b. A person who initially enters into occupancy of the property after the date of its acquisition for the project;

- c. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;
 - d. A person who is not required to relocate permanently as a direct result of a project;
 - e. A person whom the contractor determines is not displaced as a direct result of a partial acquisition (upon approval of the Community Development Division (CDD));
 - f. A person who, after receiving a notice of relocation eligibility is notified in writing that they will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and the Contractor agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;
 - g. An owner-occupant who conveys his or her property after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Contractor will not acquire the property.
 - h. A person who retains the right of use and occupancy of the real property for life following its acquisition by the Contractor;
 - i. A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law;
 - j. A person who is not lawfully present in the United States;
 - k. Tenants required to move as a result of the sale of their dwelling to a person using downpayment assistance provided under the American Dream Downpayment Initiative (ADDI).
 - l. Pursuant to Public Law 105-17, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child. All persons seeking URA relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.
- (4) *Initiation of negotiations.*

The term “initiation of negotiations” means:

- a. Whenever the displacement results from the acquisition of the real property by a Contractor, the initiation of negotiations means the delivery of the initial written offer by the Contractor to the owner or the owner’s representative to purchase the real property for the project. However, if the Contractor issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.
- b. Whenever the displacement is caused by rehabilitation or demolition of the real property, the initiation of negotiations means the notice to the person that they will be displaced by the project or, if there is no notice, the actual move of the person from the property.

However, in both (a) and (b) above, negotiations do not become effective, for purposes of establishing eligibility for relocation assistance, until there is a written agreement between the Contractor and the owner to purchase the real property.

(5) *Basic acquisition policies.*

- a. Expeditious acquisition. The Contractor shall make every reasonable effort to acquire the real property expeditiously by negotiation.
- b. Notice to owner. As soon as feasible, the Contractor shall notify the owner in writing of the Contractor's interest in acquiring the real property and will notify the owner of the following.
 - i. The Contractor will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
 - ii. The Contractor will inform the owner in writing of what it believes to be the just compensation for the property based on an appraisal of the property at which time the owner was invited to accompany the appraiser during the appraiser's inspection.
 - iii. Clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement, as the Contractor does not have authority to acquire property by eminent domain.

(6) *Relocation notices.*

- a. General information notice. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing Contractor's relocation program which does at least the following:
 - i. Informs the person that they may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
 - ii. Informs the displaced person that they will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;
 - iii. Informs the displaced person that they will not be required to move without at least 90 days advance written notice and informs any person to be displaced from a dwelling that they cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;
 - iv. Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined by relocation;
 - v. Describes the displaced person's right to appeal the Contractor's determination as to a person's application for assistance for which a person may be eligible under this part.

(7) *Manner of notices.*

Each notice which the Contractor is required to provide to a property owner or occupant under this part, except the notice described at SS 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt

requested, and documented in Contractor files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

(8) *Special Assistance.*

Reasonable accommodations must be made for persons with disabilities and language assistance must be made available for persons with limited English proficiency.

(9) *Records.*

The Contractor shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which they are entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(10) *One-for-one replacement of lower-income dwelling units.*

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income permanent dwelling units in connection with an activity assisted under this part, must be replaced with lower-income dwelling units.

Before obligating or expending any City funds provided for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the Contractor must submit the following information in writing to the Community Development Division for submittal to HUD:

- a. A description of the proposed assisted activity;
- b. 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 for low/moderate-income dwelling units as a direct result of the assisted activity;
- c. A time schedule for the commencement and completion of the demolition or conversion;

In addition, the Contractor will cooperate with the Community Development Division in developing the following information for submittal to HUD;

- a. 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;
- b. The source of funding and a time schedule for the provision of replacement dwelling units;
- c. The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy.

(11) *Relocation assistance under Section 104(d).*

Under 42 USC 5304(d), each "displaced person" is entitled to choose to receive either assistance at URA levels (see paragraph B. of this section) or the 104(d) levels described in section 24 CFR 570.606(c).

(12) *Appeals.*

If a person disagrees with the City's determination concerning the person's eligibility for, or the amount of relocation assistance for which the person may be eligible, the person may file a written appeal of that determination with the City. The appeal procedures are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the City's decision to the HUD Field Office.

Additional Requirements

The Contractor must submit a completed relocation plan to the State of Wisconsin for approval, along with a copy to the Community Development Division. Any offer to purchase a property must be contingent upon State approval of such a plan.

The Contractor further agrees to:

1. Notify the Community Development Division of the identification of a potential site prior to the initiation of negotiations resulting in the acquisition and/or rehabilitation of a property; and
2. Inform in writing each owner at the time of the initiation of negotiation of such a property of their rights and responsibilities under the Relocation Act.
3. Inform in writing each tenant at the time of the initiation of negotiation of such a property, or at the time rehabilitation is considered in the case of a contractor who already owns the property, of the potential for displacement or non-displacement, conditions of continued occupancy, or potential eligibility for relocation assistance and cautioning the tenant not to move in order to avoid jeopardizing potential relocation benefits if the project does proceed and individuals are displaced.
4. Maintain all records as required under the Relocation Act.

Note: For a more comprehensive review of all of the requirements, contact the Community Development Division.

