



City of Fairburn
56 Malone Street
Fairburn, GA 30213
May 13, 2019 @ 6:00 PM

WORKSHOP AGENDA

- | | | |
|------|--|---|
| I. | Meeting Called to Order: | The Honorable Elizabeth Carr-Hurst, Mayor |
| II. | Roll Call | Shana T. Moss, Interim City Clerk |
| III. | Presentations: | None |
| IV. | Discussions: | Councilmembers |
| V. | Review of Agenda Items for Council Session | Councilmembers |
| VI. | Adjournment | Councilmembers |



CITY OF FAIRBURN
CITY HALL
56 Malone Street
Fairburn, GA 30213
May 13, 2019

Regular Agenda

The Honorable Mayor Elizabeth Carr-Hurst, Presiding

The Honorable Mayor Pro-Tem Linda J. Davis
The Honorable Pat Pallend
The Honorable Ulysses J. Smallwood

The Honorable Alex Heath
The Honorable Hattie Portis-Jones
The Honorable James Whitmore

Mr. Randy Turner

City Attorney

I. Meeting Called to Order:

The Honorable Mayor Carr-Hurst

II. Roll Call:

Shana T. Moss
Interim City Clerk

III. Invocation:

Pastor Douglas Thompson
Harvest Rain International

IV. Pledge of Allegiance:

In Unison

V. Presentations:

1. Dr. Steven L. Moyers
Vice President/Dean of Education

Grady Health Systems-EMS

VI. Public Comments: Thirty (30) minutes shall be available for public comments. Each speaker shall be limited to three (3) minutes; however, a speaker may transfer his or her three (3) minutes to another speaker, but no speaker shall be permitted to speak for more than (6) minutes; further in the event, if more than ten (10) speakers desire to speak, each speaker shall be limited to two (2) minutes and no speaker may speak more than four (4) minutes. Issues raised at this time are generally referred to the City Administrator for review. Responses will be provided at a later date.

VII. Adoption of the Council Agenda:

Councilmember

VIII. Adoption of Consent Agenda Items:

Councilmembers

IX. Adoption of City Council Minutes:

Councilmembers

X. Adoption of Special Called Executive Session Minutes

Councilmember

City of Fairburn
Mayor and Council Meeting Minutes
April 22, 2019
7:00 PM

- I. Call to Order: The meeting was called to order by The Honorable Mayor Carr-Hurst at 7:00 pm.
- II. Roll Call was taken by Interim City Clerk Shana T. Moss with the following members present:

Mayor Elizabeth Carr-Hurst	
Mayor Pro-Tem Linda J. Davis	Councilman Alex Heath
Councilman Pat Pallend	Councilwoman Hattie Portis Jones
Councilman Ulysses J. Smallwood	

The absent member was Councilman James Whitmore.

The attendance of Council constituted a quorum and the meeting proceeded.

- III. The invocation was given by Bishop Aaron Lackey of Temple of Prayer Family Worship Cathedral UCOGIC.
- IV. The Pledge of Allegiance was recited in unison.

V. Presentations:

1. Mr. Doug Carey, Fulton County Board of Education's Director of Strategic Plan gave a comprehensive update of the STEM School that is being constructed in Fairburn. The school will house grades 6th-12th and the curriculum will be focused on Science, Technology, Engineering and Mathematics. The school will be located on 44 acres and will cost roughly \$50 million. The school will consist of an auditorium, a gymnasium, and a large multi-purpose space. The building will consist of two stories and have allocation for 900 students with a 128 students per grade being accepted. The school's structure will blend in with the façade of the neighborhood consisting of granite, brick, glass and shading. The school is slated to open in 2021 for the school year. Only students from South Fulton will be enrolled in the school. Mayor and Council stated they were excited about the new school.

2. Ms. Laura Benz and Ms. Andrea Gray with South Fulton Municipal Water and Sewer Authority Project Managers provided a water update to Mayor and Council. Ms. Benz highlighted some important dates with the water authority. She referenced August 2017 GEFA approved an amendment to the terms and conditions of the \$10.5 million loan which allowed funds to be used for engineering, permitting and other activities associated with a direct withdrawal, reservoir or infrastructure needed to purchase water from another source. Ms. Gray stated on September 30, 2017 a study was conducted which illustrated 13.25 million gallons per day was being consumed by the three cities of Fairburn, Palmetto and Union City.

VI. Public Comments:

1. Ms. Nikki Young had concerns with the police department. She inquired about the departments standard operating procedures.

2. Mr. Jay Going had concerns with Code Enforcement. Mr. Goings was previously cited, and he has complied and is in compliance standing. He stated his issue is with the ordinance stating another citation can be issued for something totally different within a twelve-month period of receiving the initial citation.

3. Ms. Vera Raglin expressed concerns with basketball being played in the streets from Campbellton to Sir Charles. She stated visitors to the area are parking on lawns and streets and loud music is being played. Also, she stated with the numerous cars parked in the street makes the visibility in the subdivision limited.

VII. Adoption of the Council Agenda: The motion to approve was made by Mayor Pro-Tem Davis with the second provided by Councilman Smallwood. Vote: 5-0: Motion Carried.

VIII. Adoption of Consent Agenda Items: There were no consent agenda items.

IX. Adoption of City Council Minutes for the April 8, 2019 meeting was made by Councilman Heath with the second provided by Councilman Smallwood. Vote: 5-0: Motion Carried.

X. Public Hearing: There was none.

XI. Agenda Items:

1. Tanner, Ballew and Maloof. Mr. Stephen Maloof addressed Mayor and Council with the city's property and liability insurance renewal. He stated Travelers Insurance would still be the city's commercial property and casualty insurance. The city's property renewal is listed at \$287,000.00 this includes all liability, law enforcement, fire, and all vehicles. Mayor Pro-Tem Davis inquired about a \$10,000 increase in premiums. Mr. Maloof stated the reason was an increase in vehicle fleet from 115 in 2018 to 121 in 2019. Mayor Carr-Hurst asked for a motion to approve or disapprove and include the \$287,000.00 rate in the motion. The motion to approve the renewal at \$287,000.00 was made by Councilman Heath with the second provided by Mayor Pro-Tem Davis. Vote: 5-0: Motion Carried.

2A. City Attorney Mr. Randy Turner addressed Mayor and Council regarding a marijuana ordinance. This ordinance arises out of a way to provide prosecution of less than one ounce of marijuana from a felony to a misdemeanor. Mr. Turner stated more cities are adopting this ordinance to prohibit a felony charge from being on someone's record for a mistake in judgement. This ordinance would be an addition to the city's disorderly conduct ordinance. Fines would start at \$450.00. Motion to approve this ordinance was made by Councilman Smallwood and the second was provided by Mayor Pro-Tem Davis.

Vote: 3-2: Motion Carried.

Councilmembers voting in support: Mayor Pro-Tem Davis, Councilwoman Portis-Jones and Councilman Smallwood.

Councilmembers voting in opposition: Councilman Heath and Councilman Pallend.

2B. City Attorney Mr. Randy Turner addressed Mayor and Council regarding a truck ordinance. The City of Fairburn's roads are heavily traveled by trucks. A lot of these roads are not built for heavy trucks and to promote and preserve the public's health, safety and welfare. An ordinance is needed to designate certain routes. Signs will be posted by the city informing the truck drivers of the unauthorized routes. Mr. Turner stated a minimum fine of \$350.00 could be imposed and violators will be charged an increased fine and the citation would affect their driving record. Motion to approve this ordinance was made by Councilman Smallwood and the second was provided by Mayor Pro-Tem Davis. Vote: 5-0: Motion Carried.

3. Fire Department. Chief Robinson presented to Mayor and Council a request to approve fire department software in the amount of \$4,956.48 annually. This software is used to generate reports from the department. Motion to approve was made by Councilman Pallend and the second was provided by Mayor Pro-Tem Davis. Vote: 5-0: Motion Carried.

XII. Council Comments:

Councilman Heath wished everyone a Happy Easter.

Mayor Pro-Tem Davis thanked the Police Department and said they were fabulous.

Councilman Smallwood thanked everyone for coming out, stated God Bless You and please come out and enjoy Georgia Cities Week.

Councilman Pallend had no comment.

Councilwoman Portis-Jones thanked the Mayor for inviting the Water Authority. She also reminded everyone that today was Earth Day and the climate is changing.

Mayor Carr-Hurst stated she was excited Armando's was given permission to open, and as of today they are open for business. She stated there would be a soft opening for city employees and council and a date would be announced later. She further stated Casablanca Restaurant will also be relocating back to Fairburn. She is excited about both restaurants. Georgia Cities Week is in effect and today she hosted, "Movie with the Mayor," at the Youth Center. The movie that was viewed was War Room.

XIII. There was no Executive Session.

XIV. Adjournment: The motion to adjourn was made at 9:04 p.m. by Councilman Heath and the second was provided by Councilman Smallwood.

Shana T. Moss, Interim City Clerk

Elizabeth Carr-Hurst, Mayor



**CITY OF FAIRBURN
MAYOR & CITY COUNCIL
AGENDA ITEM**

SUBJECT: REZONING 19RZ-002 - South Fulton, LLC

() AGREEMENT () POLICY / DISCUSSION () CONTRACT
() ORDINANCE () RESOLUTION (X) OTHER

Planning and Zoning Commission: 05.07.19

Mayor and City Council: 05.13.19

DEPARTMENT: Community Development/Planning and Zoning

BUDGET IMPACT: None

PUBLIC HEARING: (X) Yes () No

PURPOSE: For the Mayor and City Council to approve a rezoning petition to allow the development of single-family residential subdivision.

DESCRIPTION: The applicant is requesting to rezone +/- 75 acres along Virlyn B. Smith Road from R-2 (Single-family Residential District) to R-3 (Single-family Residential District) to allow the development of 171 single-family houses.

PLANNING AND ZONING COMMISSION RECOMMENDATION: APPROVAL CONDITIONAL

STAFF RECOMMENDATION: APPROVAL CONDITIONAL


Elizabeth Carr-Hurst, Mayor

APPLICATION INFORMATION

Rezoning Petition 19RZ-002

APPLICANT/PETITIONER INFORMATION

Property Owner
Virlyn OSCP, LLC

Petitioner
South Fulton, LLC

PROPERTY INFORMATION

Address, Land Lot, and District:	0 Virlyn B. Smith [parcel no. 09F090300500325, 09F090400511180, 09F180300681066, 09F090300500333], Land Lot 50, 51, 68, 69 and District 9F
Frontage:	Virlyn B. Smith Road
Area of Property:	+/- 75 acres
Existing Zoning and Use:	R-2 (Single-family Residential) and Undeveloped
Overlay District:	N/A
Prior Zoning Cases/History:	None
2035 Comprehensive Future Land Use Map Designation:	Low Density Residential, Town Center Mixed Use, and Greenspace
Compatibility with Fairburn's 2035 Comprehensive Plan:	The request to rezone property from R-2 (Single-family Residential District) to R-3 (Single-family Residential District) to allow 171 single-family houses is compatible with the 2035 Comprehensive Plan and Future Development Map.
Proposed Zoning:	R-3 (Single-family Residential District)

MEETING AND HEARING DATES

Planning and Zoning Commission Meeting
May 7, 2019

Mayor and City Council Public Hearing
May 13, 2019

INTENT

To rezone the subject property from R-2 (Single-family Residential District) to R-3 (Single-family Residential) to allow the development of 171 single-family houses on +/- 75 acres.

EXISTING LAND USE AND ZONING OF ABUTTING PROPERTIES

North: R-1 (Single-family Residential District)

East: R-1 (Single-family Residential District), R-3 Overlay (Single-family Residential District) and O&I (Office Institutional District)

South: PD (Planned Development District), R-3 Overlay (Single-family Residential District) and O&I (Office Institutional District)

West: AG-1 (Agricultural District and R-1 (Single-family Residential District)

- We are not property tax experts such that we were unsure what would warrant Fulton County's increase in property taxes.

STAFF COMMENTS

Engineering/Public Works:

- Turning lanes shall be required by the city to meet projected traffic demand and/or safe operations, as determined by the city engineer. When provided, turning lanes shall meet the following criteria:
 - a. Provide not less than 150 feet of storage length for arterial roadways. Provide not less than 100 feet of storage length for collector roadways.
 - b. Provide taper lengths of not less than 100 feet.
 - c. Longer storage and taper lengths may be required when traffic projections indicate they are justified.
- When property fronting on an existing city street is to be developed or when the property is to be accessed from the existing city street, the developer shall cause to be constructed roadway improvements (pavement, signing, striping, curb and gutter and drainage) which are required along the existing road across the entire property frontage at no cost to the city. Required improvements shall not be less than provided in these regulations for the designated street classification. [Sec. 71-37 (a)]
- Sidewalks are required on all street frontages regardless of the zoning district in which the street is located. All sidewalks shall have a minimum width of five feet (unless otherwise provided in this chapter) and shall be constructed to comply with the requirements of the Americans with Disabilities Act (ADA) standards, city's development standards and be subject to review and approval by the city engineer and/or director of building. [Sec. 71-46 (a) (c)]

Fire:

- Provide water flow calculations - 2012 International Fire Code, Chapter 5 section 507 Fire Protection Water Supplies. 507.1 Required water supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.
- 507.4 Water supply test. The fire code official shall be notified prior to the water supply test. Water supply tests shall be witnessed by the fire code official or approved documentation of the test shall be provided to the fire code official prior to the final approval of the water supply system.
- 507.5 Fire hydrant systems. Fire hydrants shall comply with Sections 507.5.1 through 507.5.6
- Fire hydrant distribution is to be in accordance with Fairburn Land Development Standards. – 2005 Fairburn Land Development Standards. Section 5.5 Location of Water Mains, Fire Hydrants and Other Fixtures.
 - Fire hydrants spacing: Provide fire hydrant spacing as requested by the Fire Chief and as follows:
 - One and Two Family Residential: Space fire hydrants not more than 500 feet apart with additional fire hydrants located as necessary so that the maximum hose lay from a hydrant to the furthestmost part of any building does not exceed 500 feet.
 - Except when waived by the Fire Chief, a fire hydrant shall be located at all street intersections in all zoning districts.
 - Locate fire hydrants between the water mains and right of way and within 5 feet of the back of the right of way

Water and Sewer:

The City of Fairburn Water and Sewer Department has no comment on this rezoning request. Certainly, it will be the responsibility of the developer to provide sound engineering design for water and sewer service for these additional 171 units as we discussed previously.

Utilities: Reviewed; no comments at this time.

Future No-Build Traffic Conditions:

The traffic impact study demonstrates the traffic conditions that will exist in the future at the date of the full build-out of the proposed subdivision but does not include the site trips. The purpose of the analysis of this condition is to isolate the traffic impacts of the proposed development from other growth that is expected to occur in the area while the project is under construction. The no-build analysis reveals some deteriorations in current operations. The northbound approach of Virlyn B. Smith Road at Rivertown Road will drop to LOS F in both the a.m. and p.m. peaks. The left turns from the ramp at Virlyn B. Smith Road and from the ramp at Roosevelt Highway will both drop to LOS F, in both the a.m. and p.m.

Future Intersection Operations:

The traffic impact study shows that future build conditions will have the same issues from the no-build conditions. The northbound approach of VBS Road at Rivertown Road will continue to operate at LOS F. The two ends of the ramp between Virlyn B. Smith Road and Roosevelt Highway will continue to operate at LOS F in the peak times. The site access on Virlyn B. Smith Road will operate acceptably. As required by the City of Fairburn development standards, a northbound right turn lane will be constructed on Virlyn B. Smith Road at the access point into the subdivision. The access will be constructed with one inbound and one outbound lane and the outbound approach will be controlled with a side street stop sign and accompanying stop bar.

Trip Generation:

The proposed subdivision will generate 126 a.m. peak hour trips, 170 p.m. peak hour trips, and 1,704 weekday trips. These trips will be heavily oriented toward the south, both toward the I-85 ramps at GA 74 and toward Roosevelt Highway. Trip generation is an estimate of the number of entering and exiting vehicular trips that will be generated by the proposed development. The trip generation for this project is represented in the table below:

Land Use	Size	A.M. Peak Hour			P.M. Peak Hour			24-Hour
		In	Out	Total	In	Out	Total	2-Way
Single Family Residential	171 houses	31	95	126	107	63	170	1,704

See the attached Traffic Impact Study Conclusions and Recommendations.

Impact on Schools

At present, the local elementary school and middle school are projected to be over capacity for the 2019-2020 school year. Any residential development on the subject site, whether the site is rezoned or remains at its current zoning, will increase the schools' populations above the 2019-2020 baseline numbers. The school system addresses population increases using "portable classrooms or other measures that may be needed to accommodate the instructional needs of the school," as stated in the Fulton County School's Rezoning Impact Statement. Please note, Fulton County Schools has started the construction process for a new STEM school for grades [6th to 12th] within the city limits of Fairburn.

E. Is the proposal in conformity with the policies and intent of the land use plan?

The Future Land Use Map designates 49.6 acres of the property as Low Density Residential, 15.3 acres as Town Center Mixed Use and 9.2 acres as Greenspace. Staff is of the opinion that the proposal to develop 171 single-family houses is consistent with the Future Development Map. The Low Density Residential Character Areas is suburban in nature with one third to one acre lots as the recommended lot sizes and Town Center Mixed Use Character Area recommends denser single-family, townhouse and multi-family developments such as R-4, RM-4, RM-8, and R-CT. The proposal is also consistent with existing subdivisions and surrounding residential uses.

The development strategies for the Residential and Town Center Mixed Use character areas are as follows:

1.) Residential Development Strategies

- o Stable, safe, well maintained neighborhoods that maintain their value over time.
- o Allow for a variety of homes styles, materials, and lot sizes.

agreement to these conditions would not change staff recommendations. These conditions shall prevail unless otherwise stipulated by the Mayor and City Council.

A. To the owner's agreement to restrict the use of the subject property as follows:

1. Single-family Residential lots at density:

- a. POD A - Single-family residential lots at no greater than 2.1 units per acre or 43 units, whichever is less and
- b. POD B - Single-family residential lots at no greater than 2.9 units per acre or 128 units, whichever is less:

2. The minimum heated floor area shall be a minimum of 1,400 square feet.

B. To the owner's agreement to abide by the following:

1. The property shall be developed in substantial conformity with the Zoning Site Plan prepared by Moore Bass Consulting stamped received April 24, 2019 and attached as Exhibit B. Any determination as to "substantial conformity" and deviation from the site plan shall be approved by Department of Community Development staff. The site plan must meet or exceed the requirements of the City's regulations prior to the approval of a Land Disturbance Permit.
2. Property maintenance shall be accomplished through a homeowner's association in which membership shall be mandatory. Such maintenance shall encompass all individual lots and all common areas that are not contained within the boundaries of individual lots. Such association by-laws shall be subject to approval by the City Administrator and shall be recorded with covenants that shall be subject to approval by the City Administrator.

C. To the owner's agreement to the following site development considerations:

1. Building setbacks as follows:

- a. Front: 35 feet
- b. Side: 10 feet
- c. Rear: 25 feet

2. Amenity package to include greenspace, playground and pavilion.

3. Exterior materials of the front façade shall be a minimum of twenty-five percent (25%) brick or stone. Vinyl siding, aluminum, stucco (EIFS) and veneers shall be prohibited.

4. Two car garages shall be provided for each single-family home.

5. Sidewalks on all street frontages shall be a minimum of five-foot and shall be constructed to comply with the requirements of the Americans with Disabilities Act (ADA) standards and City of Fairburn development standard. Five-foot sidewalks shall be provided along both sides of internal streets throughout the development and shall be designed to provide inter-connectivity to amenities areas.

6. Pedestrian-scale street lighting shall be provided along both sides of internal streets throughout the development.

7. All utilities shall be installed underground throughout the project area.

8. Turning lanes shall be required to meet projected traffic demand and/or safe operations, as determined by the City Engineer. When provided, turning lanes shall meet the following criteria:

South Fulton, LLC
270 North Jeff Davis Drive
Fayetteville, GA 30214

February 4, 2019

Ms. Tarika Peeks
Senior Planner/Zoning Administrator
26 West Campbelltown St.
Fairburn, GA 30213

Re: City of Fairburn
Proposed Rezoning – Virlyn B. Smith Road
R-2 – Single Family Residential to R-3 – Single-Family (with conditions)
Tax Parcel ID # 09F090300500325
09F090400511180
09F180300681066
09F090300500333
171 Single-Family Detached Lots

Dear Ms. Peeks,

Thank you for your assistance and input while working through this project. Your continued diligence and input have been much appreciated.

The subject 75.9-acre property is located along the northern frontage of Virlyn B. Smith Road in Land Lot 50, 51, 68, and 69 of the 9th District in the City of Fairburn.

South Fulton, LLC desires to rezone the subject property from R-2 (Medium Density single-family) to R-3 (Medium Density Residential) in accordance with section 80-74 of the City Code of Ordinances with conditions to allow for a portion of the lots to be designed in accordance with 80-75. In all, the project will have one hundred seventy one (171) single-family detached lots.

The plan shows thirty four (34) one-third acre lots designed to have a width of 85 feet. These lots are situated in an enclave near the entrance and at the end of the cul-de-sacs. South Fulton, LLC is requesting a condition to allow that the remaining one hundred twenty eight (128) lots be designed to a width of 75 feet and be one-quarter acre lots. The proposed rezoning to R-3 with said condition satisfies the future land use plan as the four parcels in question have three different uses. The FLUM shows that 15.30 acres are planned for town-center mixed use (1/4 acre lots or less), 49.60 acres are planned for low density residential (1/3 to 1 acre lots), and the remaining 11 acres are proposed for greenspace. By offering a mix of lot sizes we hope to satisfy

the plan for high density, low density, and greenspace in a mixed fashion rather than looking at each parcel individually. This plan will allow for a smooth the transition from downtown into the surrounding single-family residential uses.

The façade of each building will be constructed with a front façade of brick or stone with the remainder of all siding being cement fiber. The proposed square footage of homes is planned to be between 2,200-3,200 square feet.

