



## **PROJECT MANUAL**

**INCLUDING SPECIFICATIONS FOR THE CONSTRUCTION AND INSTALLATION OF**

## **PINEVILLE LAKE PARK FITNESS COURT SYSTEM EQUIPMENT PROJECT**

**TOWN OF PINEVILLE  
PARKS AND RECREATION  
DEPARTMENT PINEVILLE,  
NC 28134**

**Phone: (704) 704.889.2400**

**Prepared By Town of Pineville  
Date of Issue: November 17, 2023**

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# I. Notice to Bidders

The bid opening for this project will take place on December 18, 2023 at 2:00PM at the Pineville Town Hall located at 505 Main St, Pineville, NC 28134. Mailed bids should be sent to the same address with the exterior of the package clearly labeled, "Pineville Lake Park Fitness Court System Equipment Project BID;" mailed bids shall arrive before the specified time.

Bids are invited on work consisting of one Fitness Court System which will include:

- Concrete Installation
- Fitness Construction Installation
- 118 unique fitness elements
- 32' by 32' concrete based court
- 30 integrated bodyweight training components
- 32' by 5.5' public mural on the wall of the fitness court
- Digital engagement wall on the opposite side of the mural wall

All questions are to be submitted in writing via email to Matthew Jakubowski at [MJakubowski@pinevillenc.gov](mailto:MJakubowski@pinevillenc.gov) or at 704.889.2400 no later than December 13<sup>th</sup>, 2023.

All bidders are hereby notified that they must have proper licenses as required by State law is applicable at the time of submittal of bids. Bids may be held by the Town of Pineville for a period not to exceed sixty days (60) from the date of the opening of bids for the purpose of reviewing the bids and investigating the qualifications of bidders, prior to awarding of the Contract. The Town reserves the right to reject any or all bids and to waive any informality in the bidding.

The Contractor is hereby notified that the Contractor must meet all the terms and conditions related to this project imposed by the administrating agencies, as disclosed in the Project Standard Provisions section of these documents.

Davis-Bacon Act (DBA) (40 USC 276A-276A-5) federal regulations will apply to this contract "General Decision Number: NC20230088 01/06/2023, Superseded General Decision Number: NC20220088, State: North Carolina, Construction Type: Highway.

**The proposal form provided by the Town of Pineville shall be used and shall not be taken apart or altered.** All bids must be in a sealed envelope clearly stamped or marked (in letters of 1/4" or more), "PROPOSED BID FOR Pineville Lake Park Fitness Court System Equipment Project," and arrive prior to 2pm on December 18, 2023.

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

II. AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_,  
by and between the TOWN OF PINEVILLE, a Municipal Corporation organized and existing  
under the laws of the State of North Carolina and hereinafter called "TOWN," and \_\_\_\_\_  
\_\_\_\_\_ hereinafter called "CONTRACTOR."

WITNESSETH

That for and in consideration of the covenants and agreements herein set forth, the parties hereto  
mutually promise and agree as follows:

*1. Statement of Work*

The Contractor shall furnish all supervision, labor, materials, machinery, tools, equipment,  
and services and perform and complete all work in an efficient and workmanlike manner,  
and in accordance with the terms of this Agreement, as shall be necessary to complete  
construction and demolition associated with the **Pineville Lake Park Fitness Court  
System Equipment Project**

*2. Contract Sum*

The Contract sum of \_\_\_\_\_  
\_\_\_\_\_ is hereby established as determined by the unit prices  
and/or the lump sum prices bid.

*3. Contract Period*

The Contract period as defined shall begin no later than fourteen (14) days after award or  
upon the date specified in a written Notice to Proceed from the Town of Pineville,  
whichever is sooner. The work is to be diligently prosecuted to completion within ninety  
(90) calendar days from the start of the contract period. However, should the work or  
delivery of materials be interrupted or delayed by the Town, the time of completion shall be  
extended by the amount of time of said delay or interruption. Time extensions shall be  
permitted in accordance with the Project Standard Provisions.

#### ***4. Additional Work***

The Town may require the Contractor to furnish materials and to do additional work not provided in the Contract or Specifications, but which may be found necessary to the proper protection and completion of the work embraced in this Contract at prices to be fixed by the prices named in the Proposal, or on material and force account, at actual cost with fifteen percent (15%) added for profit, as specified under General Conditions. But no other work than that included in the Contract shall be done and no additional material shall be furnished by the Contractor without a written order from the Town Parks and Recreation Director. In the absence of such a written order from the Town Parks and Recreation Director, the Contractor shall not be entitled to payment for such additional work. Bills for extra work shall be filed with the Town Parks and Recreation Director within three (3) days after such extra work is completed, in order that the Town Parks and Recreation Director may establish the accuracy of the extra work bills.

#### ***5. Terms of Contract: Limitations***

The Contractor agrees to receive the prices stated in the Proposal attached, in full compensation for furnishing materials, and for labor in moving materials and executing all the work contemplated and shall be responsible for all loss or damage arising out of the nature of the work aforesaid or from any action of the elements or from any unforeseen obstruction or difficulties which may be encountered in the prosecution and delivery of the same, and for all risks of every nature and description connected with the work and furnishing the materials until their final completion and acceptance; also, for expense incurred by or in consequence of the suspense; also, for expense incurred by or in consequence of the suspense or of the discontinuance of said work and furnishing said materials according to the Plans, Specifications and requirements of the Engineer under them. The Contractor hereby further agrees that the said Town shall be and is hereby authorized to deduct and retain out of the monies which may be due or become due to the Contractor under this Agreement for the non-completion of the work or delivery of materials aforesaid within the time herein before stipulated for completion or within such further time as in accordance with the provisions of this agreement shall be fixed or allowed for such performance and completion, the sum of ***three hundred dollars (\$300.00)*** per calendar day for each and every day the time employed upon said work or delivery may exceed the time stipulated for such performance and completion. The sum of ***three hundred dollars (\$300.00)*** per calendar day is hereby fixed in view of the difficulty of estimating such damages, agreed upon, fixed and determined by the parties hereto as the liquidated damages, that the Town will suffer by reason of such default and not by way of penalty, and shall include all the actual and additional expense of the Town and of the Engineer due to the delay.

## **6. *Contract Payments***

The Town will make partial payments based on the progress of the work and payment requests submitted by the Contractor. Payment will be made within sixty (60) calendar days after receipt of a correct payment request. An amount equal to five percent (5% retainage) of the total amount due on the estimate will be deducted and retained by the Town until the work has been completed. The Town Parks and Recreation Director may withhold a monthly estimate when the payment amounts to One Thousand Dollars (\$1,000.00) or less.

The Town will require release of all claims for materials or labor furnished for this work prior to the payment of the final estimate. The Contractor shall furnish the Town with a written statement sworn before a Notary Public to the effect that all payments have been made for labor and materials used in this construction and that claims, suits, and proceedings of every name and description against the Town, its officers and agents, have been settled.

## **7. *Subcontracts***

The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this Contract without prior written approval of the Town Parks and Recreation Director, which approval may be conditioned upon compliance of the subcontractor with all the terms of this Contract relating to the work of such subcontractor.