EXHIBIT 15 (Federal Funds)

PROGRAM INCOME REQUIREMENTS

The Contractor hereby agrees to operate the program in compliance with United States Department of Housing and Urban Development Program Income Regulations 24 CFR 570.500, 570.504, HOME Investment Partnership Program Final Rule 24 CFR 92.300, 92.503, and 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards".

1. The Contractor will use all Program Income, as well as funds returned to the Contractor for the amount of the prorated share of City funds, for the purposes outlined in and under the terms of this Agreement.
 - a. Program Income is to include the original City funds contributed to the project plus interest, penalties, fees or profit generated, proceeds from the disposition of real property, payments of principal and interest on rehabilitation loans, and proceeds from special assessments.
 - b. Program Income generated as interest earned on revolving funds may not be retained by the Contractor. The Contractor will return all earned interest to the City's Community Development Division ("CDD"), on at least a quarterly basis.
 - c. Admission fees, service fees, and other receipts derived from the operation of a public work or facility, the construction of which was assisted by City funds, do not constitute Program Income.
2. For any funds received on a partial collection or settlement of a non-performing loan, or one that is in default, the Contractor will apply fifteen percent (15%) of the amount collected to "interest accrued" and the remaining eighty-five percent (85%) to "principal outstanding."
3. The Contractor will report to CDD all Program Income received and expended on a monthly basis. The Contractor will record the receipt and expenditure of such revenues in accordance with 24 CFR 84.24.
4. The Contractor will return to CDD any Program Income not disbursed for program related and eligible costs before requesting any additional payments from CDD for the same activity. Upon CDD's receipt of a reimbursement request in accordance with Exhibit 2 of this Agreement, and at the sole discretion of CDD staff, returned Program Income funds may be made available to the Contractor for reuse to fulfill the primary goals and objectives under the terms listed in this Agreement.
5. **HOME Program Income.** The Contractor will adhere to HOME Investment Partnerships Program Final Rule 24 CFR 92.503 for program income, repayments and recaptured funds.
6. **Community Housing Development Organizations (CHDO) Proceeds.** The Contractor will adhere to HOME Investment Partnerships Program Final Rule 24 CFR 92.300 as it pertains to Subpart G – Community Housing Development Organizations (CHDO).

On an annual basis, CDD staff will review, determine and approve the projected use and availability of all Program Income funds. Any necessary revisions to the Scope of Services or budget for the operation of the program will be made after said review.

The Contractor may, with the written approval of CDD staff and subject to available Program Income funds, be permitted to supplement the program's authorized budget with additional Program Income funds received after the start of the program year(s) covered by this Agreement, not to exceed a maximum amount specified by CDD staff as part of the written approval. If applicable, corresponding revisions to Exhibit 2 (Budget) of this Agreement will be made to reflect the additional terms and conditions stipulated in CDD staff's written approval.

EXHIBIT 16 (Federal Funds)

VULNERABLE POPULATIONS

Pursuant to Resolution No. 53,279, adopted by the City of Madison Common Council on May 21, 1996, Contractors whose programs deal with vulnerable populations, including, but not limited to, young children, youth, elderly, and people with disabilities, shall develop and implement policies and procedures to ensure the lowest possible degree of risk of victimization, abuse, or exploitation by employees and volunteers of the Contractor. The Contractor will use reasonable application and screening tools to select employees and volunteers who work directly with vulnerable clients. Use of all application and screening tools must be in a manner consistent with the Equal Opportunities Ordinance and the Fair Employment Act.

Note: As referenced in Resolution No. 53,279, some common components of screening include, but are not limited to: disclosure of criminal convictions and pending criminal charges, criminal background checks, reference checks, driving records checks, interviews, and testing procedures.

EXHIBIT 17

BAN THE BOX

For all contracts to which the provisions of EXHIBIT 16 VULNERABLE POPULATIONS does not apply, the following Ban the Box – Arrest and Criminal Background Checks provisions will apply:

Ban the Box - Arrest and Criminal Background Checks. (Sec. 39.08, MGO. Applicable to contracts exceeding \$25,000.)

A. Definitions.

For purposes of this section, “Arrest and Conviction Record” includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

“Conviction record” includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

“Background Check” means the process of checking an applicant’s arrest and conviction record, through any means.

B. Requirements. For the duration of this Contract, the Contractor shall:

1. Remove from all job application forms (and applications for unpaid interns, trainees or apprentices) any questions, check boxes, or other inquiries regarding an applicant’s arrest and conviction record, as defined herein.
2. Refrain from asking an applicant in any manner about their arrest or conviction record until after a conditional offer of employment is made to the applicant in question.
3. Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.
4. Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure using language provided by the City.
5. Comply with all other provisions of Sec. 39.08, MGO.

C. Exemptions: This section does not apply when:

1. Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law;
2. Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner prohibited under sec. B. above, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question; or
3. The contractor is identified by the City as being subject to the Vulnerable Populations Resolution adopted by the Common Council on May 21, 1996 (Substitute Resolution No. 53, 279.)

To be exempt under sec. C. 1. or 2. above, Contractor must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, the contractor is exempt from this section for the position(s) in question.