The development will provide a sidewalk, sodded front yards, pedestrian scale street lighting and one canopy tree for each 50 foot of street frontage. All roads will be public and designed in accordance to City of Fairburn design standards. The plan has two entrances including a full-access entrance onto Brooks Street.

I look forward to your continued thoughts and comments on this project. Thank you for your assistance and consideration with this rezoning request.

Regards,

Richard Ferry
South Fulton, LLC

Impact Analysis

Applicant: South Fulton, LLC

1. Does the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby property? *The subject property is nearly 76 acres on the northern frontage of Virlyn B. Smith Road. It is located in an area with diverse uses. To the east is a tract of open space owned by the City of Fairburn with frontage on Valley View Drive. It appears that this space, zoned R-3 Overlay, provides open space and buffering for Valley View Estates where the typical lot is 6000 square feet. Holly Hill Memorial Park is a cemetery zoned O&I. Lands associated with this cemetery have frontage on Virlyn B. Smith Road to the east of the subject property. In addition to the O&I and R-3 Overlay, is a small neighborhood zoned R-1 with frontage on Brooks Street. To the north is Duncan Park. The property is zoned R-1 and AG-1 for an active recreation park. Also, to the north of the subject property are residential tracts zoned R-1 with frontage on Rivertown Road. To the west is property zoned AG-1 that is used for the Georgia Renaissance Festival. The proposed single-family development with open space is a suitable use among the varying uses that surround the subject property.*
2. Does the zoning proposal adversely affect the existing use or usability of adjacent or nearby property? *The adverse effects of the proposed residential development on adjacent or nearby properties is very hard to measure. The most prominent properties adjacent to the subject parcel are used as a County/City active recreation park with frontage on Rivertown Road, a cemetery and a site for a seasonal festival. The proposed R-3 zoning will not negatively impact these uses. In fact, the proposed development would positively impact the neighboring properties. A full access connection is planned for Brooks Street for ease of access to downtown promoting economic growth. The neighboring residential uses will be well buffered. The proposed single family development will fit in well with the growth associated with the large Durham Lakes project.*
3. Does the property to be rezoned have a reasonable economic use as currently zoned? *The property is currently zoned R-2 for medium density single family homes. The proposed R-3 zoning and R-2 are both considered low density according to the City's 2035 Future Land Use Plan.*
4. Will the zoning proposal result in a use that could create an excessive or burdensome use of existing streets, transportation facilities, utilities or schools? *Both the current R-2 zoning and the proposed project are considered low density developments in City of Fairburn Zoning. The proposed development does not create an excessive or burdensome use of public facilities compared to a development under the current zoning. South Fulton, LLC has been in contact with the City's utility providers. All have assured adequate capacity for the project.*

5. Is the zoning proposal in conformity with the policies and intent of the land use plan? *The proposed R-3 development is in accordance with the following statements of the City of Fairburn Comprehensive Plan:*

- *"bring...vitality to downtown".*
- *"Stable, safe, well maintained neighborhoods that maintain their value over time"*
- *"Allow for a variety of home styles, materials, and lot sizes"*
- *"Accommodating to pedestrians and cyclists to allow for alternative access to Downtown"*

The single-family development will bring residents within walking distance of downtown. A full access connection is planned for Brooks Street for ease of access to downtown promoting economic growth. The location of the subject tract is in a transition area between the cemetery zoned O&I and the Georgia Renaissance Festival zoned AG-1.

6. Are there existing or changing conditions that affect the use and development of the property which support either approval or denial of the zoning proposal? *There are none.*
7. Does this zoning proposal permit a use that can be considered environmentally adverse to the natural resources, environment and citizens? *The proposal does not. The proposal provides buffers to the creeks and preservation of open space. This space provides valuable water re-charge areas and protection of the creeks.*

Conclusions and Recommendations

This traffic impact study evaluates the impact of a proposed residential subdivision on Virlyn B Smith (VBS) Road in the City of Fairburn. The subdivision will include 171 single-family homes. Vehicular access will be provided by one full-movement access on the east side of Virlyn B Smith Road and a connection to the end of Fisher Drive, providing connectivity to Roosevelt Highway and downtown Fairburn. The following are the findings and recommendations of this study:

1. Existing operations at the intersections evaluated are generally acceptable. Only one location operates unacceptably in the existing – the eastbound ramp from Roosevelt Highway at VBS Road.
2. Traffic volume growth in this area has been moderate and this is expected to continue into the future.
3. The 2023 no-build condition reveals increases in delays and several locations that will begin to operate unacceptably. This includes the side street stop controlled approach of VBS Road at Rivertown Road and both stop sign controlled ends of the ramp at VBS Road and at Roosevelt Highway.
4. The no-build mitigation recommended for the VBS Road / Rivertown Road intersection is to construct an eastbound right turn lane on Rivertown Road. This will allow the intersection to operate acceptably in the future no-build and build conditions.
5. Based on the no-build operations, it is recommended that a signal warrant study and Georgia DOT ICE be performed for the two ends of the ramp between VBS Road and Roosevelt Highway. This will identify the appropriate control for these intersections.
6. The emerging potential for the need to widen VBS Road was identified in the no-build analysis.
7. The proposed subdivision will generate 126 a.m. peak hour trips, 170 p.m. peak hour trips, and 1,704 weekday trips. These trips will be heavily oriented toward the south, both toward the I-85 ramps at GA 74 and toward Roosevelt Highway.
8. With the addition of the subdivision trips, 2023 build operations will be comparable to 2023 no-build, with some additional increases in delays. No additional mitigation was identified at the study intersections for the build condition.
9. The City of Fairburn development standards require a northbound right turn lane at the site access on VBS Road.
10. One entering lane and one exiting lane should be provided at the site access to VBS Road. The exiting approach should be controlled by side street stop sign and accompanying stop bar.
11. The project site engineer should comply with applicable access design standards including sight distance, turn radii, roadway width, and grades.

19RZ-002 South Fulton, LLC
Architectural Renderings



Kendrick D Plan Horton



Ashley E Plan Horton



Ashley F Plan Horton

19RZ-002 South Fulton, LLC
Architectural Renderings



Edinburgh A Plan Horton



Edinburgh L Plan Horton

Re: REZONING ORDINANCE 19RZ-002
Property of Virlyn OSCP, LLC
0 Virlyn B. Smith Road
09F090300500325, 09F090400511180,
09F180300681066 & 09F090300500333
75.9 acres; Land Lot 50, 51, 68 and 69
District 9F,
Fairburn, Fulton County, Georgia

**STATE OF GEORGIA
COUNTY OF FULTON**

AN ORDINANCE TO REZONE CERTAIN PROPERTY WITHIN THE CITY LIMITS OF THE CITY OF FAIRBURN FROM R-2 (SINGLE FAMILY) RESIDENTIAL DISTRICT TO R-3 (SINGLE FAMILY) DISTRICT; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FAIRBURN, GEORGIA, AND IT IS HEREBY ORDAINED BY AUTHORITY OF THE SAME:

Section 1. That the City of Fairburn Zoning Ordinance be amended, and the official maps established in connection therewith be changed so that the property located in the City of Fairburn as indicated on Exhibit "A" to this Ordinance be changed from R-2 (Single Family Residential District) to R-3 (Single Family) District with the following conditions:

A. To the owner's agreement to restrict the use of the subject property as follows:

1. Single-Family Residential lots at density:

a. POD A- Single-family residential lots at no greater than 2.1 units per acre or 43 units, whichever is less; and

b. POD B – Single-Family residential lots at no greater than 2.9 units per acre or 128 units, whichever is less:

2. The minimum heated floor area shall be a minimum of 1,400 square feet.

B. To the owner's agreement to abide by the following:

1. The property shall be developed in substantial conformity with the Zoning Site Plan prepared by Moore Bass Consulting stamped received April 24, 2019, and attached as Exhibit B. Any determination as to "substantial conformity" and deviation from the site plan shall be approved by Department of Community Development staff. The site plan must meet or exceed the requirements of the City's regulations prior to the approval of a Land Disturbance Permit.

2. Property maintenance shall be accomplished through a homeowner's association in which membership shall be mandatory. Such maintenance shall encompass all individual lots and all common areas that are not contained within the boundaries of individual lots. Such association by-laws shall be subject to approval by the City Administrator and shall be recorded with covenants that shall be subject to approval by the City Administrator.

C. To the owner's agreement to the following site development considerations:

1. Building setbacks as follows:
 - a. Front: 35 feet
 - b. Side: 10 feet
 - c. Rear: 25 feet
2. Amenity package to include greenspace, playground and pavilion.
3. Exterior materials of the front façade shall be a minimum of twenty-five percent (25%) brick or stone. Vinyl siding, aluminum, stucco (EIFS) and veneers shall be prohibited.
4. Two car garages shall be provided for each single-family home.
5. Sidewalks on all street frontages shall be a minimum of five-feet and shall be constructed to comply with the requirements of the Americans with Disabilities Act (ADA) standards and City of Fairburn development standards. Five-feet sidewalks shall be provided along both sides of internal streets throughout the development and shall be designed to provide inter-connectivity to amenities areas.
6. Pedestrian-scale street lighting shall be provided along both sides of internal streets throughout the development.
7. All utilities shall be installed underground throughout the project area.
8. Turning lanes shall be required to meet projected traffic demand and/or safe operations, as determined by the City Engineer. When provided, turning lanes shall meet the following criteria:
 - a. Provide not less than 150 feet of storage length for arterial roadways. Provide not less than 100 feet of storage length for collector roadways.
 - b. Provide taper lengths of not less than 100 feet.
 - c. Longer storage and taper lengths may be required when traffic projections indicate they are justified.

9. The Developer shall construct roadway improvements (pavement, signing, striping, curb and gutter and drainage) along the existing road across the entire property frontage at no cost to the city.

10. The Developer shall install a canopy or understory tree in the front yard of each single-family lot. Both front and rear yards shall be sodded.

Section 2. That the property shall be developed in compliance with the conditions of approval as stated in this Ordinance. Any conditions hereby approved do not authorize the violation of any district regulations; and

Section 3. That the official maps referred to, on file in the Office of the City Clerk, be changed to conform with the terms of this Ordinance; and

Section 4. In the event any section, subsection, sentence, clause, or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions of the other sections, subsections, sentences, clauses or phrases of this Ordinance, which shall remain in full force and effect as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part thereof. The City Council declares that it would have passed the remaining parts of this Ordinance or retained the previously existing Ordinance if it had known that such part of parts hereof would be declared or adjudicated invalid or unconstitutional.

Section 5. Pursuant to the requirements of the Zoning Procedures Act and the City Zoning Ordinance, a properly advertised public hearing was held not less than 15 nor more than 45 days from the date of publication of notice, and which public hearing was held on the 13th day of May, 2019; and

Section 6. This Ordinance shall become effective on the 13th day of May, 2019.

Section 7. All Ordinances and parts of Ordinances in conflict with this Ordinance are repealed.

APPROVED this 13th day of May, by the Mayor and Council of the City of Fairburn, Georgia.

Elizabeth Carr-Hurst, Mayor

ATTEST:

Shana T. Moss, Interim City Clerk

APPROVED AS TO FORM:

William R. (Randy) Turner, City Attorney

Deed Book 38074 Pg 56
 Juanita Hicks
 Clerk of Superior Court
 Fulton County, Georgia
 11001 WOODBURN DRIVE, SUITE 100, ATLANTA, GA 30349-4001

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 50, 51 & 68 OF THE 9TH F DISTRICT OF FULTON COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A REBAR FOUND AT THE POINT OF INTERSECTION OF LAND LOTS 50, 51, 48 & 49 OF THE 9TH F DISTRICT OF FULTON COUNTY, GEORGIA (SAID POINT OF BEGINNING ALSO BEING FOUND AT THE SOUTHEAST CORNER OF SAID LAND LOT 50); RUNNING THENCE ALONG THE LINE DIVIDING THE ABOVEMENTIONED LAND LOTS 50 & 49 NORTH 87 DEGREES 21 MINUTES 03 SECONDS WEST 148.44 FEET TO A POINT ON THE NORTHEASTERN RIGHT OF WAY OF VIRLYN B. SMITH PARKWAY (60 FOOT RIGHT OF WAY) (fka HERNDON ROAD); RUNNING THENCE ALONG SAID RIGHT OF WAY NORTH 42 DEGREES 45 MINUTES 13 SECONDS WEST 103.43 FEET TO A POINT; CONTINUING THENCE ALONG SAID RIGHT OF WAY NORTH 43 DEGREES 18 MINUTES 29 SECONDS WEST 234.26 FEET TO A POINT; CONTINUING THENCE ALONG SAID RIGHT OF WAY NORTH 43 DEGREES 24 MINUTES 16 SECONDS WEST 204.94 FEET TO A POINT; CONTINUING THENCE ALONG SAID RIGHT OF WAY NORTH 45 DEGREES 07 MINUTES 56 SECONDS WEST 241.19 FEET TO A POINT; CONTINUING THENCE ALONG SAID RIGHT OF WAY NORTH 45 DEGREES 37 MINUTES 58 SECONDS WEST 706.81 FEET TO AN IRON PIN SET; LEAVING SAID RIGHT OF WAY AND RUNNING THENCE NORTH 26 DEGREES 44 MINUTES 57 SECONDS EAST 2,193.42 FEET TO AN IRON PIN SET ON THE LINE DIVIDING LAND LOTS 50 & 69 OF THE 9TH F DISTRICT OF FULTON COUNTY, GEORGIA; RUNNING THENCE ALONG SAID LAND LOT DIVIDING LINE SOUTH 89 DEGREES 12 MINUTES 28 SECONDS EAST 319.99 FEET TO THE POINT OF INTERSECTION OF LAND LOTS 50, 51, 68 & 69 OF THE 9TH F DISTRICT OF FULTON COUNTY, GEORGIA; RUNNING THENCE NORTH 03 DEGREES 22 MINUTES 31 SECONDS EAST 400.31 FEET TO AN IRON PIN SET; RUNNING THENCE NORTH 26 DEGREES 28 MINUTES 57 SECONDS EAST 236.23 FEET TO AN IRON PIN SET; RUNNING THENCE SOUTH 50 DEGREES 32 MINUTES 18 SECONDS EAST 232.00 FEET TO AN OPEN TOP PIPE; RUNNING THENCE SOUTH 50 DEGREES 38 MINUTES 37 SECONDS EAST 789.08 FEET, MORE OR LESS, TO A REBAR FOUND AT THE CENTERLINE OF A CREEK; RUNNING THENCE IN A SOUTHERLY DIRECTION ALONG THE CENTERLINE OF SAID CREEK AND FOLLOWING THE MEANDERINGS THEREOF A DISTANCE OF 1,040.31 FEET TO A POINT; LEAVING SAID CENTERLINE AND RUNNING THENCE NORTH 83 DEGREES 48 MINUTES 56 SECONDS WEST 102.97 FEET, MORE OR LESS, TO A ROD FOUND; RUNNING THENCE NORTH 84 DEGREES 38 MINUTES 25 SECONDS WEST 614.39 FEET TO A NAIL FOUND IN A TOP POST FOUND ON THE EASTERN LINE OF THE ABOVEMENTIONED LAND LOT 50; RUNNING THENCE ALONG SAID LAND LOT LINE SOUTH 04 DEGREES 27 MINUTES 20 SECONDS WEST 430.58 FEET TO A NAIL FOUND IN A TOP POST; CONTINUING THENCE ALONG SAID LAND LOT LINE SOUTH 02 DEGREES 58 MINUTES 42 SECONDS WEST 369.69 FEET TO A REBAR FOUND; CONTINUING THENCE ALONG SAID LAND LOT LINE SOUTH 03 DEGREES 01 MINUTE 50 SECONDS WEST 135.86 FEET TO AN OPEN TOP PIPE; CONTINUING THENCE ALONG SAID LAND LOT LINE SOUTH 02 DEGREES 05 MINUTES 00 SECONDS WEST 255.44 FEET TO AN OPEN TOP PIPE; CONTINUING THENCE ALONG SAID LAND LOT LINE SOUTH 01 DEGREE 35 MINUTES 01 SECOND WEST 240.25 FEET TO AN OPEN TOP PIPE; CONTINUING THENCE ALONG SAID LAND LOT LINE SOUTH 02 DEGREES 57 MINUTES 16 SECONDS WEST 661.59 FEET TO THE REBAR FOUND AT THE POINT OF BEGINNING; ALL ACCORDING TO SURVEY PREPARED BY SURVEY SYSTEMS AND ASSOC., INC., DATED JULY 1, 2004; BEING THE SAME PROPERTY AS CONVEYED IN DEED RECORDED IN DEED BOOK 11777, PAGE 21, FULTON COUNTY, GEORGIA RECORDS; AND BEING APPROXIMATELY 75.90 ACRES OF LAND IN FULTON COUNTY, GEORGIA.



CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: Intergovernmental Agreement (IGA) with the Fulton County Board of Education

(X) AGREEMENT
() ORDINANCE

() POLICY / DISCUSSION
(X) RESOLUTION

() CONTRACT
() OTHER

Submitted: 5/13/2019 Work Session: 5/13/2019 Council Meeting: 5/13/19

DEPARTMENT: Mayor and City Council / City Attorney

BUDGET IMPACT: Approval of the Intergovernmental Agreement with the Fulton County Board of Education will result in a payment of \$4,865.00 to the City of Fairburn

PUBLIC HEARING? () Yes (X) No

PURPOSE:

- 1) To approve a Resolution to abandon approximately 0.230 acres of City right-of-way.
- 2) To approve an Intergovernmental Agreement (IGA) with the Fulton County Board of Education to convey the abandoned right-of-way to be used for educational purposes

HISTORY: The Fulton County Board of Education will soon commence construction of a new STEM high school to be located within the City of Fairburn. Within the property owned by the FCBOE on which the STEM high school will be constructed, the City of Fairburn owns 0.230 acres of right of way. This right-of-way no longer has any substantial purpose with regards to City operations. The Mayor and City Council are being asked to (i) formally abandon the subject right-of-way and (ii) approve an IGA conveying the property to the FCBOE for educational purposes, to aid in the location and construction of the STEM high school.

FACTS AND ISSUES: All relevant City departments, including public works, utilities and streets, concur that the right-of-way is of no use to City operations.

RECOMMENDED ACTION: Approval of the Resolution and IGA.



Elizabeth Carr-Hurst, Mayor

Resolution
Abandonment of Right of Way
5-13-19

**RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF
FAIRBURN, GEORGIA TO FULLY AND FOREVER ABANDON APPROXIMATELY
0.230 ACRES OF PUBLIC RIGHT OF WAY AND TO AUTHORIZE DISPOSITION OF
SAME IN FAVOR OF THE FULTON COUNTY BOARD OF EDUCATION TO BE
USED FOR EDUCATIONAL PURPOSES; TO PROVIDE FOR AN EFFECTIVE DATE;
AND FOR OTHER PURPOSES**

WHEREAS, the Mayor and City Council of the City of Fairburn, Georgia has determined that approximately 0.230 acres of City right-of-way, which right-of-way is more particularly shown at Exhibit "A", which is attached to and made a part of this Resolution, is no longer of any substantial benefit to the operations of the City of Fairburn; and

WHEREAS, the Fulton County Board of Education desires to acquire said right-of-way (hereinafter referred to as the "Property") and to use said Property for educational purposes, aiding in the location and construction of a new high school to be constructed within the City of Fairburn.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Fairburn, Georgia, and it is hereby Resolved by same as follows:

Section 1. Abandonment.

It is found and declared by the Mayor and City Council that the subject Property, more particularly described at Exhibit "A" to this Resolution, consisting of approximately 0.230 acres, is no longer of any substantial benefit to the operations of the City of Fairburn and, as such, the City of Fairburn fully and forever abandons the Property with the intent that the Property be conveyed to the Fulton County Board of Education to be used for educational purposes.

Section 2. Effective Date.

This Resolution shall become effective when approved and any and all resolutions and ordinances in conflict with this Resolution are hereby repealed to the extent of any such conflict.

This 13th day of May, 2019.

City of Fairburn, Georgia

Elizabeth Carr-Hurst, Mayor

1 **ATTEST:**

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4 Shana T. Moss, Interim City Clerk

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6 **Approved as to Form:**

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9 William R. Turner, City Attorney

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INTERGOVERNMENTAL AGREEMENT
FOR THE PURCHASE AND SALE OF REAL PROPERTY

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this "**Agreement**") is entered into as of the ____ day of _____, 2019, by and between the **CITY OF FAIRBURN, GEORGIA**, a Georgia municipal corporation ("**Seller**"), and the **FULTON COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia ("**Buyer**").

WHEREAS, Seller desires to sell and Buyer desires to purchase approximately 0.230 acres of real property located within and being a portion of Shaw Drive, lying and being in Land Lot 66 of the 9F District of Fulton County, Fairburn, Georgia, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, together with all easements, rights and privileges appurtenant thereto, and any improvements on such real property (collectively, the "**Property**").

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), in hand paid to Seller as independent consideration for Seller's entering into this Agreement, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Recitals**. The above recitals are true and correct and are hereby incorporated into this Agreement in their entirety.

2. **Purchase and Sale**. Seller agrees to sell and Buyer agrees to purchase the Property, subject to the terms and conditions of this Agreement.

3. **Earnest Money**.

(a) **Deposit of Earnest Money**. Within ten (10) business days after execution of this Agreement by Buyer and Seller, Buyer will deposit with Buyer's attorney, Nelson Mullins Riley and Scarborough LLP, 201 17th Street, Suite 1700, Atlanta, GA 30363, Attn: Cheryl V. Shaw, Esq. (the "**Escrow Holder**") in current U.S. funds in cash or wire transfer, the sum of One Thousand and No/100ths Dollars (\$1,000.00) in current U.S. funds in cash or wire transfer (the "**Earnest Money**"). Escrow Holder shall hold the Earnest Money in a federally insured non-interest-bearing account. If Buyer has not previously terminated this Agreement pursuant to **Section 14(b)**, then the Earnest Money shall become nonrefundable on the tenth (10th) day following the expiration of the Inspection Period and shall be credited to the Purchase Price, unless the transaction does not close due to a default by Seller or the failure of a condition under **Section 12** to be satisfied.