## **8. *Permits and Codes***

The Contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes and, shall, at the Contractor's own expense, secure and pay the fees or charges for all permits required for the performance of the contract work.

## **9. *Care of Work***

The Contractor shall furnish and erect, at the Contractor's own expense, whatever structure, or other work as may be necessary for the protection of the public and for the safe and proper execution of installation and construction of the equipment thereto. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor or Subcontractor's fault, omission, or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all work performed hereunder until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the Town.

## ***10. Indemnification***

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town and its agents and employees, from and against all claims, damages, losses and expenses, including but not limited to, attorneys' fees arising out of or resulting from the performance of work, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from; and, (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

In any and all claims against the Town or any of its agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## ***11. Inspection and Supervision***

The Town reserves the right to place Inspectors on the work or at the place of shipment or delivery of materials, or at the factory or works of the Contractor to observe the quality of the work done and materials used. The Contractor agrees to afford said Inspectors all proper facilities for carrying out their duties. It is agreed and understood that the Town, through its Town Parks and Recreation Director, Inspector or other agent, has the right to supervise completion of the work according to the Plans, Specifications, and Contract, and without unnecessary inconvenience to the public, but nothing contained in the Contracts and Specifications shall be taken or understood to authorize such control of the work or delivery of materials as to relieve the Contractor of obligations or as to make the Contractor an agent of the Town. The Contractor is cautioned that neither the Director of Parks and Recreation nor any Inspector has any power to vary the Contract and that any variation from this Contract or Specifications shall be at the Contractor's own risk. This Contract is an agreement between the Town of Pineville and the Contractor and its acceptance by the governing body of the Town is a matter of record in the Minutes of the Town Clerk and no person or persons is or are authorized to relax its provisions unless such proposed substitution or variation is brought before the Town Board at a regular meeting open to the public and acted upon favorably by Resolution of the Board and same is spread upon the Minute Book of the Town Clerk.



## ***12. Completion by Town upon Work Abandoned or Termination for Cause***

The Contractor further agrees that if the work to be done under this Contract shall be abandoned, or if the Contract shall be assigned by said Contractor otherwise than as herein provided, or if, at any time, the Town Parks and Recreation Director shall be of the opinion that the work is unnecessarily or unreasonably delayed, or that said Contractor is willfully violating any terms or conditions of this Contract, or is not executing the Contract in good faith, or is not making such progress in the execution of said work as to indicate its completion within the time specified, the Town shall have the right to notify the Contractor to discontinue said work, or such part or parts thereof as said Town may designate, and said Town shall thereupon have the power and the right to employ by Contract or otherwise, and in such manner at such price as it may determine, any persons, and obtain any materials, equipment, and other means of construction which it may deem necessary to complete the work herein described, or such part or parts of it as said Town may have designated; also, the power to use such equipment and materials and means of construction of every description as may be found upon the line of said work, both such as enter into the complete work and such as necessarily used in and about the same and to procure other materials for the completion of said work and for carrying out the terms of this Contract; also to charge the expense of all said superintendence, labor, material, equipment, and other means of construction to the Contractor, and the expense so charged shall be deducted and paid for by the Town out of said monies as may be due or become due at any time thereafter to the Contractor under this Contract, or any part thereof.

In case such expense is less than the sum which would have been payable under this Contract, if the same had been completed by said Contractor, it is agreed that said Contractor shall be entitled to receive the difference; and in case such expense shall exceed the sum which would have been payable under this Contract, if the same had been completed by said Contractor, then said Contractor shall pay the amount of such excess to said Town after notice of the excess so due.

## ***13. Termination for Breach***

In the event that any of the provisions of the proceeding paragraphs of this Contract are violated by the Contractor or any subcontractor on the work, the Town of Pineville may terminate the Contract by serving written notice upon the Contractor of its intention to terminate said Contract and, unless within ten (10) days after serving of such notice, violating shall cease, the Contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Town may take over the work and prosecute the same to completion or otherwise for the account and at the expense of the Contractor and/or such subcontractor, and the Contractor and the Contractor's sureties shall be liable to the Town for any excess cost occasioned the Town in the event of any such

termination, and the Town may take possession of and utilize in completing the work such material, appliance, and plant as may be on the site of the work and necessary there for. This clause shall not be construed to prevent the termination for other causes provided in the Construction Contract.

#### ***14. Patents***

The Contractor shall be responsible for all fees or claims for any patented invention used by him and shall defend any suit that may be brought against the Town and shall hold said Town harmless for use or infringement of any patented thing or method used in connection with the work herein specified.

#### ***15. Contract Payment and Performance Bonds***

The successful bidder will be required to execute both a payment bond and a performance bond. Bond cost shall be included in the base bid and shall not be a separate pay item. The successful bidder, within 14 calendar days after the notice of award is received, shall provide the Town with a contract payment bond and a contract performance bond each in an amount equal to 100 percent of the amount of the contract. All bonds shall be on bond forms approved for use in North Carolina. The corporate surety furnishing the bonds shall be authorized to do business in the State. The successful bidder's failure to file acceptable bonds within **14 calendar days after the notice of award is received by the bidder shall be just cause for rescinding the award of the contract.**

#### ***16. Notice to Bidders***

Sealed proposals will be received until **2:00 PM on December 18<sup>th</sup> at the Pineville Town Hall located at 505 Main St, Pineville, NC 28134.** for the construction of the **Fitness Court at Lake Park** at which time and place, all properly submitted Bids will be opened and read aloud. Single-prime, unit cost bids will be received for construction as indicated in the bidding documents. Proposals must be made on standard forms furnished by the Town. No verbal or electronic bids will be accepted. Bidders or their authorized agents and other interested parties are invited to attend.

*This project will include:*

- Concrete Installation
- Fitness Construction Installation
- 118 unique fitness elements
- 32' by 32' concrete based court
- 30 integrated bodyweight training components
- 32' by 5.5' public mural on the wall of the fitness court
- Digital engagement wall on the opposite side of the mural wall

Contact: **Matthew Jakubowski** | [mjakubowski@pinevillenc.gov](mailto:mjakubowski@pinevillenc.gov) | (704) 889-2400

**Interested bidders are advised to submit contact information to the Town's Project Manager (listed below) to receive addenda(s) or additional information published during the bid process.**

All questions are to be submitted in writing via email to Town of Pineville, ATTN: Matthew Jakubowski ([mjakubowski@pinevillenc.gov](mailto:mjakubowski@pinevillenc.gov)) **no later than December 13<sup>th</sup>, 2023.**

This project is being funded with Community Development Block Grant Program – HUD funds; and must adhere to all federal construction standards. It is the contractor's responsibility to review, understand, adhere to and comply with, all federal construction regulations whether they are explicitly contained within this project manual or not. The following link is to the federal contracting regulations <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/appendix-Appendix%20II%20to%20Part%20200>

#### **Bid Opening**

The Town of Pineville reserves the right to reject any or all proposals and to waive informalities or technicalities, as it may deem to be in its best interest.