(b) **Disposition of Earnest Money Upon Failure to Close**. Assuming all the conditions to Buyer's obligations to close have been satisfied or waived, if the Closing fails to occur due to Buyer's default under this Agreement, then the disposition of the Earnest Money shall be governed by **Section 16(a)** hereof; if the Closing fails to occur due to Seller's default under this Agreement and all of the conditions to Seller's obligation to close having been satisfied or waived, then the Earnest Money shall promptly be refunded to Buyer; and if the

Closing fails to occur due to the failure of any of the conditions set forth in Section 12 hereof other than as a result of Buyer's default under this Agreement, then the Earnest Money shall be refunded to Buyer.

4. **Purchase Price.** The purchase price for the Property (the "**Purchase Price**") shall be Four Thousand Eight Hundred Sixty-Five and No/100ths Dollars (\$4,865.00). Provided all the conditions in Section 12 hereof have been satisfied or waived as of the Closing Date, Buyer shall deposit in current U.S. funds in cash or wire transfer with Escrow Holder on the Closing Date (as such term is defined in Section 6 below) an amount equal to the Purchase Price less the Earnest Money deposited plus any costs to be paid by Buyer at Closing as provided in Section 10(c) hereof.

5. **Documents.** Seller shall within the Inspection Period provide Buyer all the following materials to the extent the materials exist and are in Seller's possession or control: a copy of any title information, leases, service and maintenance agreements, and brokerage agreements as to the Property; and a copy of any surveys, soil reports and environmental reports relative to the Property which have been obtained by Seller. **Seller shall also provide any information relative to any right-of-way abandonment proceedings that may have already occurred as to the Property, and any records relative to the installation of the existing gate at the entrance of the Property.** Between the Effective Date and the Closing Date, Seller will provide to Buyer any third-party documents pertaining to the Property that come into Seller's possession, custody or control. Buyer acknowledges that any property information provided by Seller pursuant to this paragraph ("**Property Information**") is provided without any representations or warranties as to the accuracy or contents thereof, and Buyer acknowledges and agrees that it shall not be entitled to rely upon any such materials. Buyer acknowledges it is solely responsible for ordering its own title exam, title commitment and title insurance policy; its own survey, soil reports, environmental reports, environmental assessments and any other inspections or reports desired by Buyer, all at Buyer's sole expense.

6. **Closing.** The closing of the purchase and sale of the Property (the "**Closing**") shall take place no later than the first business day that is sixty (60) days following the expiration of the Inspection Period (the "**Closing Date**") at the offices of Nelson Mullins Riley & Scarborough LLP; provided, however, that the parties may, but shall not be obligated to, agree in writing to an earlier date of Closing. Notwithstanding the foregoing, Buyer may request an extension of the Closing Date for up to 60 days if any of the conditions of Section 12 have not been or are anticipated not to be met by the originally scheduled Closing Date, and Seller shall not unreasonably condition, delay or withhold its consent to the same. Each of Seller and Buyer agrees to deposit with the Escrow Holder the documents required of it, and Buyer agrees to deposit with the Escrow Holder the amount specified in the second sentence of Section 4 hereof, in all cases sufficiently in advance of the Closing Date so as to allow the Closing to occur on the Closing Date, and agree that the transaction may close in escrow such that the parties need not be physically present for Closing.

7. **Real Estate Taxes; Utilities.** The parties agree and acknowledge that the Property is tax-exempt and that there are no utility accounts on the Property; and as such, there is no need for proration of taxes or utility charges at Closing.

8. **Title.**

(a) Seller covenants to convey to Buyer at Closing fee simple title in and to the Property by quitclaim deed, free and clear of all liens, claims of lien, deeds to secure debt, mortgages, encroachments, leases, matters of survey and other encumbrances except for those exceptions expressly accepted by Buyer (the "**Permitted Exceptions**").

(b) During the Inspection Period (as defined below) Buyer may, at Buyer's expense, examine title to the Property. Promptly after receipt, Buyer shall provide Seller with a copy of Buyer's title commitment and all instruments listed as exceptions therein. Prior to the expiration date of the Inspection Period, Buyer shall give Seller written notice of any encumbrances disclosed by such examination to which Buyer objects (the "**Title Objections**"). Seller shall have **five (5) business days** after receipt of Buyer's notice of any Title Objection in which to notify Buyer if Seller does not intend to satisfy such Title Objection. If Seller timely notifies Buyer that it does not intend to satisfy any Title Objection then Buyer shall have **five (5) business days** after receipt of Seller's notice in which to terminate this Agreement. If Buyer does not elect to terminate this Agreement within said five (5) business-day period, then Buyer shall be deemed to have waived Buyer's Title Objections and the same shall be a Permitted Exception. If Seller fails prior to the Closing Date to satisfy any Title Objection which Seller has agreed to satisfy, then Buyer may: (i) terminate this Agreement, in which event the Earnest Money shall be promptly refunded to Buyer; and the parties shall have no further obligation, each to the other under the Agreement except those that expressly survive termination; or (ii) waive such satisfaction (whereupon any such Title Objection shall be deemed a Permitted Exception) and consummate the purchase and sale of the Property.

9. **Survey; Conveyance of As-Surveyed Tract.**

(a) During the Inspection Period (as defined below) Buyer may, at Buyer's expense, cause a survey of the Property (the "**Survey**") to be prepared.

(b) Buyer shall have the right to object to any matters shown on the Survey prior to the expiration of the Inspection Period (the "**Survey Objections**"). Survey Objections shall be resolved in the same manner as Title Objections.

10. **Closing Documents and Costs.** On the Closing Date:

(a) Seller shall execute and deliver to Buyer:

(i) a quitclaim deed, in standard and recordable form, conveying the Property, subject only to the Permitted Exceptions, in the form of **Exhibit B** attached hereto and incorporated herein by reference;

(ii) an owner's title affidavit in the form of **Exhibit C** attached hereto and incorporated herein by reference;

(iii) a Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act;

(iv) an affidavit pursuant to O.C.G.A. § 48-7-128 stating whether Seller is subject to withholding for State of Georgia income tax withholding purposes;

(v) a settlement statement (the "**Settlement Statement**");

(vi) a Certificate of Authority of Executing Officer or other reasonable evidence of authority and Organizational Documents as required by the Title Company to complete the purchase and sale;

(vii) **a true and correct copy of the duly adopted Ordinance or Resolution by which the Fairburn City Council has formally abandoned the Property as right-of-way; and**

(viii) such other documents as may be required by the Title Company or as reasonable and customary under the circumstances to consummate the purchase and sale.

(b) Buyer shall pay the Purchase Price, execute and deliver the Settlement Statement, and provide such other documents as may be reasonable and customary under the circumstances to consummate the purchase and sale.

(c) Seller shall pay the costs and expenses of curing Title Objections and Survey Objections which Seller has elected or is required to cure, and Seller's attorneys' fees.

(d) Buyer shall pay the cost to record the deed, the costs and expenses associated with preparation of the title commitment and the owner's title insurance policy premium, the Survey, and Buyer's attorneys' fees. All other costs and expenses of the transaction contemplated hereby shall be borne by the party incurring the same.

(e) Seller shall deliver possession of the Property to Buyer on the date of Closing. Seller shall have terminated all service and maintenance contracts for the Property without liability to Buyer on or before the Closing Date.

11. **Warranties, Representations and Additional Covenants.**

(a) **Seller Warranties, Representations and Additional Covenants.** In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer, and covenants that:

(i) Seller is validly existing and has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereunder shall have been duly authorized by Seller prior to Closing.

(ii) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not conflict with and shall not result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien or encumbrance upon any of the Property by reason of the terms of any contract, instrument or judgment to which Seller is a party or which is or purports to be binding upon Seller or which otherwise affects Seller or the Property, which will not be discharged at Closing.

(iii) There are no pending actions, suits, proceedings or judgments against, by or affecting Seller which affect or may affect title to the Property, and there are no pending condemnation actions involving all or any portion of the Property.

(v) Seller is not a party to any leases, management, maintenance, service or other contracts which are in force with respect to the Property.

(vi) On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialman, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property respecting which any such person could claim a lien against the Property, nor shall the Property be subject to any such liens arising by, through or under Seller.

(vii) Except as provided in any environmental reports that may be provided to Buyer by Seller or obtained by Buyer, (a) Seller has not received any notice of any violation of any applicable federal, state or local environmental law; (b) Seller has not used the Property as a landfill or dump; and (c) Seller has not generated any hazardous substances on or under the Property in violation of environmental laws.

(viii) Seller covenants that, from the date of the execution of this Agreement until the earlier of the Closing or the termination of this Agreement, Seller shall not sell, encumber, pledge, convey, assign, lease or contract to sell, convey, assign, pledge, encumber or lease all or any part of the Property without the Buyer's prior written consent.

All representations and warranties of Seller made herein shall not merge with the deed and shall survive the Closing for a period of twelve (12) months after the Closing Date.

(b) **Buyer Warranties, Representations and Additional Covenants.** Buyer represents and warrants to Seller that:

(i) Buyer is validly existing and has all requisite power and authority to enter into this Agreement and perform its obligations hereunder, subject to subsection 11(b)(ii), below;

(ii) Neither the execution and delivery of this Agreement nor the consummation by Buyer of the transaction contemplated hereby will (i) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Buyer is a party, or (ii) violate any order, injunction, decree, statute, rule or regulation applicable to Buyer, except that public vote approving this Agreement and consummation of the within transaction is required by law, and has not yet occurred.

12. **Conditions to Buyer's Obligations.** The obligations of Buyer hereunder to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction, performance or waiver of the following on or before the Closing Date:

(a) Seller shall not be in material breach of this Agreement;

(b) The representations and warranties of Seller are true and correct in all material respects when made and as of the Closing Date;

(c) The City Council of the City of Fairburn shall have adopted legislation formally abandoning the Property as public right-of-way, and all statutory requirements for such abandonment shall have been met;

(d) The City Council of the City of Fairburn shall have approved this Agreement and authorized the contemplated transaction by public vote if and as required by law; and

(e) The Fulton County Board of Education shall have approved this Agreement and authorized the contemplated transaction by public vote as required by law;

(f) There shall exist no actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending against Seller that would materially and adversely affect Seller's ability to perform its obligations under this Agreement; and

(g) There shall exist no pending action, suit or proceeding with respect to Seller before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transaction contemplated hereby.

If any of the conditions set forth above has not been satisfied or performed on or as of the Closing Date, Buyer shall have the right to: (i) terminate this Agreement by giving notice to Seller, in which event the Earnest Money shall be promptly refunded to Buyer and the parties shall have no further obligation under the Agreement, except those that expressly survive termination; or (ii) waive such failure of condition and proceed to Closing.

13. **Conditions to Seller's Obligations.** The obligations of Seller hereunder to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction, performance or waiver of the following on or before the Closing Date:

(a) The representations and warranties of Buyer are true and correct in all material respects when made and as of the Closing Date; and

(b) City Council of the City of Fairburn shall have adopted legislation formally abandoning the Property as public right-of-way, and all statutory requirements for such abandonment shall have been met; and

(c) The City Council of the City of Fairburn shall have approved this Agreement and authorized the contemplated transaction by public vote if and as required by law; and

(d) The Fulton County Board of Education shall have approved this Agreement and authorized the contemplated transaction by public vote as required by law.

If any of the conditions set forth above have not been satisfied or performed on or as of the Closing Date, Seller shall have the right to: (i) terminate this Agreement by giving notice to Buyer, in which event the Earnest Money shall be promptly refunded to Buyer and the parties shall have no further obligation under the Agreement, except those that expressly survive termination; or (ii) in the event the condition set out in Section 13(a) is not met, waive such failure of condition and proceed to Closing.

14. **Inspection Period; Access.**

(a) Buyer shall have a period of time beginning on the Effective Date and expiring on the date that is sixty (60) days thereafter (such period of time, the "**Inspection Period**") in which to examine, inspect and evaluate the Property. During the Inspection Period, Buyer, its agents and contractors shall have the right to enter the Property, at their sole risk and expense, for the purposes of inspecting the Property and making surveys, soil and other investigations and inspections as Buyer may reasonably require to assess the condition of the Property subject to the restrictions and conditions set forth herein.

(b) The obligations of Buyer to consummate the Closing under this Agreement shall be conditioned upon Buyer satisfying itself, in its sole and absolute discretion, within the Inspection Period that the Property is in all respects satisfactory for Buyer's intended use. In the event Buyer determines, in its sole discretion, for any reason or for no reason that it does not wish to purchase the Property, Buyer may terminate this Agreement by written notice to

Seller within ten (10) days following the expiration date of the Inspection Period, in which event the Earnest Money shall be refunded to Buyer. Thereafter, this Agreement shall terminate, and the parties shall have no further obligation to one another except for those provisions that expressly survive the termination of this Agreement.

(c) During the Term of this Agreement, Buyer may also traverse the Property for the purpose of vehicular and pedestrian ingress and egress to Buyer's adjacent property directly to the north of the Property.

15. **No Broker.** Seller and Buyer each represent and warrant to the other that neither has employed, retained or consulted any broker, agent or finder in carrying on the negotiations in connection with this Agreement, or in connection with a listing agreement or any other agreement for the management, sale, or lease of or otherwise conveying any interest in the Property.

16. **Remedies.**

(a) *Of Seller.* If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to a default by Buyer hereunder, Seller may terminate this Agreement and retain the Earnest Money as full liquidated damages for such default. The parties acknowledge that Seller's actual damages in the event of a default by Buyer under this Agreement will be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages and are not a penalty. Such retention of the Earnest Money shall be the sole and exclusive remedy of Seller by reason of a default by Buyer under this Agreement.

(b) *Of Buyer.* If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to a default by Seller hereunder, Buyer may exercise such rights and remedies as may be provided elsewhere in this Agreement for specific instances of default by Seller, and Buyer may pursue either of the following remedies: (i) Buyer may seek specific performance of this Agreement; or (ii) Buyer may terminate this Agreement and the Earnest Money shall be promptly refunded to Buyer.

17. **Notices.** All notices, elections and communications permitted or required hereunder shall be in writing and shall be deemed given, received and effective for all purposes when delivered to the notice address for such recipient as set forth on the signature page to this Agreement, regardless of whether actually received. Any notice rejected by reason of a failure of the intended recipient to update its current address, or refused by the party, shall be deemed given, received and effective on the date of such rejection or refusal. Notices shall be given by courier, or by FedEx or by similar nationally recognized overnight courier service, or by email with next-day delivery by a nationally recognized overnight courier service, and notices may be given by and to counsel for the parties.

18. **Casualty and Condemnation.** In the event of the institution of any proceedings, judicial, administrative or otherwise, which shall relate to the proposed taking of any substantial portion of the Property by eminent domain prior to Closing, or should a substantial portion of the Property be damaged by fire, earthquake, flood, sinkhole, or other casualty prior to Closing, then

Buyer shall have the right and option to terminate this Agreement at any time prior to Closing by written notice to Seller at any time after Buyer's receipt of notice of any such occurrence. Seller shall provide Buyer written notification of such occurrence (i) within forty-eight (48) hours from the Seller's receipt of any notification in the event of eminent domain proceedings, and (ii) as soon as practicable in the event of casualty. Should Buyer so terminate this Agreement, then all Earnest Money paid by Buyer hereunder shall be returned to Buyer within ten (10) business days of such termination and, thereupon, the parties shall be released from their respective obligations and liabilities hereunder, except for such provisions that by the express terms hereof survive any termination of this Agreement. In the event Buyer does not elect to terminate this Agreement because of such taking or casualty, then at the Closing, Seller shall assign to Buyer all of Seller's right, title and interest in any award arising out of such taking, or any insurance proceeds arising out of such casualty. For the purposes of this Paragraph, a "substantial" portion of the Property shall be such a part which makes the remainder of the Property unsuitable for the use contemplated by Buyer.

19. **Miscellaneous.**

(a) *Binding Effect.* This Agreement shall be binding upon, enforceable against, and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, which assignment must be approved by Seller, consent not to be unreasonably withheld, delayed or conditioned.

(b) *Survival.* All the representations, warranties, covenants, terms and conditions of this Agreement shall survive the consummation of the purchase and sale of the Property on the Closing Date, the delivery of the deed and the payment of the Purchase Price. Notwithstanding the foregoing, the representations, warranties, covenants set forth in Section 11(a) hereof shall survive only for the period set forth in Section 11(a).

(c) *Entire Agreement.* This Agreement supersedes all prior discussions and agreements between Buyer and Seller with respect to the purchase and sale of the Property and other matters contained herein and contains the sole and entire understanding between Buyer and Seller with respect thereto.

(d) *Modification.* This Agreement shall not be modified or amended except by an instrument in writing executed by Seller and Buyer.

(e) *Applicable Law.* This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

(f) *Counterparts; Electronic Transmission.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. Execution of this Agreement may be confirmed by the exchange or transmission of one or more signature pages in PDF or JPG format via email, and any signature page so transmitted shall be considered to have the same legal and binding effect as any original signature page.

(g) *Time.* Time is and shall be of the essence of this Agreement. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline that is set forth in this Agreement falls on a day that is not a business day, then such date shall be automatically extended to the next business day. For purposes of this Agreement, a "business day" is any day that is not a Saturday, Sunday or federal legal holiday.

(h) *Effective Date.* The effective date of this Agreement (the "**Effective Date**") shall be later of the respective dates on which Seller or Buyer party executes and delivers this Agreement to the other, and upon such execution and delivery either party may enter the Effective Date upon the face page of this Agreement.

20. **Special Stipulations.**

(a) *Confidentiality.* Subject to requirements of the Georgia Open Records Act, until public vote on this transaction by the Fulton County Board of Education or by the City Council of the City of Fairburn, whichever first occurs, and except as required by law or court order, Seller shall use good faith efforts not to disclose the existence, subject matter, terms or status of this Agreement to any person other than its officers, employees, attorneys, accountants and other professionals and, in each case on a need-to-know basis and under a similar, good-faith duty of confidentiality.

(b) *Exclusivity.* Upon the execution of this Agreement by Buyer and Seller, Seller shall terminate any and all discussions and negotiations with any other prospective purchaser of the Property until this Agreement is terminated or consummated in accordance with the terms hereinabove.

(c) *Escrow.* If there is any dispute as to whether Escrow Agent is obligated to deliver the Earnest Money, including any other monies or documents which it holds, or as to whom the same are to be delivered, Escrow Agent will not be obligated to make any delivery, but in such event, may hold the same until receipt by Escrow Agent of an authorization, in writing, signed by Seller and Buyer directing the disposition of same, and if either party would be entitled to the Earnest Money, or other monies or documents held by Escrow Agent, the parties shall promptly execute such joint written authorization upon the request of any party hereto. In the absence of such authorization, Escrow Agent may hold the Earnest Money, or other monies or documents in its possession until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceedings for such determination are not begun and diligently continued, Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit said funds or documents into the registry of a court of competent jurisdiction, pending such determination. Notwithstanding the foregoing, if this Agreement is terminated pursuant to Section 14(b), Escrow Agent shall return the Earnest Money to Buyer without the need for joint written instructions. Escrow Agent shall not be responsible for any acts or omissions of Escrow Agent, unless same are a result of the gross negligence, willful misconduct or fraud of Escrow Agent. Otherwise, provided Escrow Agent acts in accordance with this Agreement, Escrow Agent shall have no liability following the delivery of any funds or documents which Escrow Agent holds

pursuant to this Agreement. If Escrow Agent elects to bring an appropriate action or proceeding in accordance with the terms of this Agreement, then Escrow Agent shall be entitled to recover all of its reasonable attorneys' fees and costs incurred in connection with the action from the party not entitled to receive the Earnest Money or other monies or documents as determined by a court of competent jurisdiction. The parties will hold Escrow Agent harmless from and, to the extent allowed by applicable law, indemnify it against any costs or liabilities, including reasonable attorneys' fees, resulting from any action brought against Escrow Agent in connection with this Agreement or the funds held hereunder, unless due to Escrow Agent's willful misconduct, gross negligence, or fraud.

[Signatures on following page]

IN WITNESS WHEREOF, Seller and Buyer have caused this Intergovernmental Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

SELLER:

CITY OF FAIRBURN, GEORGIA,
a Georgia municipal corporation

By: _____
Elizabeth Carr-Hurst, Mayor

Attest: _____ (Seal)
Shana T. Moss, Interim City Clerk

Approved As To Form:

William R. Turner, City Attorney

Notice Address:
City of Fairburn
Attention: Mayor
56 Malone Street
Fairburn, Georgia 30213

With a copy to:
William R. Turner, City Attorney
Turner Ross Germain LLC
2265 Roswell Road, Suite 100
Marietta, Georgia 30062
rturner@lawtrg.com

[Signatures continued on following page]

[BUYER'S SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT]

BUYER:

FULTON COUNTY BOARD OF EDUCATION

By: _____
Linda P. Bryant, Board Chair/President
Date: _____

By: _____
Cindy Loe, Ph.D., Interim Superintendent
Date: _____

Sworn to and subscribed before me
This the ____ day of _____, 2019.

Notary Public

My Commission Expires: _____

(Notary Seal)

Notice Address:
Fulton County Schools
Office of Land Management
6201 Powers Ferry Road, NW
Atlanta, GA 30339
Attn: William C. Boyajan, Director of Land
Management
Tel.: (470) 254-2213
boyajanwc@fultonschools.org

With a copy to:
Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attn: Cheryl V. Shaw, Esq.
Tel.: 404.322.6139
cheryl.shaw@nelsonmullins.com

[ESCROW AGENT'S SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT]

The undersigned agrees to act as Escrow Agent in accordance with the terms of this Agreement.

ESCROW AGENT:

NELSON MULLINS RILEY &
SCARBOROUGH LLP

By: _____
Cheryl V. Shaw, Esq.

Notice Address:

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attn: Cheryl V. Shaw, Esq.
Tel.: 404.322.6139
cheryl.shaw@nelsonmullins.com

EXHIBIT "A"
Property Legal Description

All that tract or parcel of land lying and being in Land Lot 66 of the 9F District, Fulton County, Georgia, and being more particularly described as follows:

Commencing at a point at the intersection of the western right-of-way of Shaw Drive (50' right-of-way) and the northern right-of-way of Fairview Drive (50' right-of-way), Thence along said right-of-way of Shaw Drive, North 14 degrees 18 minutes 14 seconds West a distance of 175.01 feet to a point, said point being the TRUE POINT OF BEGINNING. Thence continuing along said right-of-way the following two courses and distances: North 14 degrees 18 minutes 14 seconds West a distance of 31.99 feet to a 1/2-inch open top pipe found; North 14 degrees 14 minutes 23 seconds West a distance of 167.38 feet to a 5/8-inch rebar set at the terminus of the right-of-way of Shaw Drive; Thence crossing said right-of-way, North 75 degrees 26 minutes 33 seconds East a distance of 50.29 feet to a 5/8-inch rebar set on the eastern right-of-way of Shaw Drive; Thence along said right-of-way, South 14 degrees 14 minutes 20 seconds East a distance of 199.59 feet to a 5/8-inch rebar set; Thence leaving said right-of-way, South 75 degrees 41 minutes 46 seconds West a distance of 50.25 feet to a point located on the western right-of-way of Shaw Drive, said point being the TRUE POINT OF BEGINNING.

Said tract of land contains 0.230 Acres.

Exhibit B

Form of Quitclaim Deed

After Recording Return To:

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attn: Cheryl V. Shaw, Esq.

Tax Parcel: None assigned (Abandoned
Right-of-Way: Portion of Shaw Drive)

QUITCLAIM DEED

STATE OF GEORGIA

COUNTY OF FULTON

THIS INDENTURE, made this ____ day of _____, 2019 between **CITY OF FAIRBURN**, a Georgia municipal corporation ("**Grantor**") and the **FULTON COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia ("**Grantee**") (the terms "Grantor" and "Grantee" to mean and include their respective successors and assigns).

WITNESSETH:

THAT Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, at and before the sealing and delivery of these presents, has granted, bargained, sold, and does by these presents, bargain, sell, remise, release, and forever QUITCLAIM unto Grantee all the right, title, interest, claim, or demand which Grantor has or may have in and to the following described property, to wit:

All that tract or parcel of land lying and being in Land Lot 66 of the 9F District of Fulton County, Georgia, and being more particularly described on Exhibit "A" attached hereto and made a part hereof (the "**Property**").

TOGETHER WITH all the rights, members, and appurtenances to the said described Property in anywise appertaining or belonging.

TO HAVE AND TO HOLD the said Property unto the said Grantee so that neither the Grantor nor its successors or assigns nor any other person or persons claiming under Grantor shall at any time claim or demand any right, title, or interest to the said Property or its appurtenances.

IN WITNESS WHEREOF, the said Grantor has signed and sealed this Deed as of the day and year above written.

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

Commission Expiration Date:

[NOTARIAL SEAL]

GRANTOR:

CITY OF FAIRBURN, GEORGIA,
a Georgia municipal corporation

By: _____ (seal)
Elizabeth Carr-Hurst, Mayor

Attest: _____
Shana Moss, Interim City Clerk

William R. Turner, City Attorney

Exhibit C

Form of Owner's Affidavit

OWNER'S AFFIDAVIT

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before me the undersigned officer, _____
("Deponent"), who, being duly sworn according to law, deposes and says on oath as follows, to
the best of Deponent's actual knowledge:

1. That Deponent is the _____ (Title) of **CITY OF FAIRBURN**, a
Georgia municipal corporation (the "**Owner**"), and as such, has personal knowledge of the facts
sworn to in this Affidavit.

2. That the Owner is the owner of certain real estate (the "**Property**"), a description
of which is attached hereto as Exhibit A and made a part hereof subject to the matters described
on Exhibit B.

3. The Owner is in open, exclusive, notorious, continuous, adverse and peaceable
possession of the Property, and Deponent knows of no one claiming any adverse interest in the
Property.

4. That the Owner entity is in full force and effect and no proceeding is pending for
its dissolution or annulment.

5. That no real estate broker's services have been engaged by Owner in connection
with the management, sale, purchase, lease, option or other conveyance of any interest in the
Property, that no fees are owed by Owner for any such services, and that no notice of lien for any
such services has been received by Owner.

This affidavit is made to induce Fulton County Board of Education to purchase the
Property, the attorney certifying title to so certify and First American Title Insurance Company
to issue an owner's title insurance policy with respect to the Property.

Deponent (SEAL)

Sworn to and subscribed before me
this ____ day of _____, 2019.

Notary Public
(NOTARY SEAL)



CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: APPROVAL OF TASK ORDER #134 WITH INTEGRATED SCIENCE & ENGINEERING FOR WATER & SEWER PLAN REVIEWS AND CONSTRUCTION INSPECTION

() AGREEMENT () POLICY / DISCUSSION () CONTRACT
() ORDINANCE () RESOLUTION (X) OTHER

Submitted: 05/01/2019 Work Session: 05/13/2019 Council Meeting: 05/13/2019

DEPARTMENT: Engineering

BUDGET IMPACT: The budget impact of this task order will be \$30,000. It will come out of the Water & Sewer Professional Account (505-0000-52-1200).

PUBLIC HEARING? () Yes (X) No

PURPOSE: For Mayor and Council to approve Task Order #134 with Integrated Science & Engineering, Inc. (ISE) for Water & Sewer Plan Reviews and Construction Inspection Services.

HISTORY: The City of Fairburn entered into a Master Services Agreement with Integrated Science & Engineering, Inc. (ISE) on August 14th, 2017 for professional engineering and consulting services.

FACTS AND ISSUES: The agreement with ISE was approved with the understanding that task orders associated with civil engineering, water and wastewater, and water resources engineering would be issued on an as need basis. As such, the task order for Water & Sewer Plan Reviews and Construction Inspections has been submitted for review and approval.

RECOMMENDED ACTION: Staff recommends that the Mayor and City Council approve the Task Order with ISE for Water and Sewer Plan Reviews and Construction Inspections and authorize the Mayor to sign the Task Order for an amount not to exceed \$30,000.


Elizabeth Carr-Hurst, Mayor

**MASTER SERVICES AGREEMENT
CITY OF FAIRBURN**

THIS IS AN AGREEMENT made as of 8/14, 2017, between the City of Fairburn, Georgia ("CLIENT") and Integrated Science & Engineering, Inc. ("ENGINEER"). The CLIENT wishes to engage ENGINEER to provide professional engineering and consulting services. The services provided under this agreement shall encompass primarily the areas of civil engineering, water and wastewater engineering, and water resources engineering. In general, the services provided by the ENGINEER will include, but not necessarily be limited to, the following services:

- Project Management
- Project Planning
- Feasibility Studies
- Engineering Analysis
- Provision of Construction Cost Opinions and Data
- Technical Reports
- Engineering Design and Surveying
- Permitting and Regulatory Agency Coordination
- Construction Management and Oversight
- Easement and Right-of-Way Acquisition
- Other engineering services may be added at the discretion of the CLIENT, under the terms of this AGREEMENT

The ENGINEER will work with the CLIENT to coordinate and integrate the overall management, planning, analysis, engineering design, consulting, and construction review for each project. In general, the ENGINEER will oversee project management and planning, scope of work development, work progress monitoring, project schedule maintenance, engineering design, construction review, and project cost control, as well as address additional design related tasks specifically requested by the CLIENT.

The ENGINEER will prepare and submit a TASK ORDER FORM (TOF) to be executed between the CLIENT and the ENGINEER for each specific work element, project, report, study, task, etc. (unless directed otherwise by the CLIENT), which will specify the scope of services, schedule, and fee arrangement. Each TOF will reference this AGREEMENT and be an amendment to this AGREEMENT. The CLIENT has the option to direct the ENGINEER to utilize an alternative method to the TOF (as warranted by the work task requested) including memo, email or other similar and acceptable documentation method.

CLIENT and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance of professional engineering and management services by ENGINEER and the payment for those services by CLIENT as set forth below.

1.0 SECTION 1 – GENERAL PROJECT MANAGEMENT AND CONSULTING ENGINEERING SERVICES

- 1.1 **Description.** ENGINEER shall provide professional services to the CLIENT in the form of project management and consulting engineering services, from time to time, as requested by CLIENT. These services will be provided on a formal (written) or informal (verbal) basis as determined by the circumstances and the wishes of the CLIENT. Examples of General Project Management and Consulting Engineering Services would include, but not be limited to, the following:
- 1.1.1 Review of existing system data and providing of advice pertaining to CLIENT operations, planning, expansion, repair or other matters that may be of concern to CLIENT.
 - 1.1.2 Serve as consulting engineer on behalf of the CLIENT to various subconsultants as it relates to project planning, scope of work development, work progress oversight, project QA/QC, budget review/management, schedule and construction oversight.
 - 1.1.3 Prepare engineering studies, alternative evaluations, surveys, reports, cost estimates, financial analysis, or other engineering documents specifically requested by CLIENT.
 - 1.1.4 Serve as engineering liaison for the CLIENT to various local, state and federal agencies that may have jurisdiction over certain aspects of CLIENT's operations.
 - 1.1.5 Provide other engineering related services as may be requested and authorized by the CLIENT.

2.0 SECTION 2 – BASIC ENGINEERING SERVICES

- 2.1 **Basic Engineering Services.** Include those services normally associated with project management, engineering analysis and engineering design for civil engineering, water and wastewater engineering, and water resources engineering related projects, or other projects stipulated by the CLIENT. Engineering services will typically include, but not be limited, to the following.
- 2.2 **Preliminary Design and Planning Phase.** The ENGINEER shall:
- 2.2.1 In consultation with CLIENT, and on the basis of the available Preliminary Study information, define the project specific objectives, scope of work, schedule, and preliminary budget for projects requested by the CLIENT.
 - 2.2.2 Advise CLIENT if additional data or supplemental professional services of the types described in this AGREEMENT are necessary, and procure the necessary services, subject to the approval of CLIENT.

- 2.2.3 Prepare preliminary design documents consisting of the following: design criteria, cost estimate information, preliminary drawings, project scope of work development, design schedule and written description of the project.
- 2.2.4 Provide coordination, permitting, and managerial assistance to the CLIENT regarding utility relocation, easements, right-of-way acquisition, etc. as specifically requested by the CLIENT.
- 2.3 **Comprehensive Design Phase.** The ENGINEER shall:
 - 2.3.1 Perform engineering surveys of the construction site to determine horizontal and vertical site data including topography, relevant site elevation data, locations and measurements of existing site conditions that could affect the project.
 - 2.3.2 Represent the CLIENT at public hearings and meetings with applicable regulatory agencies and/or Authority Staff.
 - 2.3.3 Prepare detailed design plans, specifications, documents (a.k.a. Contract Documents/Bidding Documents) and engineering cost estimates for the project.
 - 2.3.4 Oversee the work efforts of the subconsultants as it relates to the overall project objectives, schedule and budget. Technical accuracy and design quality will be the responsibility of the subconsultant unless otherwise stipulated in their contract with the ENGINEER.
 - 2.3.5 Advise CLIENT of potential adjustments as it relates to total project costs resulting from changes in project scope, extent, character, or design requirements of the project or construction costs.
 - 2.3.6 Furnish copies of design plans, specifications and documents for approval by the CLIENT, his representatives, and applicable regulatory authorities.
- 2.4 **Pre-Construction Phase.** The ENGINEER shall:
 - 2.4.1 Pre-qualify, when possible, contractors for bidding the various projects.
 - 2.4.2 Assist CLIENT in advertising for and obtaining bids or negotiating contracts for each construction project, and maintain a record of prospective bidders to whom Construction Documents/Bidding Documents have been issued, attend pre-bid conferences and issue Construction Documents/Bidding Documents.
 - 2.4.3 Issue addenda appropriate to interpret, clarify or expand the Construction Documents/Bidding Documents.

- 2.4.4 Consult with CLIENT concerning, and determine, the acceptability of substitute materials and equipment proposed by CONTRACTOR(s) when substitution prior to the award of contracts is allowed by the Construction Documents/Bidding Documents.
- 2.4.5 Attend pre-bid meeting with prospective contractors, attend the bid opening, prepare bid tabulation sheets and assist CLIENT in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services. ENGINEER will verify that the CONTRACTOR's insurance and bonding capabilities meet the CLIENT's requirements.
- 2.5 **Construction Phase Services.** The ENGINEER shall:
 - 2.5.1 Arrange a pre-construction conference with the successful bidder to discuss administrative issues associated with the project; establish site safety procedures (where applicable); address project logistics; establish lines of communication; and address other applicable issues as necessary in the interest of construction QA/QC and safety.
 - 2.5.2 Review the CONTRACTOR's work schedule to ensure general conformance with preliminary schedules developed by the CLIENT and ENGINEER. Appropriate modifications will be recommended to CONTRACTOR in an effort to ensure efficiency in the construction process. ENGINEER will notify the CLIENT if significant discrepancies exist in the CONTRACTOR's schedule as compared to the agreed upon construction schedule with the applicable parties.
 - 2.5.3 Serve as the CLIENT's representative with duties and limitations of responsibility and authority as stated in the construction Contract Documents.
 - 2.5.4 Visit the site at regular intervals appropriate to the various stages of construction to observe progress and quality of the CONTRACTOR's work, and shall keep CLIENT informed of same.
- 2.6 **Interpretations and Clarifications.** ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents/Bidding Documents and in connection therewith prepare work change directives and process CONTRACTOR's change orders as required.
- 2.7 **Shop Drawings.** ENGINEER shall review cut sheets, submittals, shop drawings and other relevant data. ENGINEER shall review shop drawings and other data that CONTRACTOR(s) are required to submit, but only for conformance with the design concept of the project and compliance with the information given in the design plans, specifications and documents. ENGINEER will review and approve CONTRACTOR's shop drawings and provide approved copy of drawing to the CLIENT prior to CONTRACTOR notification.

- 2.8 **Schedule Monitoring.** ENGINEER will review and update CONTRACTOR(s) schedule(s) to monitor construction progress and to assist the CONTRACTOR in identifying potential "work arounds" to make up for work delays, change orders, etc. Updated schedules will be provided to the CLIENT as necessary unless agreed otherwise.
- 2.9 **Applications for Payment.** ENGINEER will review CONTRACTOR's applications for periodic payment to verify that amounts requested by the CONTRACTOR agree with actual progress of the work. Approved applications will be submitted to the CLIENT for payment.
- 2.10 **Correspondence.** ENGINEER will distribute and maintain project correspondence and documents throughout the construction phase. Schedules for project deliverables will be established and adhered to in order to maintain the overall project schedule(s).
- 2.11 **Contract Closeout.** ENGINEER shall conduct a review of each project phase to determine if the work is substantially complete and a final review of each project phase will be performed to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to CONTRACTOR and may give written notice to CLIENT and the CONTRACTOR that the work is acceptable (subject to any conditions therein expressed).

3.0 SECTION 3 – SUPPLEMENTAL SERVICES

- 3.1 The services listed in this section will be provided to supplement the services outlined in the previous sections. If authorized by the CLIENT, ENGINEER will furnish (or utilize the services of subconsultants/subcontractors as necessary) these services under the terms of this AGREEMENT.
- 3.2 Examples of Supplemental Services include, but are not necessarily limited to, the following:
- a) Geotechnical Engineering and Related Services.
 - b) Surveying (i.e. construction staking, property boundary, topographic surveys, easement plats, etc.).
 - c) Environmental Engineering and Assessment Services. (i.e. environmental impact studies, Phase I and Phase II Assessments, etc.).
 - d) Hydrogeology and Geology.
 - e) Geographical Positioning Systems (GPS) Mapping and Geographical Information Systems (GIS).
 - f) Supplemental or Extended Services, made necessary by: (1) work damaged by fire or other cause during construction; (2) prolongation of the construction contract period; and (3) default by the CONTRACTOR.
 - g) Services resulting from significant changes in extent of the project or revision of previously accepted concepts, reports, design plans, specifications or documents when such revisions are due to causes beyond control of ENGINEER.

- h) Transportation Engineering (i.e. road design, easement and right-of-way acquisition, traffic analysis, etc.)
- i) Resident Inspection for Construction.
- j) Preparation of As-built Drawings, unless required by a specific project TOF.

4.0 SECTION 4 – FEES AND PAYMENTS TO ENGINEER

- 4.1 For general consulting engineering services as outlined in this AGREEMENT, CLIENT shall pay ENGINEER the fee documented in the project specific Task Order Forms (TOFs). It is anticipated that professional services will be performed and reimbursed on payment terms agreeable to both parties (i.e. lump sum, hourly, etc.). The proposed unit rates identified for this AGREEMENT are broken out by labor category and are included as ATTACHMENT "A". Any unique unit rates or costs related to outside subconsultants contracted to the ENGINEER to provide specialized services for specific work tasks will be included in the project specific TOFs. It will be the responsibility of the ENGINEER to periodically update the CLIENT regarding incurred fees for the various projects executed under this AGREEMENT as it relates to an estimated project budget in the event that a budget revision is warranted by the work effort undertaken, or anticipated, by the ENGINEER and as agreed to by the CLIENT. ENGINEER and CLIENT will also periodically review project progress and schedules to ensure timely completion of work.
- 4.2 The labor category unit rates are included in ATTACHMENT "A" and apply to those employees of the ENGINEER who are engaged in providing professional services under this AGREEMENT. In addition to the customary overhead items, the following costs are specifically defined as an overhead charge and there shall be no additional charge for these costs: telephone charges, computer expenses, use of company vehicles (mileage), in-house reproduction, photocopying, and routine expendable/office supplies. Direct expenses (including subconsultants hired by the ENGINEER) will be invoiced at cost plus 15% to the CLIENT.
- 4.3 ENGINEER shall submit monthly invoices to CLIENT in a format acceptable by the CLIENT. CLIENT shall endeavor to make payment to ENGINEER within thirty days from receipt of invoice.
- 4.4 For the term of this AGREEMENT or any extension thereof, the ENGINEER may petition to revise labor category billing rates effective January 1 of each year (the "Rate Modification Date") to account for salary adjustments. The CLIENT reserves the right to review the proposed annual billing rate adjustments for approval prior to implementation by the ENGINEER.

5.0 SECTION 5 – CLIENT’S RESPONSIBILITIES

5.1 CLIENT shall:

- 5.1.1 Provide all criteria and full information as to OWNER’s requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.
- 5.1.2 Allow the ENGINEER to have reasonable access to the site for activities necessary for the performance of the services. If reasonable access is not provided and consequently the ENGINEER is denied or delayed in performing their services, the associated fees and costs may be viewed in their entirety as a reimbursable expense.
- 5.1.3 Promptly furnish to ENGINEER the information requested by ENGINEER needed for rendering of services hereunder. The CLIENT shall provide to the ENGINEER all such information as is available to the CLIENT and the CLIENT’s consultants and contractors, and the ENGINEER shall be entitled to rely upon the accuracy and completeness thereof. The CLIENT recognizes that it is impossible for the ENGINEER to assure the accuracy, completeness and sufficiency of information provided to ENGINEER by CLIENT or third parties. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the ENGINEER and the ENGINEER’s subconsultants harmless from any claim, liability or cost (including reasonable attorneys’ fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the CLIENT to the ENGINEER.
- 5.1.4 Assist ENGINEER by placing at his disposal all available information pertinent to the project including previous reports and any other data relative to design or construction of the project.
- 5.1.5 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 5.1.6 Designate a person (or persons) to act as CLIENT’s representative(s) with respect to the services to be rendered under this AGREEMENT. Such person(s) shall have complete authority to transmit instructions, receive information, interpret and define CLIENT’s policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER’s services.

6.0 SECTION 6 – ENGINEER’S RESPONSIBILITIES

- 6.1 **Project Management and Design.** The ENGINEER shall manage and design the work in strict compliance with all applicable laws and in strict compliance with all applicable codes. All plans and specifications shall bear the signature and seal of the ENGINEER,

which shall be prima facie evidence that the ENGINEER has exercised the degree of skill and professional competence required of professional engineers licensed in the State of Georgia and that the ENGINEER has not practiced beyond the limits of his field of specialty or expertise.

- 6.2 **Standard Professional Services.** The ENGINEER by the execution of this AGREEMENT contracts that he is possessed of that degree of care, learning, skill and ability which is ordinarily possessed by other members of his profession and further contracts that in the performance of the duties herein set forth he will exercise such degree of care, learning, skill and ability as is ordinarily employed by professional engineers licensed to practice in the State of Georgia under similar conditions and like circumstances and shall perform such duties without neglect, and shall not be liable except for failure to exercise such degree of care, learning, skill and ability. Any other provision of this AGREEMENT to the contrary notwithstanding, the ENGINEER shall not receive any fee on account of increases in cost resulting from change orders necessitated by errors or oversights of the ENGINEER.
- 6.3 **Professional Liability Insurance.** Simultaneous with the execution of this AGREEMENT, and prior to the provision of any professional services by the ENGINEER, and during the entire term of this AGREEMENT, including future renewals thereof, the ENGINEER shall maintain in full force and effect a policy of professional liability insurance from a company authorized to do business in the State of Georgia in limits of \$1,000,000 each claim, \$2,000,000/year aggregate, with \$100,000 per claim deductible, \$200,000/year aggregate deductible. The ENGINEER represents, warrants and covenants that in the event a claim is filed against such policy, the ENGINEER has sufficient unencumbered assets and financial standing to pay in full the maximum deductible per claim. If requested, the ENGINEER shall furnish evidence of said coverage to CLIENT in the form of a certificate from the issuing insurance company that the policy is in good standing. If two or more claims are made by ENGINEER against said coverage, at any time relevant to this AGREEMENT, notice of such fact shall be furnished to CLIENT in writing, which event shall furnish CLIENT the option to terminate this AGREEMENT. As further condition, said policy shall not be canceled, changed, allowed to lapse or allowed to expire until ten (10) days after written notice is given by ENGINEER to CLIENT, via certified mail, return receipt requested. ENGINEER shall at all times during the terms of this AGREEMENT, including for four (4) years after the expiration or termination of the AGREEMENT for any reason, maintain continuity of coverage described herein against any liability directly or indirectly resulting from ENGINEER or its employees or its subconsultant's duties in connection with this AGREEMENT, or other acts or omissions of ENGINEER or its respective employees or agents occurring in whole or in part during the term of this AGREEMENT. ENGINEER shall procure continuity coverage by obtaining subsequent policies which have a retroactive date of coverage equal to the effective date of this AGREEMENT or by obtaining an extended recording endorsement with coverages consistent with those described herein.