Bids may be held by the Town for a period not to exceed one hundred twenty (120) days from the date of the bid opening for reviewing bids and investigating qualifications of bidders.

The itemized proposal provided by the Town shall be used in its entirety. All entries including signatures shall be in ink.

**Delivery of Bids:** Each proposal must be complete and independent including bid proposal forms, bid security, and all other required forms. Each proposal must be submitted in (2) opaque adhesively sealed envelopes, to conceal its contents as follows:

a. **Inner Envelope**-The inner Envelope shall contain all bidding documents indicated in **INSTRUCTIONS TO BIDDERS, 8. PROPOSAL FORMS** with the exception of the Bid Bond. The name of the Bidder, their address and license number shall be marked on the outside of the Inner Envelope.

b. **Outer Envelope**- The Outer Envelope shall contain the sealed Inner Envelope and the Bid Bond. The Project Name and Bid Date shall be marked on the outside of the sealed Outer Envelope as well as the address for submission as indicated in the **NOTICE TO BIDDERS**.

**BID FOR:** \_\_\_\_\_ (Enter the project name as shown on the Bid Documents)  
*Project Name*

**BIDDER'S NAME:** \_\_\_\_\_ (Full name of Contractor submitting the bid)  
*Contractor's Name*

**DO NOT OPEN UNTIL:** \_\_\_\_\_ (Enter the date & time as shown on the Bid Documents)  
*Bid Opening Date & Time*

For information regarding this project, please contact:

Matthew Jakubowski Town of  
Pineville Town Hall  
704-889-2400  
[MJakubowski@pinevillenc.gov](mailto:MJakubowski@pinevillenc.gov)  
505 Main Street  
Pineville, NC 28134



## IV. Instructions to Bidders

- 1. FAMILIARITY WITH WORK AND CONDITIONS:** Before preparing Bids, Bidders are urged to visit the site to inform and familiarize themselves with all conditions involved and under which the project is to be constructed or apparatus erected or installed. The Owner will not be responsible to the Contractor for payments other than as set out in the Construction Contract should construction conditions be different from those assumed or contemplated by the Contractor. The Contractor is required to be satisfied, before bidding, as to the correctness of the site as indicated by the Contract Documents.
- 2. FAMILIARITY WITH LAWS, ETC.:** The Bidder shall be familiar with all Federal, State and Local Laws, ordinance and regulations, which may in any manner affect those engaged or employed in Work, or the materials or equipment in or upon the Work, or in any way affect the conduct of the Work, and no pleas of misunderstanding will be considered on account of the ignorance thereof. If the Bidder or Contractor shall discover any provisions in the plans, specifications or Construction Contract (hereinafter sometimes referred to as "Contract") which are contrary to or inconsistent with any such law, ordinance, or regulation, the bidder or contractor shall immediately report it to the Consultant in writing before the bid opening.
- 3. INSURANCE REQUIREMENTS:** The Contractor shall purchase and maintain insurance in the amounts and coverage listed on page 5 of the bid forms. The Contractor shall, at the time of execution of the Contract, file with the Owner the Certificate of Insurance contained herein showing proof of coverage as required by this Contract. All certificates supplied in accordance with this provision shall contain a cancellation clause that in the event of a material change or cancellation, thirty (30) calendar days prior written notice shall be given to the Town.

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees arising out of or resulting from the performance of the work provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom; and, (2) is caused, in whole or in part, directly or indirectly, employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the Town (or the Engineer) of any of its agents or employees, by any employee of the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts or other employee benefits acts.

#### **4. DISADVANTAGED BUSINESS ENTERPRISE:**

##### POLICY

It is the policy of the Town of Pineville that Disadvantaged Business Enterprises shall have the opportunity to participate in the performance of contracts finance by the Town.

##### OBLIGATION

The contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, color, national origin, creed, sex, sexual orientation, identity, or gender in the performance of this contract. The contractor shall carry out the applicable requirements of 49 CFR 26 in the award and administration of Town contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Town deems necessary.

- 5. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:** The Owner will comply with the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of a disability. The Owner will make reasonable accommodations in all programs to enable participation by an individual with a disability who meets essential eligibility requirements. The Owner's programs will be available in the most integrated setting for each individual. If any accommodations are necessary for participation in any program or services, participants are encouraged to notify Town Staff. Bidders must also submit a signed statement as provided herein, certifying compliance with the requirements of the Americans with Disabilities Act regarding non-discriminatory employment practices.

#### **6. DATE OF AVAILABILITY**

The date of availability will be 14 days after award of the project by the Town of Pineville Board of Commissioners. The Contractor may be permitted to begin work on the project prior to this date upon issuance of the Notice to Proceed.

#### **7. AWARDING OF CONTRACT**

The Town of Pineville will award the Contract or Contracts conditioned upon funds being available for construction and other governmental approval as may be required. The Contract will be awarded to the lowest responsible Bidder or Bidders, as required by North Carolina General Statutes. Consideration will be given only to proposal from Contractors who are properly licensed, bonded, experienced in the class of work proposed, and who can refer to projects of similar magnitude and character as have been completed by them. The Town also reserves the right to reject any and all proposals and to waive informalities or technicalities as it may deem to be in its best interest.

## **8. PLANS AND SPECIFICATIONS PROVIDED**

The Contractor will be provided with two (2) sets of plans and specifications.

**END OF INSTRUCTIONS TO BIDDERS**



## V. General Conditions of the Contract for Construction

1. **GOVERNING LAW:** The Contract and Contractor shall be governed by the laws of North Carolina and the Federal Government, including but not limited to OSHA regulations.
2. **USE OF SITE, CONSTRUCTION PROCEDURES AND SAFETY:** The Contractor shall confine construction operations to the limits of construction as indicated in the Contract Documents. The Contractor shall provide the Owner, Consultant, independent testing laboratories, and governmental agencies with jurisdictional interests' access to the site and the Work at reasonable times for their observation, inspections and testing. The Contractor shall provide them proper and safe conditions for such access and advise them of the Contractor's site safety procedures and programs so that they may comply.
3. **CONTRACT PERIOD:** Award of the Contract shall be made by the Town of Pineville. The Contract Period is ninety (90) calendar days. The Contract period as defined shall begin no later than fourteen (14) days after award or upon the date specified in a written Notice to Proceed from the Town of Pineville, whichever is sooner. The work is to be diligently prosecuted to completion within ninety (90) calendar days from the start of the contract period. The final acceptance date of the Contract Period is the date on which all work set forth in the Contract and work modified by the Engineer is satisfactorily completed. This excludes any observation periods not specifically made a part of the work by the Specifications or Special Provisions. The contractor is advised that the Town of Pineville does not recognize a "Substantial Completion Date" for the Contract and Contract Time will be counted until all work including punch list items of incomplete or nonconforming work has been corrected to the Engineer's satisfaction. On the final acceptance date, the Town Engineer will issue in writing a directive to the Contractor that all work has been accomplished within the terms of the Contract or as modified to date.
4. **CONSTRUCTION HOURS :** Construction hours shall be as follows:
  - a. Unless specifically noted otherwise, construction hours shall be during normal business hours.
    1. Normal business hours are defined as occurring Monday through Friday between the times of 7:00am to 7:00pm.
    2. Normal business hours do not include nationally recognized holidays.
    3. Weekend work is permissible upon approval by Owner. Request permission for weekend work a minimum of 48 hours prior to commencing weekend work.
    4. Work is subject to federal and state law and local ordinance.
  - b. All work delineated within the contract documents to take place outside of normal business hours shall be provided as such.
    1. The contractor shall include all aspects of related work that will be required to complete work delineated to take place outside of normal business hours.

5. **NOTICE TO PROCEED:** A Notice to Proceed will be issued to the Contractor upon receipt of the executed contract, insurance certificates, receipt of approval by other governmental agencies (if required) and any other documentation required by the Engineer. Any delay in issuance of the Notice to Proceed due to the Contractor's failure to provide the required documentation and consequently not being allowed to begin working on the project will not be sufficient grounds for an extension of the Contract Period.
  
6. **LIQUIDATED DAMAGES:** Liquidated damages will be assessed at the rate of **\$300.00 (three hundred dollars)** per calendar day for failure to complete the project within the Contract Period.
  
7. **HAZARDOUS MATERIALS:** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Consultant in writing.

The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Consultant, the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance.

The Contractor and the Consultant will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Consultant has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Consultant have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately.

The Owner, to the fullest extent permitted by law, shall indemnify and hold harmless the Contractor, Subcontractors, Consultants, Consultants Sub-consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses including but not limited to attorneys' fees, arising out of or resulting from performance of the Work

in the affected area, if in fact the material or substance presents the risk of bodily injury or death, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss, or expense is not due to the sole negligence of a party seeking indemnity. The Owner shall not be responsible for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents. The Contractor shall act at the contractor's discretion to prevent damages, injury, or losses as part of the original Work.

If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. These additional costs shall follow the procedures established for addition compensation and additional time extension to the Contract outlined in paragraph 4 of the Agreement section, regarding additional work.

8. **EMERGENCIES:** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss.
9. **GUARANTEE:** The Contractor shall guarantee all materials and workmanship for a period of one (1) year from the date of acceptance by the Town and shall replace any portions that fail because of faulty materials or workmanship at the Contractor's expense. A six (6) month and eleven (11) month inspection will be held during the warranty period. The Contractor shall immediately repair all defective items upon notification. Items repaired under the provisions shall have an extended warranty period of twelve (12) months of repair of the item.
10. **CLEAN UP:** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste material, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials.

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost shall be charged to the Contractor.

11. **TAXES & LICENSES:** North Carolina Sales and/or Use Taxes are applicable to purchases of building materials and other tangible personal property by Contractors for use in performing Town Contracts. Use Tax is also due on construction equipment brought into North Carolina for use in the performance of Town Contracts (N.C. Revenue Laws, G.S. 105-164.4 and G.S. 105-164.6). Contractors are liable for payment of applicable privilege licenses (N.C. Revenue Laws, G.S. 105-54). Contractors are also liable for payment of applicable franchise, corporate income, license and withholding taxes (N.C. Revenue Laws, G.S. 105-122, G.S. 105-123, G.S. 105-134 and G.S. 105-163.2).

The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed. The CONTRACTOR shall provide along with each pay request a detailed list of all sales taxes paid along with a copy of all invoices, on forms approved by the TOWN, for all materials incorporated into this project and all consumable materials used in the construction of the PROJECT. The CONTRACTOR shall maintain on file for up to three (3) years a copy of all invoices and the list of sales tax paid on this PROJECT.

12. **CONTRACTOR'S LIABILITY AND OTHER INSURANCE:** The Contractor shall purchase and maintain with a company acceptable to the Town and authorized to do business with the State of North Carolina, such insurance as will protect from claims under Worker's Compensation Laws, Disability Benefit Laws or other similar employee benefit laws from claims for damages because of bodily injury, occupational sickness or disease, or death of employees, and claims insured by usual personal injury liability coverage, from claims for damages because of bodily injury, sickness or disease, or death of any person other than employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom - any or all of which may arise out of or result from the Contractor's operations under the Contract documents, whether such operations be by the Contractor or any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall be written for no less than the limits of liability specified below or required by law.

**Automobile** - Bodily injury and property liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage combined.

**Comprehensive General Liability** - Bodily injury and property damage liability as shall protect the Contractor and any subcontractor performing work under this Contract from claims of bodily injury or property damage which arise from operations of this Contract whether such operations are performed by the Contractor, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$2,000,000 property damage each occurrence/aggregate of \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury liability and contractual liability assumed under the indemnity provision of this Contract and broad form property damage, explosion, collapse and underground utility damage (XC & U), stating if the policy is written on claims made or occurrence basis.

**Worker's Compensation and Employers Liability** - Must meet the statutory requirement of the State of North Carolina, in the amount of \$100,000 each accident and disease - each employee and \$500,000 disease policy limit.

**Excess Liability** – Umbrella form with limits of not less than \$2,000,000 each occurrence/aggregate.

The Contractor shall provide the Town with insurance certificates certifying that the foregoing insurance is in force; and such insurance certificates shall include provisions that the insurance shall not be cancelled, allowed to expire or be materially changed without giving the Town thirty (30) days advance written notice by Registered Mail.

The Contractor is advised that if any part of the work under the Contract is sublet, the Contractor should require the subcontractor (s) to carry insurance as required above.

However, this will in no way relieve the Contractor from providing full insurance coverage on all phases of the projects, including any that are sublet.

When certain work is to be performed inside right-of-ways owned by railroads, the North Carolina Department of Transportation, or other agencies, both the Contractor and any subcontractor may be required to furnish individual insurance certificates made in favor by the controlling agency, with limits established by that agency.

# **CONTRACT PROVISIONS FOR FEDERALLY ASSISTED CONSTRUCTION PROJECTS**

## **INTRODUCTION**

This project is being financially supported by federal funds awarded by the U.S. Department of Housing and Urban Development under the Community Development Block Grant (CDBG) Program. As a result of using federal funds on this project there are a number of regulations that must be adhered to in order to receive prompt payment for work done under the program.

The information provided on the following pages outlines a number of conditions that the Contractor must abide by in order to enter into a contract for the work described in the specifications and contract drawings.

The following conditions take precedence over any conflicting conditions in the contract:

**SEC. 1. APPLICATION TO SUBCONTRACTORS.** No money under this contract shall be disbursed by the Contractor to any sub-contractor or agency except pursuant to a written contract which incorporates the conditions listed below to the extent they are applicable.

**SEC. 2. DEFINITIONS.** As used in this contract:

"HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.

"Town" means the Mayor and Council Members of the Town of Pineville or a person authorized to act in their behalf.

"Act" means Title I of the Housing and Community Development Act of 1974, as amended, unless otherwise specified.