- 6.4 **Personal Services.** In contemplation that engineering services are personal, the ENGINEER agrees that no change in the business organization of the ENGINEER under which the firm shall perform shall be made during the AGREEMENT term, unless prompt written notice to the CLIENT is given, which event shall afford the CLIENT the option to terminate this AGREEMENT.
- 6.5 **Approval of Bonds by Bidders.** Inasmuch as the ENGINEER will provide assistance to the CLIENT in the bidding and negotiating of water and sewer, and public works contracts, for which the successful contractor must present payment and performance bonds as a condition of the award of such contracts, it shall be the duty of the ENGINEER to verify that the Surety for CONTRACTOR's Bonds meets the criteria contained in the General Conditions of the Contract Documents (listed on Federal Register Circular 570) and is licensed and in good standing with the Insurance Commission of the State of Georgia.
- 6.6 **Compliance with Equal Employment Opportunity Laws and Americans with Disabilities Act.** As a condition for entry of this AGREEMENT, the ENGINEER represents, warrants and covenants that at the time of entry of this AGREEMENT, and during the term thereof, the ENGINEER shall observe and comply with all applicable laws governing equal employment opportunities, including the employment of persons with disabilities, as defined by the Americans with Disabilities Act of 1991. Furthermore, the ENGINEER shall maintain a drug free workplace as required by Georgia law during the term of this AGREEMENT.

7.0 SECTION 7 – GENERAL CONSIDERATIONS

- 7.1 **Commencement.** This AGREEMENT will take effect upon delivery of executed AGREEMENT to both parties.
- 7.2 **Term of AGREEMENT.** The initial term of this AGREEMENT shall be 12 months from the date of execution by all parties. Thereafter, unless either party provides at least 30 days prior written notice to the contrary, the AGREEMENT shall automatically renew for increments of one year beginning on January 1 and ending on December 31 of each such year. Either party, upon giving 30 days written notice, may terminate this AGREEMENT at any time without cause. Termination of this AGREEMENT by either party shall not impair or affect whatever rights, including payment for services performed prior to termination either party may have under this AGREEMENT.
- 7.3 **Authorized Representative.** ENGINEER shall designate a person (or persons) to act as ENGINEER's representative(s) with respect to the services to be rendered under this AGREEMENT. Such person(s) shall have complete authority to transmit instructions, receive information, interpret and define ENGINEER's policies and decisions with respect to materials, equipment, elements and systems pertinent to this AGREEMENT.

7.4 Successors and Assigns.

7.4.1 CLIENT and ENGINEER each is hereby bound and the partners, successors, executors, administrators, assigns and legal representatives of each are bound, to the other party to this AGREEMENT and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this AGREEMENT.

7.4.2 Neither CLIENT nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other.

7.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CLIENT and ENGINEER.

7.5 **Limitations of Responsibility.** Nothing herein shall be construed as making the ENGINEER responsible for supervising or directing the work of the CLIENT, CONTRACTORS or others furnishing work related to the project. Nor shall ENGINEER have authority over means, methods, techniques or procedures of construction, or for safety precautions incident to the work of the CLIENT, CONTRACTORS or others, or for any failure of same to comply with laws, rules or regulations. ENGINEER cannot guarantee the performance of work by CONTRACTORS nor assume responsibility for CONTRACTOR's failure to perform in accordance with Contract Documents.

7.6 **Indemnification.** The CLIENT shall indemnify and hold harmless the ENGINEER and all of its personnel from and against any claims, damages, loss and expenses (including attorney's fees) arising out of or resulting from the performance of the services under this AGREEMENT, provided that any such claim, damage, loss or expense is solely caused by the negligent act or omission of the CLIENT, its employees or agents (except ENGINEER).

7.7 **Re-use of Documents.** All documents including design plans, specifications and documents prepared by ENGINEER pursuant to this AGREEMENT are instruments of service with respect to the specific project and/or this AGREEMENT. They are not intended or represented to be suitable for re-use by CLIENT or others on extensions of the project or on any other project. Therefore, any other use or distribution of said documents without the written consent of ENGINEER is prohibited.

7.8 **Controlling Law.** This AGREEMENT is to be governed by the laws of the State of Georgia. The parties hereby agree and stipulate this AGREEMENT was made and entered into in Coweta County, Georgia, which shall be appropriate venue for any action brought relating thereto.

7.9 **Severability and Reformation.** Any provision or part thereof of this AGREEMENT held to be void or unenforceable under any law shall be deemed stricken, and all remaining

provisions shall continue to be valid and binding upon the parties. The parties agree that this AGREEMENT shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

- 7.10 **Risk Allocation.** In recognition of the relative risks, rewards and benefits of the project to both the CLIENT and ENGINEER, the risks have been allocated such that the ENGINEER and the CLIENT agree that, to the fullest extent permitted by the law, each parties' total aggregate liability to the one another and their respective contractors, subcontractors, consultants and other parties with legal standing to file claims resulting from any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this AGREEMENT from any cause or causes, shall not exceed \$50,000 or the total fee for services contemplated under this AGREEMENT, whichever is less. Such causes include, but are not limited to, ENGINEER's or CLIENT's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.
- 7.11 **Ownership of Documents.** All documents produced by ENGINEER under this agreement shall remain the property of ENGINEER and may not be used by the CLIENT for any other endeavor without the written consent of ENGINEER. Any unauthorized use or distribution shall be at CLIENT's and Recipient's sole risk and without liability to ENGINEER. CLIENT further agrees that documents produced by ENGINEER pursuant to this agreement will not be used at any location or for any project not expressly provided for in this AGREEMENT without ENGINEER's written approval.
- 7.12 **Discovery of Hazardous Materials.** Hazardous materials may exist on the site on which work will be performed by the ENGINEER under this agreement. The CLIENT acknowledges that the ENGINEER's scope of services for this project does not include any services related to the identification, removal or abatement of hazardous wastes. The ENGINEER and the CLIENT agree that the discovery of hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. The ENGINEER and the CLIENT also agree that the discovery of hazardous materials may make it necessary for the ENGINEER to take immediate measures to protect human health and safety, and/or the environment. The ENGINEER agrees to notify the CLIENT as soon as practically possible should hazardous materials or suspected hazardous materials be encountered. The CLIENT authorizes the ENGINEER to take any and all emergency measures that in the ENGINEER's professional opinion are justified to preserve and protect the health and safety of the ENGINEER's personnel and the public, and/or the environment, and the CLIENT agrees to compensate the ENGINEER for the additional cost of such work.
- 7.13 **Site Operations.** The ENGINEER's field personnel will avoid hazards or utilities that are visible to them at the site. If the ENGINEER is given data in writing that reveals the presence or potential presence of underground or overground obstructions, such as utilities, the ENGINEER will give special instructions to their field personnel. The ENGINEER will conduct the research that in its professional opinion is necessary to

locate utility lines and other objects that may exist beneath the site's surface. The CLIENT recognizes that the ENGINEER's research may not identify all subsurface utility lines and manmade objects, and that the information upon which the ENGINEER relies may contain errors or may not be complete. The ENGINEER is not responsible for any damage or loss due to undisclosed or unknown surface or subsurface conditions. For example, evaluations of existing buildings require that certain assumptions be made regarding existing conditions, many of which cannot be viewed by reasonable visual observation. The CLIENT understands that actual field conditions may subsequently be found to vary from design assumptions which in turn may alter or increase the scope of the design and/or construction services.


- 7.14 **Dispute Resolution.** The CLIENT and ENGINEER agree to use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options. However, neither party is obligated to use alternative dispute resolution absent its written agreement.

This AGREEMENT (consisting of thirteen (13) pages) constitutes the entire AGREEMENT between CLIENT and ENGINEER and supersedes all prior written or oral understandings between them in respect of the subject matter covered hereby. The attached documents and those incorporated herein constitute the entire AGREEMENT between the parties and cannot be changed except by a written instrument signed by an authorized agent of both parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT as of the day and year first above written.

CLIENT:


City of Fairburn

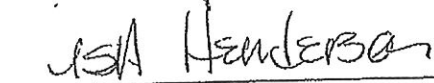

(Name) MARIO B. AVERY
(Title) MAYOR


Attest: TOM RIDGWAY

ENGINEER:

Integrated Science & Engineering, Inc.


Lawrence H. Davis, Jr., P.E.
President


Attest:

ATTACHMENT A

UNIT RATES

Integrated Science & Engineering, Inc.

	Rate/Hour
Principal	\$185
Senior Engineering Manager / Project Manager	\$160
Project Engineer III	\$145
Project Engineer II	\$130
Project Engineer I	\$115
Engineer II	\$105
Engineer I	90
GIS Professional III	\$115
GIS Professional II	\$90
GIS Professional I	\$80
Senior Planner	\$90
Senior Surveying Manager / Registered Land Surveyor	\$130
Survey Crew (2-Person)	\$135
Survey Crew (1-Person)	\$115
Engineer / Survey Technician III	\$115
Engineer / Survey Technician II	\$85
Engineer / Survey Technician I	\$65
Administration / Clerical	\$60
Subcontractor / Subconsultant	Cost + 15%
Reimbursables	Cost + 15%



INTEGRATED Science & Engineering

Atlanta / Savannah

Task Order Form

1039 Sullivan Road, Suite 200, Newnan, GA 30265
(p) 678.552.2106 (f) 678.552.2107

To: De'Carlton Seewood, City Administrator
Company: City of Fairburn
Address: 56 Malone Street
Fairburn, Georgia

Date: April 19, 2019
From: Jarred M. Jackson, P.E.
Copy to: Lester Thompson

Project: Water & Sewer Plan Reviews & Construction
Inspections

TOF #: 134

BACKGROUND

The City of Fairburn (City) engaged Integrated Science & Engineering (ISE) to complete Water & Sewer plan reviews and construction inspections in an interim roll due to limited staffing at the City. To begin this work, ISE will request standard plan review and construction inspection protocol from City staff (i.e. Plan Review Checklist, Field Inspection Reports, Water & Sewer Construction Ordinances, etc.). Based upon the provided information, ISE will complete Water & Sewer plan reviews, attend pre-construction meetings, and conduct Water & Sewer construction inspections. This Task Order Form (TOF) indicates the scope, schedule, and fee to perform the work described herein, and will be performed in accordance with ISE's Master Services Agreement (MSA) with the City of Fairburn, Georgia dated August 14, 2017.

SCOPE OF SERVICES

Task 1 – Water & Sewer Plan Review/Construction Inspection. Based upon the City provided protocol information, ISE will complete Water & Sewer plan reviews, attend pre-construction meetings, and conduct Water & Sewer construction inspections.

SCHEDULE

Task 1 – Water & Sewer Plan Review/Construction Inspection: TBD

FEE ESTIMATE

Task	Contract Amount	Billing Type
Task 1 – Water & Sewer Plan Review/Construction Inspections	\$30,000	Hourly
Total	\$30,000	

Task Order Form

AUTHORIZATION

The Scope of Services outlined herein will be performed in accordance with ISE's Master Services Agreement (MSA) with the City of Fairburn, Georgia dated August 14, 2017. Additional work requested outside the Scope of Work above can be accomplished at hourly rates outlined in our MSA. If this adequately defines the scope of work desired and is acceptable, please execute in the space provided below and return a copy to ISE as our Agreement and Authorization to proceed. We look forward to working with you and your staff on this project.

City of Fairburn

Integrated Science & Engineering, Inc.

Signature: _____

Signature: _____

Name: _____

Name: Jarred M. Jackson, P.E.

Title: _____

Title: Project Engineer

Date: _____

Date: _____



CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: APPROVAL OF THE 2017 CDBG CONTRACT WITH FULTON COUNTY

() AGREEMENT () POLICY / DISCUSSION (X) CONTRACT
() ORDINANCE () RESOLUTION () OTHER

Submitted: 05/09/2019 Work Session: 05/13/2019 Council Meeting: 05/13/2019

DEPARTMENT: Engineering

BUDGET IMPACT: The 2017 CDBG Contract award is \$100,000. These funds are provided through reimbursement request(s).

PUBLIC HEARING? () Yes (X) No

PURPOSE: For Mayor and Council to approve the 2017 CDBG Contract with Fulton County for the Cora Robinson Park Improvements Phase II Project.

HISTORY: The executed 2017 CDBG contract for an amount of \$100,000 to be used for Phase II of Improvements at Cora Robinson Park was received on January 25th, 2018. The Notice to Proceed (NTP) was issued on February 26, 2018, with a completion date of March 1st, 2018. Due to the three-day completion date, a ninety (90) day extension request was submitted to the Fulton County Director of Community Development on February 26, 2018. On March 26, 2018, the approval of the Contract Extension Request was received. The extension was approved through July 31st, 2018.

FACTS AND ISSUES: The completion date for the previous 2017 contract expired before all the proposed improvements were completed. Approval of the new 2017 Contract will allow the City to be reimbursed for any work associated with the project until March 1, 2020. Approval of the contract will also allow the City to be reimbursed for the recently completed Lightning Community Development Study.

RECOMMENDED ACTION: Staff recommends that Mayor and City Council to approve the 2017 CDBG Contract with Fulton County for \$100,000.


Elizabeth Carr-Hurst, Mayor



**FULTON COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
Community Development Block Grant Program
137 Peachtree Street, Suite 300
Atlanta GA, 30303**

**AN AGREEMENT BETWEEN FULTON COUNTY
and
The City of Fairburn
STATE OF GEORGIA, COUNTY OF FULTON**

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
2018 PUBLIC FACILITIES/INFRASTRUCTURE CONTRACT II
CFDA Number 14.218 – Community Development Block Grants**

**Federal Award Identification Number: B-17-UC-13-0003
City of Fairburn's DUNS Number: 099631004
Federal Award Date: 01/01/2017
Total Fulton County 2017 CDBG Municipality Agreement: \$100,000.00**

THIS AGREEMENT, between Fulton County, Georgia, the Department of Community Development (hereinafter referred to as "the County"), a political subdivision of the State of Georgia, acting by and through its duly elected Board of Commissioners, and the **City of Fairburn** (hereinafter referred to as "the Subrecipient"), a municipality organized and existing in Fulton County under the laws of the State of Georgia.

WITNESSETH THAT:

WHEREAS, on August 2, 2017 the Fulton County Board of Commissioners approved the 2017 Annual Action Plan and substantial amendments as part of the overall Fulton County 2015 – 2019 Consolidated Planning document which includes Community Development objectives and the projected uses of funds for the Community Development Block Grant (CDBG) program activities, as prescribed under the Housing and Community Development Act of 1974, as amended; and

WHEREAS, the City of Fairburn has been provided CDBG funds by Fulton County for **Public Facility and Improvements** services as set forth in 24 CFR §570.201(c) and to meet a national objective benefiting low/moderate income persons; as set forth in 24 CFR §570.208(a)(1)(i); and

WHEREAS, the Twenty Percent (20%) cap on Administrative Cost expenditures pursuant to CFR §570.200(g) has been reached; and,

WHEREAS, the year 2017 CDBG allocation awarded to the City of Fairburn in the amount of **\$100,000.00**, shall be specifically used for Cora Robinson Park Phase II in the Lightning Community to address community planning activities and public health and safety concerns and shall not be used towards any Program Administrative Costs. The activities are designed to benefit low-/moderate income persons as required to meet the CDBG national objective; and

WHEREAS, the contract I, ended on 03/01/2018, and work was completed.

WHEREAS, contract II starts on 03/02/2018 in the amount of \$100,000.00

1 **WHEREAS**, these activities are designed to benefit low and moderate income persons as required to
2 meet the CDBG national objective; and

3
4 **WHEREAS**, this Agreement constitutes the contractual arrangement for said improvements and/or
5 services that have been prepared for execution between the County and the City as consistent with the Fulton
6 County's Consolidated Plan Annual Action Plan for fiscal year 2017 to support the 2015-2019 Consolidated
7 Plan goals.

8
9
10 **NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the parties hereby
11 agree as follows:

12
13 **SECTION 1.0 – STATEMENT OF WORK**

- 14
15 1. Under this Agreement, the Subrecipient shall provide the services under this Agreement in accordance
16 with the "Statement of Work" attached hereto and made a part hereof as *Attachment A*, consistent with
17 applicable federal rules and regulations governing the use of CDBG funds. Additionally, the
18 Subrecipient shall perform the work according to the "Implementation Schedule" attached hereto and
19 made a part hereof as *Attachment A*.
20
21 2. Under this Agreement, the Subrecipient shall perform the public facility or improvements work
22 according to the "Implementation Schedule," which shall be executed in accordance with the
23 Agreement. The "Implementation Schedule" was submitted in the Subrecipient's year 2017 CDBG
24 application and is attached hereto and made a part hereof as *Attachment B*.
25
26 3. Under this Agreement, the Subrecipient shall also provide a CDBG "Cost Reimbursement Budget" for
27 the project that is being executed with CDBG funds, as submitted in the Subrecipient's 2017 CDBG
28 application. The "Cost Reimbursement Budget" is attached hereto and made a part hereof as
29 *Attachment C*.
30
31 4. Under this Agreement, the Subrecipient shall submit, on not less than a monthly basis, a "Monthly
32 Performance Report" detailing project progress as attached hereto and made a part hereof as
33 *Attachment D and Attachment D-2*.
34
35 5. All work described in *Attachments A, B, and C* must be consistent with applicable federal rules and
36 regulations governing the use of CDBG funds, and the Subrecipient shall ensure that none of the work
37 described constitutes a Program Administrative Cost.

38
39 **SECTION 2.0 – COMPENSATION FOR SERVICES AND WORK**

- 40
41 1. The County shall make reimbursement compensation for the services described in Section 1.0
42 (*Statement of Work*) herein, during the performance of this contract, in accordance with the "Cost
43 Reimbursement Budget" attached hereto and made a part hereof as *Attachment C*.
44
45 2. The County shall make payment to the Subrecipient upon conditional commitment of funds as the
46 project is subject to Environmental Review. Payment shall then be made through reimbursement of
47 costs incurred by the Subrecipient in the performance and execution of the services under this
48 contract. Payments shall be made timely upon the County's receipt of proper and sufficient
49 documentation of such costs and as satisfactory to the County. The County shall have the right not to
50 pay any request for reimbursement or part thereof if not properly supported, or if the costs requested
51 or a part thereof, as determined by the County, are reasonably in excess of the actual stage of
52 completion.
53
54 3. Such documentation shall include, but not be limited to time sheets, vendors' and suppliers' invoices or
55 vouchers, mileage logs, etc.
56
57 4. This documentation, along with a written request for reimbursement and a statement of costs incurred
58 shall be submitted to the attention of the assigned Community Development Specialist at the Fulton
59 County Department of Housing and Community Development, 137 Peachtree Street, SW, Suite 300,

Atlanta, GA, 30303. A minimum of one copy of the request and the statement shall be included with the submission. One copy must be accompanied by documentation supporting the eligible costs.

SECTION 3.0 – TERM OF AGREEMENT

1. The completion date of this Agreement shall be March 1, 2020, unless otherwise extended in writing, terminated by mutual agreement, or by the County, or in accordance with other terms and provisions contained herein. Any modifications to the term of the Agreement shall be documented through an amendment process as outlined in the County's Citizen Participation Plan as executed by the County. The term of this Agreement shall be in compliance with the Fiscal Year 2018-2020 Cooperative Agreement between Fulton County and the City.
2. The completion date of this Agreement is computed on the basis that the Subrecipient is eligible to receive retroactive costs incurred on or after March 2, 2018. The United States Department of Housing and Urban Development (HUD) with the County will make funds available for eligible incurred costs upon execution of the year 2017 grant agreement.
3. Although the completion date shall be (24) months and the completion date shall be March 1, 2020, the County periodically reports CDBG accomplishments and expenditures to HUD. By November 1, 2019, HUD traditionally reviews the County's collective accomplishments and expenditures, thus the County strongly encourages all Subrecipient services and work to be near completion by September 15, 2019 with no less than seventy percent (70%) of its eligible reimbursement costs submitted appropriately for review.

SECTION 4.0 - MODIFICATIONS TO AGREEMENT

1. In the event the Subrecipient chooses to modify its pre-approved "Statement of Work" by adding or deleting a project, the Subrecipient shall submit to the County a written request for the approval of such changes 30 days after execution of the contract. No such modification shall become effective unless and until approved by the County in the form of a formal amendment to the Subrecipient's "Statement of Work".
2. Additions or deletions to the "Statement of Work", which have been approved as a part of the County's Consolidated Plan may be allowed one time per Fiscal Year, subject to County approval. The Subrecipient must submit its request within the time frame referenced above.
3. The County must adhere to 24 CFR 91.505 "Amendments to the Consolidated Plan". The Subrecipient's failure to request modifications 30 days after execution of the contract shall result in the County's automatic denial of any such modifications to said Agreement and shall be construed as the Subrecipient's failure to properly and timely fulfill its obligations under this Agreement and will result in the County's right to exercise its options under Section 6.0 (*Termination of Agreement for Cause*) of this Agreement.
4. This Agreement constitutes the entire contractual arrangement between the County and the Subrecipient, and there are no further written or oral agreements with respect thereto. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by the County's and the Subrecipients' duly authorized representatives.
5. Further, in the event of any material change or modification in the Subrecipient's Agreement or agreement with any other funding source during the course of this Agreement, the Subrecipient shall immediately notify the County of such change. In such event, the County shall have the right to terminate its obligations under this Agreement, discontinue future funding hereunder, and demand the refund or return of funds previously advanced.

1 **SECTION 5.0 – EXTENSIONS**

2
3 In the event the Subrecipient determines that it cannot begin projects as scheduled or complete
4 projects within the time frame indicated by the Subrecipient in Attachment B, no extension will be
5 granted.
6

7 **SECTION 6.0 – SUSPENSION OF WORK**

- 8
9 1. The County may by written notice to the Subrecipient suspend at any time the performance of all or
10 any portion of the services to be performed under this Agreement. Upon receipt of a suspension
11 notice, the Subrecipient must unless the notices requires otherwise: (i) immediately discontinue
12 suspended services; (ii) place no further orders or subcontracts for material, services or facilities with
13 respect to suspended services, other than to the extent required in the notice; and (iii) take any other
14 reasonable steps to minimize costs associated with the suspension.
15
16 2. The County may elect to resume suspended service upon written notice to the Subrecipient. Upon
17 receipt of notice to resume suspended services, the Subrecipient will immediately resume performance
18 under this Agreement as required in the notice.
19
20

21 **SECTION 7.0 – TERMINATION OF AGREEMENT**

22
23 1. **Termination for Cause**

24
25 Time is of the essence and if, through any cause, the Subrecipient shall fail to fulfill in a timely and
26 proper manner its obligations under this Agreement, or in the event that any of the provisions or
27 stipulations of this Agreement are violated by the Subrecipient, the County shall thereupon have the
28 right to terminate this Agreement by providing written notice to the Subrecipient of the County's intent
29 to terminate the Agreement, specifying the reasons for such intention for termination. Unless within
30 ten (10) calendar days after serving of such notice (by hand delivery or posting in the U.S. Mail) to the
31 Subrecipient such violation or delay shall cease or arrangements for correction satisfactory to the
32 County be made, the Agreement shall, upon expiration of said ten (10) calendar days, be terminated
33 without further notice. Upon such termination, the Subrecipient will be compensated by the County for
34 expenses deemed by the County to be due and reasonable.
35

36 The Subrecipient shall be liable for any damage to the County resulting from the Subrecipient's refusal
37 or failure to complete the work within the specified time period, and said damages shall include, but not
38 be limited to, any additional costs associated with the County obtaining the services of another
39 Subrecipient to complete the project.
40

41 2. **Termination for Convenience of the County**

42 In the event the County determines that it is no longer feasible or in its best interest to continue
43 assisting the service covered by this Agreement, or should the U.S. Department of Housing and Urban
44 Development institute corrective and/or remedial actions against the County in accordance with
45 regulations under the CDBG program where such actions impede or halt the disbursement of the
46 County CDBG funds for this project, the County may terminate this Agreement by giving at least fifteen
47 (15) calendar days prior notice in writing (by hand delivery or posting in the U.S. mail) to the
48 Subrecipient.
49

50 In addition, in the event this agreement has been terminated due to the default of the Subrecipient, and
51 if it is later determined that the Subrecipient was not in default pursuant to the provisions of this
52 Agreement at the time of termination, then such termination shall be considered a termination for
53 convenience pursuant to this paragraph.
54

55 **SECTION 8.0 – INDEPENDENT SUBRECIPIENT STATUS**

56
57 Nothing herein contained shall be deemed to create a relationship other than that of independent
58 Subrecipient between the County and the Subrecipient. Under no circumstances shall the
59 Subrecipient, its principals, employees, subcontractors, associates, or agents be deemed employees,
60

agents, partners, successors, assigns, or legal representatives of the County except as specifically required herein.

SECTION 9.0 – ASSIGNMENT OF AGREEMENT

The Subrecipient shall not make any purported assignment of this Agreement or any part thereof, or delegate the duties herewith without prior written consent of the County. Any attempted assignment or delegation of duties by the Subrecipient without prior expressed written consent of the County shall at the County's sole option terminate this Agreement without any notice to the Subrecipient of such termination. The Subrecipient binds itself, its successors, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations contained herein.

SECTION 10.0 – PROGRAM INCOME

1. Program income, as defined in 24 CFR 570.500 (a), means any gross income received by the recipient (County) or a Subrecipient (the Subrecipient) directly generated from the use of CDBG funds, except as provided in paragraph (a)(4) of 570.500. When program income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used. The Subrecipient shall provide information regarding program income, with a breakdown of the CDBG allocation, to the County concurrently with the quarterly reports described and required by Section 13.0 of this Agreement.
2. Any program income received or generated by the Subrecipient as a result of the CDBG assistance provided under this Agreement is to be retained by the Subrecipient during the duration of this Agreement. The activities undertaken with any program income generated shall conform to *Attachment A* of this Agreement ("Statement of Work") and shall comply with all other provisions of this Agreement.
3. If at any time during the duration of this Agreement the Subrecipient retains program income, transfers of grant funds by the County to the Subrecipient shall be adjusted according to the principles described in paragraphs (b) (2) (i) and (ii) of §570.504, which state that all program income must be disbursed for eligible activities before additional cash withdrawals are made by the recipient from the U.S. Treasury.

SECTION 11.0 – REVERSION OF ASSETS

1. Upon expiration or termination of this Agreement, any remaining program income that is either on hand or to be received after the Agreement's expiration, shall be transferred by the Subrecipient to the County as required by 24 CFR 570.503(b)(7) "Agreements with Subrecipients".
2. Further, in the event that the Subrecipient should sell or otherwise dispose of any property acquired with the County CDBG funds, the manner of said disposition shall result in the County being reimbursed in the amount of the current fair market value of the property at that time less any portion of the value attributable to expenditures of non-County CDBG funds. In the event that such a sale or disposition occurs more than ten (10) years after expiration or termination of this Agreement, such reimbursement shall not be required.

SECTION 12.0 – COPYRIGHT AND PUBLICITY

1. No report, map, or other document produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Subrecipient without the prior written consent of the County. All such reports, maps, or other documents shall become and be deemed the property of the County and title therein shall automatically vest in the County.
2. Further, any publicity given to this project must identify the County prominently as a sponsoring agency. Specifically, at all places of, and in all publications concerning, this project, the Subrecipient agrees to display and make known that the project was assisted under the auspices of the Fulton County Community Development Block Grant program. In the event of new construction or substantial rehabilitation, and at the County's discretion, the Subrecipient shall acknowledge the use of CDBG

1 funds for the project by installation of a permanent plaque at the project site. The County in
2 collaboration with the Subrecipient shall determine design and replica for the plaque.
3

4 **SECTION 13.0 – RECORDS AND REPORTS**

6 **1. Records**

7 The Subrecipient shall maintain accounts and records, (including an annual Audit) personal property
8 and financial records, adequate to identify and account for all costs pertaining to this Agreement and
9 such other records as may be requested by the County including financial data pertaining to the
10 preparation of the U.S. Department of Housing and Urban Development (HUD) Consolidated Annual
11 Performance and Evaluation Report (CAPER) to assure proper accounting for all funds, both public
12 and private. Said records shall be made available for audit purposes to the County, HUD, or any
13 authorized representative thereof, upon reasonable request and within three (3) days of said request.
14

15 **Retention**

16 Pursuant to 24 CFR 570.502(a) (7) (ii), the retention period of individual CDBG activities shall be the
17 longer of 3 years after the expiration or termination of the subrecipient agreement under 24 CFR
18 507.503, or 3 years after the submission of the annual performance and evaluation report, as
19 prescribed in 24 CFR 91.520 of this title, in which the specific activity is reported on for the final time.
20 In addition, records for individual activities subject to the reversion of assets provisions at §570.503(b)
21 (7) or change of use provisions at §570.505 must be maintained for as long as those provisions
22 continue to apply to the activity. Moreover, records for individual activities for which there are
23 outstanding loan balances, other receivables, or contingent liabilities must be retained until such
24 receivables or liabilities have been satisfied.

25 The Subrecipient's records and accounts shall at all times meet or exceed the applicable requirements
26 of federal, state, and local laws, rules, and regulations. The Subrecipient's duty to retain records and
27 permit inspections and copying shall remain in force and effect even after the expiration or termination
28 of this Agreement.
29

30 **2. Reports**

31 The Subrecipient shall provide the County with a written plan that outlines the activities and processes
32 of the program that will be funded by CDBG. Further, the Subrecipient shall submit detailed reports on
33 the progress made and services of their programs based on the objectives they establish in response
34 to local needs and goals. Objectives reflect the common ways that Subrecipients work to achieve their
35 goals. The Objectives incorporated into the proposed Outcome Measurement System are: Suitable
36 Living Environment, Decent Housing, and Economic Opportunity. Outcome measurements will be
37 based on (a) Availability /Accessibility (b) Affordability (c) Sustainability. Outcomes show how
38 programs benefit a community or people served. Indicators tell whether an outcome is occurring.
39

40 At a minimum, these reports shall be submitted on a monthly basis. The monthly reports are due the
41 fifth (5th) of the following month for activities which occurred in the previous month, and shall be
42 submitted on the "Public Facility Monthly Performance Report" attached hereto and made a part hereof
43 as *Attachment D*. The year-end reports are due no later than thirty (30) days after the contract expires
44 for activities which occurred during the funding year in the "Year End Performance Report" attached
45 hereto and made a part hereof as *Attachment D-2*.
46

47 Said reports shall be submitted to the County, to the attention of the assigned Community
48 Development Specialist at the Fulton County Department of Housing and Community Development,
49 137 Peachtree Street, SW, Suite 300, Atlanta, GA., 30303. Two (2) copies of the report shall be
50 included in each submission, one (1) copy for the Community Development Specialist and the other
51 one (1) copy addressed to the CDBG Community Development Grant Manager.
52

53 **SECTION 14.0 – INSPECTION OF FILES AND RECORDS**

54
55 The County shall at all reasonable times have access to the pertinent offices and books and records
56 (including an annual Balance Sheet or Independent Audit) of the Subrecipient for inspection of the
57 activities performed and expenses incurred under this Agreement. The County will perform and the
58 Subrecipient shall be prepared to meet the requirements of, at least, one (1) audit per year.
59

1 **SECTION 15.0 – CITIZEN PARTICIPATION MEETINGS AND TECHNICAL ASSISTANCE MEETINGS**

2
3 Subrecipient representative must attend at least one (1) CDBG related Citizen Participation meeting,
4 participate in every Technical Assistance (TA)/Needs Assessment session and the annual Monitoring
5 session during each contract year. The County shall provide meeting dates and locations timely, and
6 shall provide comprehensive information to assist the Subrecipient to perform efficiently and
7 effectively.
8
9

10
11 **SECTION 16.0 -- MONITORING**

12
13 Through on-site and remote monitoring, the County determines whether the Subrecipient's
14 performance meets CDBG program requirements and assists to improve the Subrecipient's
15 performance by providing guidance and making recommendations. Monitoring visits are conducted no
16 less than once per contract term with a specific purpose to validate the accuracy of information
17 presented in the program participant's performance reports. On-site and remote monitoring is also
18 conducted to follow-up on problems identified during the Consolidated Annual Performance and
19 Evaluation Report (CAPER) assessment that are not resolved as of the date of the monitoring, to
20 determine compliance for those activities where there is sufficient information, to make eligibility and/or
21 national objective determinations, and to ascertain the Subrecipient's ability to ensure that activities
22 meet compliance requirements.
23

24 **SECTION 17.0 - FINDINGS / NON-COMPLIANCE**

- 25
26 1. The Subrecipient shall be notified in writing by the County of any Findings or Concerns identified
27 during each monitoring visit. The Subrecipient shall be given thirty (30) calendar days from the time of
28 written notification by the County for corrective actions to take place. The County will not
29 unreasonably withhold acceptance of corrective actions taken in good faith by the Subrecipient. Upon
30 the Subrecipient proving satisfactory corrective action, a letter shall be sent to the Subrecipient stating
31 that such findings or concerns have been addressed. Pursuant to 24 CFR 570.501, in the event the
32 Subrecipient fails to correct the findings or fails to comply with terms and provisions of this Agreement,
33 the County may take corrective and remedial actions such as those described in 24 CFR 570.910.
34 Such remedial actions may include, but are not limited to, the following:
35
36 a. Temporarily withhold cash payments pending correction of the deficiency;
37
38 b. Disallow all or part of the cost of the activity or action not in compliance;
39
40 c. Wholly or partly suspend or terminate the current award;
41
42 d. Withhold further award; or
43
44 e. Take other remedies that may be legally available.
45

46 **SECTION 18.0 – UNIFORM ADMINISTRATIVE REQUIREMENTS**

47 During its performance under this Agreement, the Subrecipient shall comply with the requirements and
48 standards of the Office of Management and Budget (OMB) codified at 2 CFR part 200 and guidance at
49 a new part, 2 CFR part 2400 which streamlines the Federal government's guidance on administrative
50 requirements, cost principles, and audit requirements to more effectively focus Federal resources on
51 improving performance and outcomes, while ensuring the financial integrity of taxpayer dollars in
52 partnership with non-Federal stakeholders. [https://www.federalregister.gov/articles/2014/12/19/2014-
53 28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-andbudgets-
54 uniform\)](https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-andbudgets-uniform)
55

56 The uniform guidance supersedes, consolidates, and streamlines requirements from eight OMB
57 Circulars:

- 58 • A-21, Cost Principles for Educational Institutions,
59 • A-87, Cost Principles for State, Local and Indian Tribal Governments,

- A-89, Catalog of Federal Domestic Assistance,
- A-102, Grants and Cooperative Agreements With State and Local Governments,
- A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,
- A-122, Cost Principles for Non-Profit Organizations,
- A-133, Audits of States, Local Governments, and Non-Profit Organizations, and
- The guidance in OMB Circular A-50, Audit Follow-up, on Single Audit Act follow-up.

SECTION 19.0 – EQUAL OPPORTUNITY AND NON-DISCRIMINATION

1. Civil Rights Act of 1964 (As amended)

The Subrecipient shall comply with all Federal requirements imposed by or pursuant to Title VI and Title VII of the Civil Rights Acts, as Amended; Age Discrimination In Employment Act; Rehabilitation Act of 1973, as Amended, Section 504; Equal Pay Act; The American with Disabilities Act of 1990, as Amended; Fair Housing Act, as Amended; and other applicable Acts which prohibits discrimination on the ground of race, color, religion, sex, age, national origin, handicap, disability, or familial status. No person in the United States shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Agreement.

2. Section 109 of the Housing and Community Development Act of 1974 (As amended)

The Subrecipient shall also comply with Section 109 of the Housing and Community Development Act of 1974, as amended, which requires that no person in the United States shall on the ground of race, color, national origin, sex, age, disability, or familial status, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available pursuant to said Act.

3. Further, during the performance of this Agreement, the Subrecipient agrees as follows

- (A) The Subrecipient shall not discriminate against any employee, or applicant for employment, because of race, religion, color, sex, national origin, age, disability, or familial status. As used herein, the word "employment" means and includes without limitation the following:
 - Recruiting, whether by advertising or other means; compensation or wages, whether in the form of rates of pay, or other forms of compensation; selection for training including apprenticeship; promotions; upgrades; demotions; downgrades; transfers; layoffs; and terminations.
 - The Subrecipient shall post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.
- (B) The Subrecipient shall in all solicitations or advertisements for employees, placed by or on behalf of itself, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, age, disability or familial status.
- (C) The Subrecipient shall, when applicable, send to each labor union or representative of workers with which the Subrecipient has a collective bargaining agreement or other Agreement or understanding, a notice representative of the Subrecipient's commitment under the Equal Opportunity Program of the County and under this Article and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (D) The Subrecipient shall file compliance reports at reasonable times and intervals with the County in the form and to the extent prescribed by the County. Compliance reports filed when directed shall contain information as to the employment practices, policies, programs, and

1 statistics of the Subrecipient and his Subrecipients.

2
3 (E) The Subrecipient shall include the provisions of paragraph (A) through (F) of this Equal
4 Employment Opportunity Clause in every subcontract or purchase order so that such
5 provisions will be binding upon each subcontractor or vendor.

6
7 (F) The Subrecipient shall comply with the provisions of Section 109 of the Act which provides, in
8 part, that any prohibition against discrimination on the basis of age under the Age
9 Discrimination Act of 1975, or as provided in Section 504 of the Rehabilitation Act of 1973,
10 shall also apply to any program or activity funded in whole or in part with funds made available
11 pursuant to the Act and provided hereunder. These provisions shall also be binding upon
12 each subcontractor or vendor.

13
14 **4. Section 3 of the Housing and Urban Development Act of 1968**

15
16 (A) The work to be performed under this Agreement is subject to the requirements of Section 3 of
17 the Housing and Urban Development Act of 1968, as amended. Section 3 requires that, to the
18 greatest extent feasible, opportunities for training and employment be given to low income
19 persons residing within the unit of local government in which the project is located, and that
20 Agreements for work in connection with the project be awarded to businesses which are
21 located in, or owned in substantial part, by persons residing in the area of the project.

22
23 (B) Accordingly, the Subrecipient shall, when applicable, send to each labor organization or
24 representative of workers with which it has a collective bargaining agreement or other
25 Agreement or understanding, a notice of its commitment under this Section 3 clause and shall
26 post copies of the notice in conspicuous places available to employees and applicants for
27 employment or training.

28
29 (C) The Subrecipient shall include this Section 3 clause in every subcontract for work in
30 connection with the project and will take appropriate action pursuant to the subcontract upon a
31 finding that the subcontractor is in violation of regulations issued by the Secretary of Housing
32 and Urban Development, 24 CFR Part 135. The Subrecipient shall not subcontract with any
33 subcontractor where it has notice or knowledge that the latter has been found in violation of
34 regulations under 24 CFR Part 135, unless the subcontractor has first provided it with a
35 preliminary statement of ability to comply with the requirements of those regulations. The
36 Federal Section 3 Provisions are attached hereto and made a part hereof as *Attachment G*.

37
38 **5. Equal Access to Housing in HUD Programs**

39
40 (A) Through final rule effective March 5, 2012 (Equal Access to Housing in HUD Programs
41 Regardless of Sexual Orientation or Gender Identity) 24 CFR Parts 5, 200,203, 236, 400, 570,
42 574, 882, 891, and 982, HUD implements a policy to ensure that its core programs are open to
43 all eligible individuals and families regardless of sexual orientation, gender identity, or marital
44 status.

45
46 (B) It is important that HUD and Fulton County ensure that their programs do not involve
47 discrimination against any individual or family otherwise eligible for HUD-assisted or -insured
48 housing, but that its policies and programs serve as models for equal housing opportunity.
49 Failure to comply with the requirements of this Rule will be considered a violation of the
50 program requirements and will subject the non-compliant grantee to all sanctions and
51 penalties available for program requirement violations.

52
53 (C) Under 24 CFR 5.100 "sexual orientation" is defined -as "homosexuality, heterosexuality, or
54 bisexuality," a definition that the Office of Personnel Management (OPM) uses in the context of
55 the federal workforce in its publication "Addressing Sexual Orientation in Federal Civilian
56 Employment: A Guide to Employee Rights."

57
58 (D) To promote equal access to HUD's housing programs without regard to sexual orientation or
59 gender identity, HUD prohibits unlawful inquiries regarding sexual orientation or gender

identity. The prohibition precludes owners and operators of HUD-assisted housing or housing whose financing is insured by HUD from inquiring about sexual orientation or gender identity of an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied.

SECTION 20.0 – MINORITY BUSINESS ENTERPRISE (MBE/FBE) PARTICIPATION

Federal MBE/FBE Policy

It is national policy to award a fair share of contracts to small and minority business firms. All HUD grantees and subrecipients must take appropriate affirmative action to support minority and women's enterprises, and are encouraged to procure goods and services from labor surplus areas. Therefore, the Subrecipient shall take affirmative steps to ensure that minority (MBE) and female (FBE) business enterprises are utilized during the course of this Agreement, and that a fair share of any contracts generated during such course are awarded to such firms.

SECTION 21.0 – LABOR STANDARDS

The Subrecipient shall comply with all Federal Labor Standards Requirements imposed by the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act; the Copeland Act; and the Fair Labor Standards Act. As a requirement of the Fair Labor Standards Act, the Subrecipient must ensure that a copy of the applicable wage rate decision is included in each contract and subcontract and the Notice to Employees poster that pertains to all federally-funded projects is to be posted, along with a copy of the wage decision, on all construction sites. This information must be posted in a conspicuous location accessible to those employed under any contract funded with CDBG funds. The Federal Labor Standards Provisions are attached hereto and made a part hereof as *Attachment E*.

SECTION 22.0 - HB 87 ILLEGAL IMMIGRATION REFORM

Among other measures, the Illegal Immigration and Reform Enforcement Act of 2011 requires subcontractor and sub-subcontractors to submit their E-Verify affidavits to the Subrecipients working on public projects. The Subrecipient then must forward affidavits to the local government within five (5) days of receipt. The Department of Audits will create a form affidavit.

Attached hereto and made a part hereof as *Attachment F* is The Georgia Security and Immigration Compliance Act Applicant for Public Benefits Affidavit, the Subrecipient, Subcontractor and Sub-subcontractor Affidavits.

SECTION 23.0 – ENVIRONMENTAL REQUIREMENTS

The County, Sub-Recipients, Contractors, Owners, and Developers shall not undertake any activities that would adversely impact or limit the choice of reasonable alternatives for a project until an Environmental Review has been completed and approved by the County. To this end, the County, Sub-Recipients, Subcontractors, Owners, and Developers must not expend public or private funds (HUD, other Federal, or non-Federal funds) or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. Using any portion of federal funds for acquisition, rehabilitation, conversion, leasing, repair or construction before, completing the Environmental Review process requires the denial of any federal funds for that project. The Environmental Review Assurances are attached hereto and made a part hereof as *Attachment H*.