## **SEC. 3. ACCESS TO RECORDS AND RECORDS RETAINAGE.**

- A. **Records to be Kept.** Records shall be maintained in accordance with requirements prescribed by HUD or the Town with respect to all matters covered by this contract. Except as otherwise authorized by HUD, such records shall be maintained for a period of five (5) years after receipt of the final payment under this contract.
- B. **Documentation of Costs.** All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.
- C. **Inspection of Records.** At any time during normal business hours and as often as the Town, HUD and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available to the Town, HUD and/or representatives of the Comptroller

General for examination all of its records, with respect to all matters covered by this contract, and will permit the Town, HUD and/or representatives of the Comptroller General to audit, examine and make excerpts or transcripts from such records including contracts, invoices, materials, payrolls, records of personnel, conditions of employment and any other data relating to matters covered by this contract.

**SEC. 4. LOBBYING.** The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No federally 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 loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federally 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements.
4. This certification is a material representation of fact upon which reliance was placed when this contract was made or entered into. Agreement to this certification is a prerequisite for making or entering into this contract imposed by Section 1352, title 31, U.S. Code. Any person or agency that makes an expenditure prohibited by this section is subject to a civil penalty from \$10,000 up to \$100,000 for each failure. This penalty also applies to any person or agency that fails to submit or amend the disclosure form (LLL), when required. Failure to submit the required certification may result in payment under this contract being delayed or denied.

**SEC. 5. DISCRIMINATION.** Contractors shall comply with all relevant requirements of the following federal laws and regulations dealing with discrimination in federally assisted programs:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d)** which provides that no person shall, on the ground of race, color, or national origin, be excluded from employment or participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- B. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309) and regulations at CFR 570.602** which provide that no person shall on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, be denied employment in, or be subjected to discrimination under any CDBG program or activity.
- C. Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794)** which provides that no otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, be denied employment in, or be discriminated against under any program or activity receiving federal assistance.
- D. Age discrimination Act of 1975, as amended (42 U.S.C. 6101)** which provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.
- E. Executive Order 11246, as amended by Executive Order 12086, and regulations in 41 CFR 60**, which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally-assisted construction contracts and subcontracts. Contractors and subcontractors shall take affirmative action to ensure fair treatment in employment, including recruitment, training, promotion, demotion, transfer, layoff, termination, and pay.
  - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions in this nondiscrimination clause.
  - 2. The Contractor will, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.



3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advertising the labor union or worker's representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, and orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the contracting agency, and may direct the subcontractor or vendor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

**F. Section 3 Clause.** Projects involving construction where federal funding exceeds \$200,000 and any contract or subcontract exceeds \$100,000, the Contractor shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and regulations at 24 CFR Part 135.

1. Section 3 requires that, to the greatest extent possible:
  - a. Training and employment opportunities shall be made available to low-income residents of the metropolitan area in which the project is located; and
  - b. Subcontracts shall be awarded to businesses owned by low-income residents or to

businesses in which at least 30% of their permanent employees are low-income residents.

2. Contractors and subcontractors shall be required to provide to the Town plans for complying with these provisions and reports on the extent to which they have met them.
3. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project. The Contractor will not subcontract with any subcontractor where it has notice that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided a preliminary statement of ability to comply with the requirements of these regulations.

**SEC. 6. LABOR STANDARDS.** Contractors shall comply with all relevant requirements of the following federal laws and regulations dealing with labor standards in federally assisted programs:

- A. Davis-Bacon Act Provisions. All contracts for construction work in excess of \$2,000 awarded by grantees and subgrantees shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276 a to a.7) as supplemented by Department of Labor Regulations (29 CFR Part 5). However, these requirements apply to the rehabilitation of residential property only if such property contains eight (8) or more units. The Davis Bacon Act is not triggered when CDBG funds are used for non-construction work such as acquisition, purchase of equipment, architectural and engineering fees, other services (legal, accounting, construction management), etc.
  1. All workers employed by Contractors or subcontractors on construction work costing over \$2,000 and financed in whole or in part under this Contract shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor and specified in a wage determination.
  2. In construction projects subject to the Davis-Bacon Act, Contractors and subcontractors shall submit weekly payroll information for each worker in the form prescribed by HUD, and shall post a notice listing the minimum wage rates at the work site or sites. In addition, Contractors and subcontractors shall be required to pay wages at least once a week.
- B. Copeland "Anti-Kick Back Act" (18 U.S. C. 876) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that the Contractor 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.
- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). Contracts awarded by grantees and subgrantees in excess of \$2,000 which involve the employment of mechanics or laborers shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations contained in 29 CFR Parts 3, 5 and 5a.

1. Under Section 103 Of the Act, the Contractor and any of his subcontractors, shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty hours. Work in excess of the standard work week is permissible, provided the worker is compensated at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any work week.
2. Section 107 of the Act provides that 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. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market.

**SEC. 7. Clean Water, Clean Air, E.O. 11738 and EPA Regulations Provision Compliance**

**with Air and Water Acts** apply to assisted construction contracts and related subcontracts exceeding \$100,000. In compliance with Section 306 of the Clean Air Act, as amended, (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended, (33 U.S.C. 1368), Executive Order 11738, and the Regulations (40 CFR, part 15) of the Environmental Protection Agency with respect thereto the Contractor agrees that:

1. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
2. They will comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued there under.
3. They will promptly notify the Town of any notification received from the EPA Office of Federal Activities, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. They will include the provisions of paragraph 1 through 4 of this subpart in every nonexempt subcontract, and take such action as the Government may direct as a means of enforcing such provisions.

**SEC. 8. LEAD BASED PAINT.** The use of lead-based paint in the federally assisted construction or rehabilitation of residential structures (including day cares, senior centers, and community facilities) is prohibited by Section 401(b) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4831(b)] and regulations in 24 CFR 35B. To the extent that contracted work involves residential structures, the Contractor and subcontractors must follow the new regulations issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X ("ten") of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally associated housing. The new regulation appears within title 24 of the Code of Federal Regulations as part 35 (24 CFR 35).

1. The Contractor and subcontractors shall not use lead-based paint in residential structures and shall eliminate any lead-based paint hazards in residential structures rehabilitated.
2. At a minimum the Contractor and subcontractors must comply with the Lead Hazard Reduction Methods in 24 CFR 35.1330 and 1325.
3. All workers involved in the disturbance of lead-based paint bearing surfaces should be trained in lead safe work practices.
4. At the conclusion of residential rehabilitation, the property must pass a lead hazard clearance test by a certified technician and lab. The lead level must meet the federal and North Carolina standard lead level threshold for Childhood Lead Exposure Act of North Carolina and the Environmental Protection Agency. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in 24 CFR 35.1350(d).

**SEC. 9. USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS. CDBG**

funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 24 CFR Part 24. (Government Debarment and Suspension Regulations).

**SEC. 10. CONFLICT OF INTEREST.**

- A. Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials.** No member, officer, or employee of the recipient, subrecipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. This provision shall be incorporated in all such contracts or subcontracts.
- B. Contractor's Responsibilities.** The Contractor shall take appropriate steps to assure compliance with paragraph (A) of this section and will incorporate the following provision into every sub-contract: Interest of Sub-Contractor and Employees. The Sub-Contractor covenants that no person who presently exercises any functions or responsibilities in connection with the Community Development Block Grant Program has any personal financial interest, direct or indirect, in this Contract. Any interest on the part of the Sub-Contractor or his employees must be disclosed to the Recipient and the Town, provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area."