Conditional Commitment of Funds

Further, notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of Environmental Review and receipt by the County of a release of funds from the U.S. Department of Housing and Urban Development (HUD), under 24 CFR Part §58. Additionally, the Sub-Recipient or Subcontractor are prohibited from undertaking or committing any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in

1 the denial of any funds under the Agreement. The parties further agree that the provision of any funds
2 to the project is conditioned on the County's determination to proceed with, modify or cancel the
3 project based on the results of a subsequent Environmental Review.
4

5 **Environmental Conditional Clause**

6 Responsible entities may enter into an Agreement for the conditional commitment of CDBG funds for a
7 specific project prior to the completion of the Environmental Review process. The responsible entity
8 must ensure that any such agreement does not provide the County Recipient, Sub-Recipient, or
9 Subcontractor any legal claim to any amount of CDBG fund to be used for the specific project or site
10 unless and until the site has received environmental clearance.
11

12 **SECTION 24.0 – LEAD BASED PAINT**

13
14 On September 15, 2000, HUD published the final rule concerning the control of lead-based paint
15 hazards in housing receiving federal assistance and federally owned housing being sold. These
16 regulations published at 24 CFR Part 35 specify the requirements for treating lead hazards to protect
17 those who occupy housing constructed before 1978. This regulation also implements the new
18 requirements, concepts, and terminology established by the Residential Lead-Based Paint Hazard
19 Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992.
20 Should the Subrecipient propose to use CDBG funds for the rehabilitation or conversion of residential
21 units, the Subrecipient must meet the requirements of 24 CFR Part 35. The County shall provide
22 ongoing technical assistance to the Subrecipient to assist in meeting these requirements.
23

24 **SECTION 25.0 – CONFLICT OF INTEREST**

25
26 No member, officer, or employee of the County or its designee or agents, no member of the governing
27 body of the County, and no other official of the County who exercises or has exercised any functions or
28 responsibilities with respect to the CDBG-assigned activities or who is in a position to participate in a
29 decision making process or gain inside information with regard to such activities, may obtain a
30 personal or financial interest or benefit in any Agreement, subcontract or agreement with respect
31 thereto, or the proceeds there under, either for themselves or for those with whom they have family or
32 business ties, during their tenure or for one (1) year thereafter, unless an exemption in writing from this
33 provision is specifically granted by the U. S. Department of Housing and Urban Development.
34

35 **SECTION 26.0 – PROHIBITION OF USE OF FEDERAL FUNDS FOR LOBBYING**

- 36
37 1. By signing this Agreement, the undersigned Subrecipient certifies that all activities under this
38 Agreement will adhere to 24 CFR Part 87 (New Restrictions on Lobbying) and, to the best of his/her
39 knowledge and belief, that:
40
41 (A) No Federal appropriated funds have been paid or will be paid, by or on behalf of the
42 Subrecipient or the undersigned, to any person for influencing or attempting to influence an
43 officer or employee of any agency, a Member of Congress, an officer or employee of
44 Congress, or an employee of a Member of Congress in connection with the awarding of any
45 federal Agreement, the making of any federal grant, the making of any federal loan, the
46 entering into of any cooperative agreement, or the extension, continuation, renewal,
47 amendment, or modification of any federal Agreement, grant, loan or cooperative agreement.
48
49 (B) If any funds other than federal appropriated funds have been paid or will be paid to any person
50 for influencing or attempting to influence an officer or employee of any agency, a Member of
51 Congress, an officer or employee of Congress, or an employee of a Member of Congress in
52 connection with this federal Agreement, grant, loan, or cooperative agreement, the
53 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report
54 Lobbying," in accordance with its instructions.
55
56 (C) The undersigned shall require that the language of this certification be included in the award
57 documents for all sub-awards at all tiers (including subcontracts, subgrants, and Agreements
58 under grants, loans, and cooperative agreements) and that all subrecipients shall certify and
59 disclose accordingly.

- 1
2 (D) This certification is a material representation of fact upon which reliance was placed when this
3 transaction was made or entered into. Submission of this certification is a prerequisite for
4 making or entering into this transaction imposed by Title 31, U. S. Code, Section 1352. Any
5 person who fails to file the required certification shall be subject to a civil penalty of not less
6 than \$10,000 and not more than \$100,000 for each such failure.
7
8

9 **SECTION 27.0 – INDEMNIFICATION AND HOLD HARMLESS**

10
11 The Subrecipient hereby warrants, represents, covenants and agrees to release, indemnify, defend
12 and hold harmless the County, its commissioners, officers, and employees, from any and all claims,
13 losses, liabilities, damages, deficiencies or costs (including without limitation, reasonable attorney's
14 fees and legal expenses) suffered or incurred by such parties, whether arising in tort, contract, strict
15 liability or otherwise, and including without limitation, personal injury, wrongful death or property
16 damage, arising in any way from the actions or omissions of the Subrecipient, its agents, employees,
17 Subrecipients, officers, or directors. The Subrecipient does further hereby agree to release, indemnify,
18 defend and hold harmless the County, its commissioners, officers, and employees, from any injury
19 (including death resulting there from), loss, claim or damage sustained by the Subrecipient's agents
20 and employees, without regard to negligence. The language of this indemnification clause shall survive
21 termination of this Agreement, even if the County terminates the Agreement for its convenience.
22

23
24 **SECTION 28.0 – GOVERNING LAW**

- 25
26 1. This Agreement shall be governed in all respects, as to validity, construction, capacity, and
27 performance or otherwise, by the laws of the State of Georgia.
28
29 2. A waiver by either party of any breach or any provision, term, covenant or condition of this Agreement
30 shall not be deemed a waiver of any subsequent breach of the same or any other provision, term,
31 covenant or condition.
32
33 3. The parties agree that each of the provisions included in this Agreement is separate, distinct and
34 severable from the other remaining provisions of this Agreement, and that the invalidity of any
35 agreement provision shall not affect the validity of any other provision of this agreement.
36
37 4. The parties agree that the terms of this Agreement include the entire Agreement between the parties
38 and as such, shall exclusively bind the parties. No other representations, either oral or written, may be
39 used to contradict the terms of this Agreement.
40
41 5. Any notices or communications required or permitted herein shall be sufficiently given if sent by
42 Registered or certified mail, return receipt request, postage prepaid, addressed as follows:
43 As to the County:
44 Kim Benjamin, Community Development Specialist
45 Fulton County Community Development Department
46 137 Peachtree Street, SW, Suite 300
47 Atlanta, GA 30303
48
49 As to the Subrecipient:
50 Elizabeth Carr-Hurst, Mayor
51 City of Fairburn
52 56 Malone Street
53 Fairburn, Georgia 30213
54

55 Alternatively, such other addressed as shall be furnished by such notice of the other party.
56

57 **REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.**

IN WITNESS HEREOF, the parties hereunto have set their hands and seal.

CITY OF FAIRBURN

FULTON COUNTY

Elizabeth Carr-Hurst, Mayor
City of Fairburn

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST

ATTEST

Shana Moss, Interim City Clerk
City of Fairburn

Dr. Jesse A. Harris, Clerk to the Commission
Fulton County Board of Commissioners

DATE:

DATE:

SEAL:

SEAL:
APPROVED AS TO CONTENT:

Dr. Pamela Roshell, Interim Director
Department of Community Development

Dawn Robinson Butler, Division Manager
Department of Community Development

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Office of the County Attorney

DATE:

DATE:

Fulton County Community Development Block Grant Program
ATTACHMENT A: Statement of Work
City of Fairburn – Cora Robinson Park Improvements Phase II

Provide a succinct description of the project submitted in your CDBG application that will be reimbursed with County CDBG funds. Please include specific details related to the following.

- A. Goal
- B. Target Population
- C. National Objective
- D. Number of Beneficiaries

Do not include information on other activities not funded with CDBG.

It is our goal to use the funds derived from the 2017 Fulton County CDBG Program to continue the improvement initiated with the 2016 CDBG Project, Cora Robinson Park Improvements. The Cora Robinson Community Park and playground serves the predominantly residential L/M income Lightning Community and was suffering from years of neglect and deterioration.

With last year's project we were able to address some immediate concerns within the Lightning Community through the replacement of existing dilapidated playground equipment we felt posed a serious threat to the health and welfare of the community, with the ultimate goal of our efforts being to revitalize the interest and attendance at the park and encourage the use of this area for community purposes. We have already begun seeing some of the fruits of our labor as both interest and attendance have both increased significantly. So much so, that it was decided to use 2017 CDBG funding to continue making improvements in the park. As such, the proposed scope for this year's project entails the demolition of the existing gazebo and replacing it with a new pavilion constructed on a concrete slab containing picnic tables and seating units. The project also proposes the installation of site lighting to promote visibility and to enhance public safety. The 2017 project also proposes the demolition of approximately 500 linear feet of chain-link fencing and replacing it with wrought iron fencing with intermittent brick columns to align with decorative fencing installed on a previous project. Lastly, the project proposes the replacement of the existing wood sign with a decorative sign/monument structure.

The service area of the Fairburn program is approximately 500 homes within the quarter-mile radius of the project limits. Based on our occupancy records, we anticipate this project will positively impact over 1,000 residents in the area. Job creation is most likely negligible; however, the project will create work for approximately 20 employees, contractors, and suppliers. Because the intent of the project is to complete a construction project and create a fixed asset, no continuing employment will be affected by it.

The City of Fairburn completed a planning initiative in 2009, with significant public involvement, which identified this type of project as being a priority for the Lightning Neighborhood. This program is the result of the 2009 Livable Centers Initiative (LCI) study and aligns with the recommendations identified in the short term strategies for the City as we continue to improve the Lightning District.

Part of this grant will be use to conduct a neighborhood plan in conjunction with the strategic CDBG development plan.

ATTACHMENT B: Project Implementation Schedule

City of Fairburn – Cora Robinson Park Phase II Improvements
and Community Planning Study

FACILITY/IMPROVEMENT PROVISIONS

TASKS

DATE _____

Fulton County Community Development Block Grant Program
ATTACHMENT C: Cost Reimbursement Budget
City of Fairburn – Cora Robinson Park Improvements

PROJECT DELIVERY OPERATING BUDGET

An operating budget acknowledging costs of all funds (CDBG and Agency) for this activity.

PROJECT EXPENSES	DATE	2017 CDBG	CITY OF FAIRBURN
Pre-Development /Demolition (Architect / Consultant / Engineer Design)	September 2017	\$0	\$ 5,000 (in-kind services)
Construction Management (Construction Plans, Bid Documents, Proposals & Neighborhood Plan)	October 2017	\$100,000	\$ 5,000
Construction Costs (Labor, Equipment/Supplies, Permits) –	November 2017 – December 2017	\$0	\$ 5,000
Total for Year 2017 –	January 2018	\$100,000	\$15,000

REIMBURSEMENT EXPENDITURE SCHEDULE

A reimbursement schedule acknowledging drawdowns of CDBG funds for this activity.

Agency Expenses	January- December Projections	Submission Date	Total CDBG Operating Budget
3. Construction Costs			
▪ Labor	\$100,000.00	January 2018	\$100,000.00
▪ Equipment/Supplies			
TOTAL REIMBURSEMENT:	\$100,000.00		\$100,000.00

Fulton County Community Development Block Grant Program ATTACHMENT D: Monthly Performance Report

Municipality: City of Fairburn CDBG Funding Year: 2017
Project Name: Cora Robinson Park Improvements in the Lightning Community
Administering Department: City of Fairburn
Reporting Period From: March 2, 2019 To: _____

I. **Project Status:**

CDBG allocation amount: \$ 100,000.00

Number of Contracts Awarded: 1 (If contract was awarded this reporting period, attach a copy of the fully executed contract).

Contract Amounts: \$ _____	CDBG Amount: \$ _____
Contract Amounts: \$ _____	CDBG Amount: \$ _____
Contract Amounts: \$ _____	CDBG Amount: \$ _____

Has CDBG spending occurred for this project?

☐ Yes ☐ No

(If payments have been made toward contracts with CDBG funds, attach up-to-date expenditure and revenue account printouts or similar official financial report)

CDBG project fund balance: \$ _____

Agency's Local Match project fund balance: \$ _____

Date of Construction start-up: _____

Date of Notice to Proceed (if different): _____

Number of days worked on project: _____

Percentage (%) of project complete: _____ %

Percentage (%) of CDBG funds spent: _____ %

Number of employees/workers on the job site: _____

Number of subcontractors on site: _____

Number of subcontractor's employees on site: _____

Wage decision or modification in use: _____

Number of submitted payrolls within reporting period: _____

Number of draw downs within reporting period: _____

Total amount of draw downs to date: \$ _____

CDBG remaining balance: \$ _____

Anticipated project completion date: _____

II. **Narrative Description of Project Progress (attach additional sheets as necessary):**

III. **Project Issues, Considerations, or Problems (attach additional sheets as necessary):**

1. BENEFICIARY DEMOGRAPHICS

Quarter	Jan 1 st – March 31 st		April 1 st – June 30 th		July 1 st – Sept 30 th		Oct 1 st – Dec 31 st	
Race Categories	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity
American Indian or Alaska Native								
American Indian or Alaska Native & Black or African American								
American Indian or Alaska Native & White								
Asian								
Asian and White								
Black or African American								
Black or African American & White								
Native Hawaiian or Other Pacific Islander								
Other Multi Racial								
White								
TOTAL								

2. INCOME

FY 2019 INCOME LIMITS SUMMARY								
Fulton County, GA FY 2019 Median Income \$79,700								
	Persons in Family							
	1	2	3	4	5	6	7	8
Very Low Income (50%)	\$27,900	\$31,900	\$35,900	\$39,850	\$43,050	\$46,250	\$49,456	\$52,650
Extremely Low Income	\$16,750	\$19,150	\$21,550	\$25,750	\$30,170	\$34,590	\$39,010	\$43,430
Low Income (80%)	\$44,650	\$51,900	\$57,400	\$63,750	\$68,850	\$73,950	\$79,050	\$84,150

FY 2019 Income Limit Category	Jan 1st – March 31st	April 1st – June 30 th	July 1st – Sept 30 th	Oct 1st – Dec 31 st
Very Low Income				
Extremely Low Income				
Low Income (80%)				
Total				

3. NEW/CONTINUING OR IMPROVED SERVICE OR BENEFIT

Of the total number of persons assisted and represented above, enter the number of those persons that received a NEW or Continued Access to the service or benefit provided by the CDBG funded activity	
Of the total number of persons assisted and represented above, enter the number of those persons that received IMPROVED ACCESS to the service or benefit provided by the CDBG funded activity	
Total	

4. LEVERAGED FUNDS: Provide the amount of money leveraged from other federal, state, local, and private sources to carry out this program.

Cumulative amount of funds leveraged this this reporting period that supported this CDBG funded activity	
---	--

Submitted by:

Name

Signature

Date: _____

Title: _____

Approved by:

Name

Signature

Date: _____

Title: _____

Fulton County Community Development Block Grant Program

ATTACHMENT D2: Year End Performance Report

Municipality: City of Fairburn CDBG Funding Year: 2018

Project Name: Cora Robinson Park Phase II Improvements and community Planning Study

Administering Department: City of Fairburn

Reporting Period From: _____ To: _____

I. *Project Status:*

CDBG allocation amount: \$ _____

Number of Contracts Awarded: _____ (If contract was awarded this reporting period, attach a copy of the fully executed contract).

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Has CDBG spending occurred for this project?

☐ Yes ☐ No

(If payments have been made toward contracts with CDBG funds, attach up-to-date expenditure and revenue account printouts or similar official financial report)

CDBG project fund balance: \$ _____

Agency's Local Match project fund balance: \$ _____

Date of Construction start-up: _____

Date of Notice to Proceed (if different): _____

Number of days worked on project: _____

Percentage (%) of project complete: _____ %

Percentage (%) of CDBG funds spent: _____ %

Number of employees/workers on the job site: _____

Number of subcontractors on site: _____

Number of subcontractor's employees on site: _____

Wage decision or modification in use: _____

Number of submitted payrolls within reporting period: _____

Number of draw downs within reporting period: _____

Total amount of draw downs to date: \$ _____

CDBG remaining balance: \$ _____

Anticipated project completion date: _____

II. *Narrative Description of Project Progress (attach additional sheets as necessary):*

III. *Project Issues, Considerations, or Problems (attach additional sheets as necessary):*

Did the Contractor / Subcontractor hire new employees to complete the construction job? If so how many and if any how many were local Section 3 residents? (Section 3 residents: Local/ area residents who are of Low- and Very Low Income who were hired by the Contractor / Subcontractor specifically to work on this construction job.)

A	B	C	D	E	F
Job Category	Number of New Hires	Number of New Hires that are Section 3 Residents	% of Aggregate Number of Staff Hours of new hires that are Section 3 Residents	% of Total Staff Hours for Section 3 Employees and Trainees	Number of Section 3 Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade:					
Trade:					
Trade:					
Trade:					
Trade:					
Trade:					
Other (List):					
Total:					
* Program Codes 1 = Flexible Subsidy 2 = Section 202/811	3 = Public/Indian Housing A = Development B = Operation C = Modernization		4 = Homeless Assistance 5 = HOME 6 = HOME State/Administered 7 = CDBG Entitlement	8 = CDBG State Administered 9 = Other CD Programs 10 = Other Housing Programs	

Description of Scope of Work: Provide a complete description of the actual activity undertaken including 1) what products or services were performed, 2) where they were provided, 3) for whom they were provided, and 4) how they were provided.

Description of Specific use of CDBG funds: Provide a summary of what expenses the CDBG funds were utilized to support the activity listed above.

Income Benefit: Complete the following statement.

It is documented that _____ unduplicated low-moderate income clients/participants were served over the course of the January – December of this grant award. Of those served, _____ clients/participants had household income levels at the 0-30% area median income (AMI) level; _____ clients/participants had household income levels at the 31-50% area median income (AMI) level; _____, and clients/participants had household income levels at the 51-80% area median income (AMI) level.

Anticipated Accomplishments: _____
 Actual Accomplishment: _____
 Total Number of Beneficiaries: _____
 Zip Code of Project Location: _____

Census Tract(s) and Block Groups Impacted: _____

Commission District(s) Impacted: € District 1 € District 2 € District 3
 € District 4 € District 5 € District 6

Outcome Measurement System: Check the box which identifies the best generalized Outcome Statement for the activity funded by the Fulton County Community Development Block Grant.

	<u>Outcome 1:</u> Availability/Accessibility	<u>Outcome 2:</u> Affordability	<u>Outcome 3:</u> Sustainability
Objective #1: Suitable Living Environment	€ Accessibility for the purpose of creating Suitable Living Environments	€ Affordability for the purpose of creating Suitable Living Environments	€ Sustainability for the purpose of creating Suitable Living Environments
Objective #2: Decent Housing	€ Accessibility for the purpose of providing Decent Housing	€ Affordability for the purpose of providing Decent Housing	€ Sustainability for the purpose of providing Decent Housing
Objective #3: Economic Opportunity	€ Accessibility for the purpose of creating Economic Opportunities	€ Affordability for the purpose of creating Economic Opportunities	€ Sustainability for the purpose of creating Economic Opportunities

Submitted by: _____
 Name

 Signature

Date: _____

Title: _____

Approved by: _____
 Name

 Signature

Date: _____

Title: _____

Fulton County Community Development Block Grant Program

ATTACHMENT E: Form HUD-4010 (07/2003)

Federal Labor Standards Provisions

U.S. Department of Housing
And Urban Development
Office of Labor Relations

Applicability

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

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a) (1) (ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3)

(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

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

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

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

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) (1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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

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

subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

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

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

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

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

THE DAVIS BACON ACT (DBA). The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works. Labor standard provisions apply to any contract for the construction of 12 or more HOME-assisted units (Section 286, National Affordable Housing Act of 1990, as amended). Specifically:

Davis Bacon Wage Requirements

Acknowledgement Form

- ☐ Affordable housing with 12 or more units assisted with funds made available under this subtitle. Unlike CDBG, the standard for coverage is “assisted” not “financed” – which provides for much broader application. The requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services.
- ☐ Any contract for the construction of affordable housing with 12 or more units assisted with HOME funds. Davis-Bacon requirements do not follow “construction work” or “projects”. This factor has two implications:
 - First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for avoiding Davis-Bacon.)
 - Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide down payment assistance to individual homebuyers. (See also HUD Regulations at 24 CFR 92.354(a)(2). This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. Once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project – including the portions of the project that are not assisted with HOME funds.

DEPARTMENT OF LABOR REGULATIONS The Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in **29CFR Parts 1, 3, 5, 6 and 7**. Part 1 explains how the DOL establishes and publishes DBA wage determinations (aka wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in your contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

RESPONSIBILITY OF THE PRINCIPAL CONTRACTOR The principal contractor (also referred to as the *prime* or *general contractor*) is responsible for the full compliance of all employers

(the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the Owner (Developer) only through the prime contractor.

PRE-CONSTRUCTION CONFERENCE Present the Federal statutory compliance requirements as well as performance expectations.

- Provide and review a copy of the “Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.”
- Emphasize that A copy of the wage decision (or the Project Wage Rate Sheet) and a copy of the DOL Davis-Bacon poster titled Employee Rights under the Davis-Bacon Act (Form WH- 1321) should be in a place at the job site that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The Employee Rights under the Davis-Bacon Act poster is available in English and Spanish on-line at HUDClips.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency recognized by BAT. If apprentices or trainees are to be used, the contractor must provide the grantee/PJ with a copy of the individuals' registration in the apprenticeship program.
- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee.
- Describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making final payment to the contractor. Remind the contractor that willful violations may be subject to contract termination and debarment from future contracts for up to three years. Failure to pay specified wages may result in contractor payments being withheld to satisfy liabilities for unpaid wages and liquidated damages.

NOTICE TO PROCEED Following execution of the contract documents and completion of the pre-construction conference, it is typical practice to issue a Notice to Proceed to the prime/general contractor to provide the date that work can begin and contract time for completion. The Notice to Proceed marks the start of contract performance and, if applicable, provides the basis for assessing liquidated damages (other than CWHSSA liquidated damages). The construction period and basis for assessing liquidated damages specified in the Notice to Proceed must be consistent with those sections of the contract documents. Note, however, that issuance of a Notice to Proceed is not mandatory. If a Notice to Proceed is not issued, an alternate method to provide notification of construction commencement is recommended.

ON-SITE INTERVIEWS to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive.

- Interviews should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a

reasonable judgment as to compliance. Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).

- The interview should take place on the job site and be conducted privately. Interviews are confidential. The interviewer should observe the duties of workers and take notes before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed.