## **SEC. 11. DISPUTES, DEFAULT AND TERMINATION**

A. **Disputes.** In the event of dispute arising under this Contract, the Contractor shall notify the Town promptly in writing of their contentions and submit the claim. If the dispute arises before performance of the related work, the written notice shall be submitted prior to commencing such work. In any event, the Contractor shall proceed with such work in compliance with the instructions of the Town; such compliance shall not be a waiver of the Contractor's rights to make a claim, provided they have notified the Town in writing as above stipulated.

### **B. Default and Remedies.**

1. Default shall consist of any failure by the Contractor to perform under this contract or written amendments thereto or any breach of any covenant, agreement, provision or warranty provided by the Contractor as a part of this contract. Actions which constitute a default include, but are not limited to:
  - a. Failure to submit to the Town reports which are required pursuant to this contract or the submission of required reports that are incorrect or incomplete.
  - b. Submission of requests for payment or reimbursement of amounts that are incorrect or incomplete.
  - c. The failure of the Contractor to accept any additional conditions which may be provided by law, by executive order, by regulation or by other policy announced by the Town, the state or any federal agency.
  - d. Failure to perform any activity required by this contract.
2. Upon occurrence of any default, the Town shall advise the Contractor in writing of the action constituting the default, and specify the actions that must be taken to cure the default. The Town may suspend payment under the contract. If a default is not cured within 30 days from receipt of written notice of such default by the Contractor, the Town may continue the suspension or, by written notice of termination, may terminate the contract.
3. Notwithstanding the above, the Contractor shall not be relieved of liability to the Town for damage sustained by the Town by virtue of any default or breach of the contract; and the Town may deduct the amount of damages from any outstanding payments to the Contractor or may withhold payments until such time as the exact amount of the damages is determined.

**C. Termination.**

1. If federal funding for this project is terminated and no other funding is available for continuation of this project, the Town will not be obligated to continue funding for the services contained in this contract and may terminate the contract.
2. In the event of termination, all property and finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by or purchased with CDBG funds by the Contractor under this contract shall, at the option of the Town, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

**END OF GENERAL CONDITIONS OF THE CONTRACT**

## VI. TECHNICAL SPECIFICATIONS

### BID REQUIREMENTS AND DOCUMENTS

#### 1. Existing Utilities

The owners of utilities in this project are, but are not limited to:

- Gas- Piedmont Natural Gas
- Water- Charlotte Water
- Communications – Town of Pineville
- Electric – Town of Pineville Electricities

The Contractor shall adhere to the provisions of *Underground Utility Safety and Damage Protection Act, NCGS 87-115 through NCGS 87-130*. To assist the Contractor and utility owners in meeting the requirements of this law, there is a "one call system" called "NC811." Most major utilities with underground facilities in the State subscribe to this service. For calls originating within North Carolina, the telephone number is 811. For calls originating outside North Carolina, the number is 1-800-632-4949.

Charlotte Water's (formally CMUD) telephone number is 311 within Mecklenburg County. Outside of Mecklenburg county limits the telephone number is 704-336-7600. The Contractor shall include the cost of any coordination and cooperation of utilities in the bid. No additional compensation shall be allowed for delays or inconveniences sustained by the Contractor due to utility relocation or adjustments. No additional payment will be made for re-mobilization required by the utility's failure to relocate utility at the request of the Contractor.

When the Contractor's controlling operations are halted due to the failure of a utility owner to relocate or adjust a utility after being properly notified by the Contractor, the Contract Period may be extended upon request by the amount of time the Contractor's controlling operations have been delayed while awaiting the relocation or adjustment. The Contractor is required to provide the request in writing documenting the delays and identifying the controlling operations.

Where changes to utility facilities are to be made solely for the convenience of the Contractor, it shall be the Contractor's responsibility to arrange for such changes and the Contractor shall bear all costs of such changes.

There is one pole on this project that needs to be moved. Contractor will coordinate with the utilities on the pole relocations.

#### 2. Quality Control Services

Contractor Responsibilities: Contractor shall be responsible for quality control inspection to ensure that the quality of means and methods of construction will produce the specified quality of work. There will be no separate payment for this item. Copies of all test results will be provided to the Town at no additional cost.

Owner Responsibilities: The owner will provide quality assurance and engage and pay for the

services of an independent agency to perform inspections and test of materials for quality assurance.

Retest Responsibilities: Where results of required inspections, test, or similar services prove unsatisfactory, then retests are the responsibility of the Contractor. Said costs for quality assurance retests shall be deducted from monies due the Contractor on the next monthly pay request.

### **3. Project Closeout Documents**

The Contractor shall provide the following documents with the final payment request:

1. Consent of Surety to Final Payment
2. Contractor's Release and Wavier of Claim
3. North Carolina and County Sales or Use Tax Statements and Certifications
4. Affidavit of Payment
- 5 MBE Documentation for subs for Contract Payments

No final payment will be authorized until these documents have been properly completed and submitted by the Contractor.

### **END OF SECTION BID REQUIREMENTS AND DOCUMENTS**

## **VII. WORK COVERED BY CONTRACT DOCUMENTS**

Project Identification: Pineville Lake Park Fitness Court System Equipment Project

A. The work consists of:

1. Ground preparation and concrete base:
  - a. Work to include ground preparation for installation of concrete base measuring 32'x 32'
2. Fitness Equipment Construction/Installation: comprehensive outdoor circuit training system, laid out in 32'x32' of space, for a total of 1024 sq ft of training area including integrated bodyweight training component with 118 unique fitness elements, and 30 integrated bodyweight training components.
3. 32' x 5.5' Public Art Mural
4. Digital Engagement Wall including digital QR codes.



## B. Material and Equipment Storage

The Contractor shall be responsible for locating and providing storage areas for construction materials and equipment. The material and equipment storage shall comply with all local and state ordinances throughout the construction period. The Contractor shall restore the storage area to its original condition upon completion of the project. Such restoration shall be at the Contractor's expense.

The Contractor shall be responsible for the safeguarding of materials and equipment against fire, theft and vandalism and shall not hold the Town responsible in any way for occurrences of same.

## C. Restoration

All private and public property disturbed in the process of project construction shall be restored to the condition existing prior to construction.

## VIII. BID FORMS

### PROPOSAL SHEET

To the Town Parks and Recreation Director, Pineville Parks and Recreation Department, 505 Main Street, Pineville, North Carolina 28134.

The following documents are attached to and made a part of this Bid:

1. Non-collusion Affidavit
2. Certificate of Insurance
3. Contractor's Affidavit
4. Release and Waiver of Claim
5. Certificate of Prompt Payment

The undersigned, having carefully examined the site and familiarized (themselves, itself) with the existing conditions on the project area affecting the cost of the work, and with the Contract documents, which includes Notice to Bidders, the form of Proposal, form of Contract (Agreement), form of Non-collusion Affidavit, Addenda (if any), General Specifications, Project Special Provisions (to include the required insurance limits and Technical Specifications), and form of Surety Bonds and plans, details, drawings, as prepared by the Office of the Town Engineer and on file in the Office of the Town Engineer, hereby proposes to furnish all supervision, labor, equipment, materials and services, including all utility and transportation services required to construct and complete the **Pineville Lake Park Fitness Court System Equipment Project**, all in accordance with the above-listed documents at and for the Contract lump-sum bid as determined by the unit prices for the items and estimated quantities listed on the itemized proposal for said project.

See attached estimated quantities in the Itemized Proposal sheet for reference. These quantities are provided solely for the purpose of illustrating the work shown in the construction plans. While every effort was made to provide accurate information, contractors shall not base bids on these estimated quantities as there is no guarantee made for accuracy. Contractors must visit the work areas and reference the construction plans and specifications to determine actual quantities for use in calculating the LUMP SUM BID amount. Change orders for additional materials to complete the work shown in the bid documents will not be approved as this project is lump sum guaranteed maximum price.

Section Numbers refer to the appropriate section of *the Standard Specifications for Roads and Structures*, current edition of the North Carolina State Highway Department, detail from NCDENR, or the appropriate detail from the *Mecklenburg County Land Development Standards*, latest edition, as applicable. SP refers to the appropriate section of the Special Provisions. All item prices shall include the costs to install the item at the beginning of the appropriate work period, maintain and refresh the item as needed during the work period, and remove the item, when appropriate, at the completion of the work period.

**SIGNATURE SHEET**

Prior to submitting this proposal, each Bidder shall visit the project site and be thoroughly familiar with all existing conditions that will affect the work. Site visits shall be coordinated with the Town of Pineville Parks and Recreation Department by contacting Matthew Jakubowski, Director at (704) 889-2400.

The foregoing quantities are considered to be approximate only and are given as the basis for comparison of bids. The Contractor shall make an estimate of the quantities of materials to be used in this work and shall use those quantities in the line-item amount and final Lump-Sum Bid. Unit prices are to be used for new work or modifications to proposed work only. The Town of Pineville may increase or decrease the amount of any item or portion of items as may be deemed necessary or expedient.

An increase or decrease in the quantity for any item will not be regarded as sufficient grounds for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for in the Contract.

**SIGNATURE OF BIDDER**

Name of Firm: \_\_\_\_\_  
(Print or Type)

Signature of Bidder: \_\_\_\_\_ (SEAL)

**ATTEST**

\_\_\_\_\_  
(Secretary, if Corporation)

Address of Bidder: \_\_\_\_\_  
(Print or Type)

Email Address of Bidder: \_\_\_\_\_  
(Print or Type)

Phone Number of Bidder: \_\_\_\_\_  
(Print or Type)

**ACKNOWLEDGEMENT OF ADDENDA:**

No.: \_\_\_\_\_ Date: \_\_\_\_\_  
No.: \_\_\_\_\_ Date: \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT OF CONTRACTOR**

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

\_\_\_\_\_, being first duly sworn, deposes and says that:  
*(Name)*

- (1) She/He is \_\_\_\_\_ of \_\_\_\_\_, the  
*(Title)* *(Company)*  
Contractor that submitted the attached Proposal;
- (2) She/he is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal was genuine and not a collusive or sham Proposal;
- (4) Neither the said Contractor nor any of its officers, partners, owners, agents, representatives, employees or parties of interest, including this affiant, in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Proposal of any other Bidder, or to fix any overhead, profit or cost element of the bid price, or the bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Town of Pineville or any person interested in the proposed Contract; and,
- (5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Contractor or any of its agents, representatives, owners, employees or parties in interest including this affiant.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public My Commission Expires: \_\_\_\_\_

# CERTIFICATE OF INSURANCE

Company: \_\_\_\_\_ Date: \_\_\_\_\_

This is to certify to the Town of Pineville that on the above date the following described insurance policies issued by this company are in full force and effect.

Name of Insured: \_\_\_\_\_ Address: \_\_\_\_\_

Description of Work & Location: \_\_\_\_\_

Type of Insurance	Policy No.	Effective Date	Expiration Date	All Limits x 1000		
<b>General Liability</b>						
___ Commercial General Liability				General Aggregate	\$	
___ Claims Made__ Occurrences				Personal & Advertising Injury	\$	
___ Owners & Contractors Protective				Products - Comp/Ops Aggregate	\$	
___				Each Occurrence	\$	
___				Fire Damage (any one fire)	\$	
				Medical Expense (any one person)		
<b>Automobile Liability</b>						
___ Any Auto				CSL	\$	
___ All Owned Autos				Bodily Injury (per person)	\$	
___ Scheduled Autos				Bodily Injury (per person)	\$	
___ Hired Autos				Property Damage	\$	
___ Non-Owned Autos						
___ Garage Liability						
<b>Excess Liability</b>					Each Occurrence \$	Aggregate \$
___ Other Than Umbrella Form						
<b>Workman's Compensation and Employer's Liability</b>				Statutory		
				\$		(each accident)
				\$		(disease-policy limit)
				\$		(disease-each employee)
<b>Other</b>	The Town of Pineville is to be added as an additional insured as evidenced by the attached endorsement.					

**Under General Liability Policy or Policies**

- |    |  |     |    |
|----|--|-----|----|
| 1. | Is Products-Completed Operations coverage included?  | Yes | No |
| 2. | Is Personal Injury (false arrest, libel, wrongful eviction, etc.) included?                        | Yes | No |
| 3. | Is Broad Form Property Damage coverage provided for on this project?                               | Yes | No |
| 4. | Is coverage for XC and U hazards included?   | Yes | No |
| 5. | Is coverage provided for Contractual Liability (including indemnity provision) assumed by Insured? | Yes | No |

**Cancellation/Expiration**

The subscribing company hereby agrees that thirty (30) days written notice shall be given, via Registered Mail, to the Town of Pineville Public Works Department before any policy referred to herein is changed or canceled. The subscribing company also agrees that immediate notice shall be given to the Town of Pineville Engineering if any policy is not renewed by the Insured.

\_\_\_\_\_  
Insurance Company Authorized to do Business in North Carolina

\_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address of Agency

**CONTRACTOR'S AFFIDAVIT  
RELEASE AND WAIVER OF  
CLAIM**

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

\_\_\_\_\_, \_\_\_\_\_ of  
(Name) (Title)

\_\_\_\_\_, being first duly sworn, deposes and says that:  
(Company)

1. The undersigned is authorized to execute this Affidavit, Release and Waiver of Claim on behalf of the Contractor and has personal knowledge of all facts set forth herein.
2. This Affidavit, Release and Waiver of Claim is made concerning the construction of the following project:  

**Pineville Lake Park Fitness Court System Equipment Project**
3. All payrolls, material bills, sales tax, social security tax, state and federal unemployment insurance, and all liabilities and taxes owed by the Contractor and arising in any manner from the above-described project have been paid in full;
4. No claim or lien exists in favor of any supplier of materials or labor or in favor of any subcontractor furnishing materials or labor on the above-described project;
5. Notwithstanding the foregoing, if the Town of Pineville or property of the Town of Pineville is subject to any claim or lien which arises in any manner from the failure of the Contractor to pay any liability described above, the Contractor will indemnify and hold the Town of Pineville harmless for any amount which the Town of Pineville is required to pay to discharge such lien or settle such claim and further will pay the Town of Pineville's expenses, costs, and attorney fees incurred in connection therewith.
6. All claims, suits, and proceedings of every name, description, or nature arising out of the above project against the Town of Pineville, its officers, employees and agents have been settled;
7. The Contractor releases and waives any and all claims of every type and description which the Contractor may have against the Town of Pineville arising in any manner from the construction of the above-described project.

\_\_\_\_\_  
Contractor Date: \_\_\_\_\_

\_\_\_\_\_  
Title

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, (Seal)  
20\_\_\_\_.

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_

## CERTIFICATE OF PROMPT PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the Owner. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the owner. This clause applies to both DBE and non-DBE subcontractors.

NAME OF BIDDER:

---

BY:

---

TITLE:

---

DATE:

---



Pineville Lake Park Fitness Court Itemized Proposal

32' by 32' Concrete Slab and Installation Cost	Fitness Court Materials and Installation Cost	Bid Total



## IX. ADDITIONAL EXHIBITS

### CDBG Program Language Provisions

1. Compliance with Executive Order 11246 - During the performance of this Contract, the Contractor agrees as follows:
  - a. The Contractor will not discriminate against any employee or applicant because of race, creed, color, age, sex, handicap or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, age, handicap or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, handicap or national origin.
  - c. The Contractor will send to each labor Mecklenburg or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor Mecklenburg or worker's representatives of commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or a veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veteran status in all employment practices such as the following: employment upgrading, demotion

or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor. No segregated facilities will be maintained as required by Title VI of Civil Rights Acts of 1964.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his book, records, timecards, and accounts by the administering agency and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations and orders.
- g. In the event of the Contractor's non-compliance with the non-discriminatory clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further grantee contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11236 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order, of the Secretary of Labor, or as otherwise provided by law.
- h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Section 110, Chapter 69, Title 42, Housing and Community Development Act of 1974 (42 USC 5310) provides that “All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 USC 276a-276a-5): Provided that this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.”
3. Davis-Bacon Act (DBA) (40 USC 276A-276A-5) provides that contracts in excess of \$2,000 to which the United States is a party for the construction, alteration, and/or repair, including painting and decorating of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.
4. Contract Work Hours and Safety Standards Act (CWHSSA) (40 USC 327-333). CWHSSA provides that work in excess of 40 hours per week shall be compensated for at rates not less than one and one-half times the basic rate of pay. CWHSSA applies to both direct federal contracts and indirect federally assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA also applies to maintenance laborers and mechanics employed by public housing authorities.
5. Copeland Act (Anti-Kickback Act) (40 USC 276c) makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his contract of employment. The Act also requires contractors on covered projects to submit weekly a “Statement of Compliance” certifying that the contract has paid the required wages.
6. Fair Labor Standards Act of 1938, as Amended (FLSA), (29 USC 201, et seq.) establishes minimum wage, overtime pay (40-hour workweek), recordkeeping, and child labor standards. When prevailing rates apply, in general all the above statutory provisions apply except to the rehabilitation of residential property only if such property contains no less than eight (8) units.

7. Audit, Inspection, and Retention of Records - The Contractor shall permit the Owner, Mecklenburg County, the U.S. Department of Housing and Urban Development, the U.S. Department of Labor, the Comptroller General of the United States, or any of their duly authorized representatives, to inspect and audit any books, documents, papers, and records of the Contractor which are directly pertinent to the Contractor's performance under this Contract until the expiration of three (3) years after the Owner makes final payment under this Contract and all other pending matters are closed. Failure of the Contractor to produce or have available these records may result in debarment.
8. Energy Efficiency - The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
9. Violation or Breach of Contract - If any party violates or breaches any term of this Contract, such violation or breach shall be deemed to constitute a default, and the other parties have the right to seek such administrative, contractual or legal remedies as may be suitable to the violation or breach; and, in addition, if any party, by reason of any default, fails within fifteen (15) days after notice thereof by another party to comply with the conditions of the Contract, the party having provided such notice may terminate this Contract.
10. Termination for Default or Convenience
  - a. The Owner may terminate this Contract, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including Contract closeout costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid to the Contractor. If the Contractor has any property in its possession belonging to the Owner, the Contractor will account for the same, and dispose of it in the manner the Owner directs. The parties agree that the Owner shall not be liable for the cost of the Contractor doing business, his overhead, or salaries if this Contract is terminated.
  - b. If the Contractor fails to perform in the manner called for in this Contract, or if the Contractor fails to comply with any other provisions of this Contract, the Owner may terminate this Contract for default. Termination shall be effected by serving a "Notice of Termination" on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for services performed in accordance with the manner of performance set forth in this Contract.
  - c. In the event of a strike, fire, flood, or events which are not the fault of the Contractor, or

events that make it impossible or impractical for the Contractor to complete said work on schedule, the Owner, after establishing a new performance schedule, may allow the Contractor to continue work, or may treat the said events as a termination for convenience.

11. Subcontracts

- a. The Contractor shall not subcontract any work to be performed under this Contract 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." 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.
- b. The provisions enumerated herein (including Exhibits) shall be applied to and physically be made a part of any and all subcontracts entered into by the Contractor for the performance of any part of the work of this Contract. The Contractor shall notify the Owner and the Mecklenburg County in writing prior to executing such subcontracts so that a pre- construction conference may be scheduled with the subcontractor and Owner to review applicable contract provisions.

12. Section 3 Clause (Applicable if Contract amount is equal or exceeds \$200,000)

- 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 agree to comply with HUD's regulations in 24 CFR part 75, 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 24 CFR part 135 regulations.
- c. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications

for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract 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.
  - g. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
13. Environmental Protection (Applicable if Contract amount exceeds \$100,000) - The Contractor shall comply with the applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

14. Build America, Buy America (BABA) Act: On November 15, 2021, the Build America, Buy America Act (the Act) was enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58. The Act establishes a domestic content procurement preference, the Buy American Preference (BAP), for Federal programs that permit Federal financial assistance to be used for infrastructure projects. In Section 70912, the Act further defines a project to include “the construction, alteration, maintenance, or repair of infrastructure in the United States” and includes within the definition of infrastructure those items traditionally included along with buildings and real property. Starting May 14, 2022, new awards of Federal financial assistance (FFA) from a program for infrastructure, and any of those funds obligated by the grantee, are covered under the Build America, Buy America (BABA) provisions of the Act, 41 U.S.C. 8301 note, unless covered by a waiver. The BAP is applicable now to iron and steel used in covered CDBG projects, i.e. for projects using funds obligated on or after November 15, 2022

# Davis Bacon Prevailing Wage General Decision