CERTIFIED PAYROLL REPORTS The prime contractor is required to submit a weekly certified payroll report (CPR) to the County beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

PAYROLL SUBMISSION AND REVIEW Once construction starts, the general contractor must complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. Make sure the payroll is signed with an original signature in ink. The payroll must be signed by a principal of the firm, owner, officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. Signatures in pencil; signature stamps; Xerox, pdf and other facsimiles are not acceptable. To ensure compliance, Grantees/PJs should review/ spot check payrolls to guarantee that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no discrepancies or violations. The prime contractor is responsible for the full compliance of all subcontractors and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the County.

PAYROLL RETENTION Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as employee addresses and full SSNs, time cards, tax records; evidence of fringe benefit payments, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

PAYROLLS AND BASIC RECORDS Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

CONTRACT TERMINATION/DEBARMENT A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

RECIPIENT ACKNOWLEDGEMENT AND STATEMENT OF UNDERSTANDING

This is to acknowledge that I have reviewed the aforementioned standards regarding the Davis Bacon requirements. I understand that the above provides general guidelines and summary information about some of the wage provisions but it is not intended to be all inclusive of Davis Bacon labor standards. I also understand that it is my responsibility to read, understand, become familiar with, and comply with Davis Bacon standards that have been established by the U.S. Department of Housing and Urban Development (HUD). I further understand that HUD reserves the right to modify, supplement, rescind, or revise any standard or policy from time to time, with or without notice, as it deems necessary or appropriate and I am responsible for full compliance.

Company Official

Date

Fulton County Community Development Block Grant Program
ATTACHMENT F: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Georgia Security and Immigration Compliance Act

Policy

It is the policy of Fulton County Government, its agencies, departments, and agents to comply with the Georgia Security and Immigration Compliance Act (GSICA), as amended from time to time. The Illegal Immigration and Reform Enforcement Act of 2011: requires Fulton County to require at a minimum, Subrecipients and sub-contractors to submit their E-Verify affidavits to the Subrecipients working on public projects. The Subrecipient then must forward affidavits to the local government within five days of receipt. The Department of Audits will create a form affidavit by August 1, 2011. Until Fulton County is in receipt of the forms, the Subrecipients shall submit forms indicated as "Affidavit Verifying Status of Benefit Applicant, City's Affidavit, Subrecipient's Affidavit and Subcontractor's Affidavit" attached hereto.

This law requires Fulton County to enforce among other measures, the Illegal Immigration and Reform Enforcement Act of 2011:

HB 87 ILLEGAL IMMIGRATION REFORM

- Requires Subrecipients and sub-subcontractors to submit their E-Verify affidavits to the Subrecipients working on public projects. The Subrecipient then must forward affidavits to the local government within five days of receipt. The Department of Audits will create a form affidavit by August 1, 2011.
- Requires local governments to submit E-Verify compliance reports to the state auditor annually by December 31. If the auditor finds a violation in this reporting, the county or city has 30 days to demonstrate compliance or will lose their qualified local government status. Local governments in disagreement may seek relief through the Office of State Administrative hearings. Counties will not be held responsible for the failure of Constitutional Officers failing to abide by this requirement.
- Creates an offense of aggravated identify fraud for those knowingly using fake identification to obtain employment with the punishment being from 1-15 years in prison and a fine of up to \$250,000.
- Authorizes law enforcement officers to verify, through one of several listed documents or immigration verification programs, the immigration status of those they have probable cause to suspect of committing a criminal offense. If the person is found to be an illegal immigrant, the officer may take any action authorized by state or federal law, and has immunity from damages or liability in the process.
- Allows, local law enforcement agencies to arrest any person for a violation of federal immigration law when authorized by federal law.
- Requires private businesses with more than 10 employees to sign an affidavit and attest they are registered to use E-Verify in order to obtain or renew a local business license, occupation tax certificate or other document required to operate a business. Counties and cities must file a report annually, to the Department of Audits, which identifies each license or certificate they issued during the year - to include the name of the person and business and their E-Verify number. Any person, including county employees, who knowingly violate this reporting requirement, shall be guilty of a misdemeanor.
- Requires any applicant who applies for a public benefit (or who must provide identification for any official purpose) to provide secure and verifiable documents to the county to prove their legal status. Local

government employees in willful violation are guilty of a misdemeanor. Each year the Attorney General will provide a list of "secure and verifiable" documents.

- Creates the Immigration Enforcement Review Board, attached to the Department of Audits, which will take complaints, investigate and enforce the provisions of this Act.

Background

Senate Bill 529, the "Georgia Security and Immigration Compliance Act" of 2006, established new work eligibility verification requirements for Fulton County and its Subrecipients and subcontractors, effective July 1, 2007. The Act further prohibited the provision of certain services or benefits to any adult without a verification of their immigration status. Additionally, GSCIA required the County to make a reasonable effort to verify the immigration status of any foreign national charged with and jailed for a felony or DUI.

During the 2009 Legislative Session, House Bill 2 amended several sections of the Georgia Code that make up the GSCIA. Effective January 1, 2009, HB 2 --

- Mandates public employers to post their federal identification number and date of authorization on their website;
- Requires a signed, notarized affidavit from Subrecipients attesting registration and participation in E-Verify;
- Defines the term "applicant" for public benefits;
- Expands the definition of "public benefits";
- Clarifies the annual reporting requirement;
- Calls for a reasonable effort to determine a person's nationality when any person is confined in compliance with Article 36 of the Vienna Convention on Consular Relations.
- Directs the County Jailer to inform a foreign national prisoner of their right to have their native country's local consular office notified of their detention and to allow a consular officer from their native country to visit, converse, correspond, and arrange for legal representation; and
- Establishes penalties for noncompliance.

Applicability

Effective January 1, 2010, this policy will apply to Fulton County departments and agencies, Subrecipients, and to the staffs of elected officials.

Definitions

- (1) *Applicant* means any person 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.
- (2) *Subrecipient* means Subrecipients, contract employees, staffing agencies, or subcontractors.
- (3) *Public benefit* means --
 - a). any grant, contract, loan, professional license, or commercial license provided by Fulton County or by appropriated funds of the United States, State of Georgia or Fulton County;
 - b). Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments of assistance are provided to an individual, household, or family eligibility unit by an agency of Fulton County government, or by appropriated Federal, State or County funds including --

- Adult education
- Authorization to conduct a commercial enterprise or business
- Business certificate, license or registration
- Business loan
- Cash allowance
- Disability assistance or insurance
- Down payment assistance
- Energy assistance
- Food stamps
- Gaming license
- Health benefits
- Housing allowance, grant, guarantee or loan
- Loan guarantee
- Medicaid
- Occupational license
- Professional license
- Registration of a regulated business
- Rent assistance or subsidy
- State grant or loan
- Tax certificate required to conduct a commercial business
- Temporary assistance for needy families (TANF)
- Unemployment insurance
- Welfare to work

(4) *Foreign national* means any individual who is a citizen of a country other than the United States.

(5) *Qualified alien* means –

- a). an alien who is lawfully admitted for permanent residence under the federal Immigration and Nationality Act (INA);
- b). an alien who is granted asylum under Section 208 of the INA;
- c). a refugee who is admitted to the United States under Section 207 of the INA;
- d). an alien who is paroled into the United States under Section 212(d) (5) of the INA for a period of at least one year;
- e). an alien whose deportation is being withheld under Section 243(h) of the INA (as in effect prior to April 1, 1997) or whose removal has been withheld under Section 241(b)(3);
- f). an alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- g). an alien who is a Cuban/Haitian Entrant as defined by Section 501(e) of the Refugee Education Assistance Act of 1980; and
- h). an alien who has been battered or subjected to extreme cruelty, or whose child or parent has been battered or subject to extreme cruelty.

(6) *Systematic Alien Verification for Entitlements Program (SAVE)* means an intergovernmental information sharing initiative of the United States Department of

Homeland Security designed to assist in determining a non-citizen applicant's immigration status.

Responsibilities and Procedures

(1) *Generally.*

- a). All appointing authorities shall verify the immigration status of every newly hired employee according to County Policy 100-27.
- b). All agencies providing a public benefit shall register with the SAVE program at <https://save.uscis.gov/Registration>, enter into a Memorandum of Understanding with the SAVE program, and establish a purchase order for the payment of transaction fees.
- c). All agencies providing a public benefit, shall verify the lawful presence of every person 18 years of age or older who applies for state or local public benefits by requiring each applicant to execute an affidavit in the format attached as "Attachment A", affirming that he or she is a legal permanent resident, or a qualified alien lawfully present in the United States. The affidavit is presumed to be proof of lawful presence until eligibility verification is made through the federal Systematic Alien Verification Entitlement (SAVE) program.
- d). All agencies providing a public benefit shall verify the lawful status of all applicants stating that they are aliens lawfully present in the United States through the SAVE program.
- e). All applicants that are not lawfully present in the United States shall be ineligible to receive public benefits.
- e). Verification of lawful presence is not required for the following benefits:
 - Treatment of emergency medical conditions;
 - Short-term, non-cash emergency disaster relief;
 - Immunizations;
 - Certain in-kind services, such as soup kitchens, short-term shelter, crisis counseling and intervention provided by public and nonprofit agencies that are necessary for the protection of life or safety;
 - Prenatal care;
 - Postsecondary education under specified circumstances;
 - Certain community development assistance or financial assistance programs administered by HUD;
 - Other Federal programs including certain social security and Medicare benefits under specified conditions.

(2) *Office of the County Attorney.* The Office of the County Attorney shall --

- a). Require each contract or agreement for the performance of services between Fulton County and a Subrecipient or subcontractor to include a provision stating that compliance with OCGA § 13-10-91 is a condition of the contract and directs the Subrecipient or subcontractor to register and participate in a Federal work authorization program.
- b). Ensure that each agreement between Fulton County and a Subrecipient/subcontractor for the performance of services includes an executed affidavit verifying compliance with OCGA § 13-10-91 in the form provided for in Attachments "F-1" and/or "F-2".

(3) *Office of Intergovernmental Affairs.* The Office of Intergovernmental Affairs shall --

- a). Submit to the Board of Commissioners for its approval during a Regular or Recess Meeting in December of each year, a report documenting Fulton County's compliance with the GSICA.
- b). Provide an annual report on or before January 1 to the Georgia Department of Community Affairs (DCA),

in a format prescribed by DCA, documenting Fulton County's compliance with the GSICA, and identifying each public benefit administered by Fulton County.

(4) *Department of Information Technology.* The Department of Information Technology shall post the County's federally issued identification number (58-6001729) and date of authorization (*date to be provided*) on the County's website.

(5) *Personnel Department.* The Personnel Department shall monitor new employee work eligibility as required by OCGA § 13-10-91.

(6) *Department of Purchasing and Contract Compliance.* The Department of Purchasing and Contract Compliance shall –

- a). Require all Subrecipients and subcontractors to register and participate in the federal work authorization program "E-Verify". No Subrecipient shall perform any services unless the Subrecipient or subcontractor registers and participates in a federal work authorization program.
- b). Require a signed, notarized affidavit from Subrecipients attesting to their registration and participation in the E-Verify program before considering a bid from the subcontractor for the performance of any service.

(7) *Sheriff's Office.* The Fulton County Sheriff's Office shall –

- a). Make a reasonable effort to determine the nationality of a person confined to the Fulton County Jail for any period of time and charged with a felony, DUI, driving without a license, or a serious misdemeanor.
- b). If the Jail identifies the prisoner as a foreign national, the Sheriff's Office shall make a reasonable effort to determine if the detainee has been lawfully admitted into the United States, and if lawfully admitted, that such lawful status has not expired.
- c). Inform a detained foreign national of their right to have their native country's local consular office notified of their detention and of their right to have a consular officer from their country arrange for legal representation.
- d). Contact the Law Enforcement Support Center of the United States Department of Homeland Security within 48 hours if verification of lawful status cannot be made from documents in possession of the detainee.
- e). Release from custody, pursuant to the admissions and release policies of the Fulton County Sheriff's Office, a detained foreign national unless the Jail receives a valid notification of pending charges from the United States Department of Homeland Security or another agency.
- f). Follow the guidelines and procedures developed by the Georgia Sheriff's Association pertaining to the determination of national and immigration status of certain persons admitted into the Fulton County Jail.

Departmental Sponsor: Office of the County Manager.

Policy Review Date: December 31, 2014

References

- Vienna Convention on Consular Relations, Article 36 "*Communication and Contact with Nationals of the Sending State*"
- 8 U.S.C. § 1611, 1621 and 1623
- 42 U.S.C. § 1396 b(v)(30)
- Immigration Reform and Control Act of 1986, Public Law 99-603
- Georgia Security and Immigration Compliance Act of 2006, Act 457 2006 Georgia General Assembly
- Official Code of Georgia sections 13-10-90, 13-10-91, 42-4-14, 50-13-1, 50-36-1

- Georgia Department of Labor Rules § 300-10-1-01 through 300-10-1-.09
- Fulton County Policy 100-27, "*Immigration Reform and Control Act (IRCA)*"

Attachments

Attachment F-1: Applicant for Public Benefits Affidavit

Attachment F-2: Subrecipient/Subcontractor/Sub Sub-subcontractor Affidavit

Fulton County Community Development Block Grant Program
ATTACHMENT F-1: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Affidavit Verifying Status of Benefit Applicant

Pursuant to the Georgia Security and Immigration Compliance Act (O.C.G.A. § 50-36-1), effective July 1, 2007, every agency in **FULTON COUNTY** providing public benefits through any local program is responsible for determining the immigration status of citizen applicants for said benefits.

By executing this affidavit under oath, as an applicant for benefits, I am stating the following with respect to my application for benefits from Fulton County Government:

_____ I am a United States citizen or legal permanent resident 18 years of age or older;

OR

_____ I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act, Title 8 U.S.C., as amended, 18 years of age or older and lawfully present in the United States. My alien number issued by the U.S. Department of Homeland Security or other federal immigration agency is _____.

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20.

Signature of Applicant

Date

Printed Name

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE
_____ DAY OF _____, 20__.

Notary Public
My Commission Expires:

Fulton County Community Development Block Grant Program
ATTACHMENT F-2: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Subrecipient Affidavit

By executing this affidavit, the undersigned Subrecipient verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that **City of Fairburn** (hereinafter "Prime Subrecipient") engaged in the physical performance of services under a contract with **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Prime Subrecipient further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services to this contract with **Fulton County Government**, the Prime Subrecipient will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit attached hereto. The Prime Subrecipient further agrees to maintain records of such compliance and provide a copy of each verification to the **Fulton County Government** at the time the subcontractor(s) is retained to perform such service.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent
(Insert Prime Contractor Name)

Title of Authorized Officer or Agent of Prime Contractor

Printed Name of Authorized Officer or Agent

Subrecipient Affidavit

Page 2 of 6

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20__.

Notary Public

My Commission Expires:

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)

Subcontractor Affidavit

Page 3 of 6

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **City of Fairburn** on behalf of **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Subcontractor further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent

(Insert Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20____.

Subcontractor Affidavit

Page 4 of 6

Notary Public

My Commission Expires:

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)

Sub Subcontractor Affidavit

Page 5 of 6

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **City of Fairburn** on behalf of **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Sub Subcontractor further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent

(Insert Sub Subcontractor Name)

Title of Authorized Officer or Agent of Sub Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

_____ DAY OF _____, 20____.

Sub Subcontractor Affidavit

Page 6 of 6

Notary Public
My Commission Expires:

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)

Fulton County Community Development Block Grant Program
ATTACHMENT G: Form HUD 60002 (06/2001)

Compliance with Section 3 Assurance

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 8080(e) (6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Upon signing this document, recipients receiving Federal financial assistance for Housing and Community Development projects and activities covered by Section 3, will adhere to the reporting requirements as specified by 24 CFR Part 135 and HUD Form 60002.

If the recipient agency [Fulton County] receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract with a subrecipient exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient agency and not to the subrecipient.

Signature of Authorized Certifying Official	Applicant
X	City of Fairburn
Title	Date
Elizabeth Carr-Hurst, Mayor	

Fulton County Community Development Block Grant Program ATTACHMENT G-2: Section 3 Reporting Requirements Summary)

ANNUAL SECTION 3 SUMMARY REPORTING REQUIREMENTS FOR RECIPIENTS OF HUD COMMUNITY PLANNING & DEVELOPMENT FUNDING *TECHNICAL ASSISTANCE ON FORM HUD-60002

Why HUD Enforces Section 3?

Each year the U.S. Department of Housing and Urban Development invests billions of federal dollars into distressed communities for projects designed to build and rehabilitate housing, improve roads, develop community centers, and otherwise assist families achieve the American Dream.

The Section 3 regulation recognizes that HUD funding typically results in projects/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide "bricks and mortar", but can also positively impact the lives of local residents who live in the neighborhoods being redeveloped.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD's legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

Further, as a condition of receiving HUD Community Planning and Development assistance, recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, the Department has the legal responsibility to monitor recipients for compliance and can impose penalties upon those that fail to meet these obligations.

Applicability of Section 3 to Community Planning & Development Assistance

The requirements of Section 3 apply to recipients of HUD Community Planning and Development funding exceeding **\$200,000**.

Section 3 covered projects are those in which a (or aggregate) amount of covered funding exceeding \$200,000, is invested into activities involving **housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, community centers, etc.**

[Example: Section 3 applies to the combined investment of more than \$200,000 into multiple single-family housing rehabilitation projects during a program year].

Subrecipients, Contractors or subcontractors that receive contracts in excess of **\$100,000** for Section 3 covered projects/activities are required to comply with the Section 3 regulations in the same manner as direct recipients.

If the recipient agency receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient.

Accordingly, the recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by: 1) Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and 2) Offering 30 percent of new employment opportunities to Section 3 businesses.

Section 3 Covered Community Planning and Development funding

- Community Development Block Grants (CDBG)
- Home Investment Partnership Assistance
- Housing Opportunities for Persons with Aids (HOPWA)
- Economic Development Initiative (EDI)
- Brownfield Economic Development Initiative (BEDI)
- Emergency Shelter Grants
- Homeless Assistance
- University Partnership Grants
- Neighborhood Stimulus Program (NSP)
- Certain Grants Awarded Under HUD Notices of Funding Availability (NOFAs)

*NOTE: The requirements of Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction.

Section 3 applies to the **entire** covered project or activity regardless of whether the activity was fully or partially funded with covered assistance.

Section 3 Covered Recipient Agencies

"Recipient" refers to any entity that receives Section 3 covered financial assistance directly from HUD or from another recipient and includes, but is not limited to any of the following:

- States; Units of Local Government; Native American Tribes; or other Public Bodies
- Public or Private Nonprofit Organizations
- Private Agencies or Institutions
- Mortgagors; Developers; Limited Dividend Sponsors; Builders; Property Managers; Community Housing Development Organizations
- Successors, assignees, or transferees of any such entity listed above
- Recipients do **NOT** include any ultimate beneficiary under the HUD program that Section 3 applies and does **NOT** refer to contractors.

Triggering the Requirements of Section 3

Section 3 is triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting, or training opportunities.

The Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, each agency must still submit Section 3 annual reports indicating this information.

Recipient Responsibilities Pursuant to Section 3

Each recipient (and their covered contractors, subcontractors, or subrecipients) are required to comply with the requirements of Section 3 for employment, training, or contracting opportunities resulting from the expenditure of covered funding. This responsibility includes:

1. Implementing procedures to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance;
2. Notifying potential contractors working on Section 3 covered projects of their responsibilities;
3. Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];
4. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
5. Assisting and actively cooperating with the Department in making contractors and subcontractors comply;
6. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
7. Documenting actions taken to comply with Section 3; and
8. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.

In addition to the responsibilities described above, **State and County agencies or consortia** that distribute covered funds to units of local government, nonprofit organizations, or other subrecipients, must attempt to reach the minimum numerical goals set forth at 24 CFR Part 135.30, regardless of the number of subrecipients that receive covered funding. State or County agencies must also do the following:

1. Inform subrecipients about the requirements of Section 3;
2. Assist subrecipients and their contractors with achieving compliance;
3. Monitor subrecipients' performance with respect to meeting the requirements of Section 3; and
4. Report to HUD on the cumulative Section 3 activities taking place within their jurisdiction on an annual basis.

Section 3 Residents and Business Concerns

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or
2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

Recipients can use their discretion for determining the type of verification that is required by prospective Section 3 residents and business concerns. Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

Section 3 Summary Reports (Form HUD-60002)

Annually, each direct recipient of Community Planning and Development funding is required to submit form HUD-60002 to HUD's Economic Opportunity Division in Washington, DC. , preferably online from the following website: www.hud.gov/section3.

Due Date: Form HUD-60002 is due at the same time as annual performance (e.g., CAPERS) reports

The Section 3 Summary Report shall follow the same program, fiscal, or calendar year as the annual performance report and should correspond to the covered projects and activities that were administered during the reporting period.

NOTE: Section 3 reports must be submitted by all agencies that receive Community Planning and Development funding in excess of \$200,000 whether the requirements were triggered or not.

Determining What Should Be Reported on Form HUD-60002

Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations **AND** those of its covered contractors, subcontractors, and subrecipients. Each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HUD funding that was received by the recipient for covered projects/ activities during the specified reporting period.
- The total number of new employees that were hired by the recipient and/or its covered contractors, subcontractors, and subrecipients, as a result of performing or completing covered project/activities.
- The number of new employees that were hired by the recipient (or its covered contractors, subcontractors, and subrecipients), as a result of covered projects/activities, that met the definition of a Section 3 resident.
- The total number of man hours worked on covered projects (optional).
- The aggregate number of hours worked by Section 3 residents on covered projects (optional).
- The total number of Section 3 residents that participated in training opportunities that were made available by the recipient agency, its contractors, subrecipients, or other local community resource agencies.
- The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with covered funding.

- The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, subrecipients, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

Section 3 Reporting and Compliance Determinations

Absent evidence to the contrary, the Department considers recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

- a. 30 percent of the aggregate number of new hires shall be Section 3 residents;
- b. 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- c. 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.

Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.

Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 to HUD.

Important Notes for Submitting Form HUD-60002

- Recipients must submit a separate form HUD-60002 for each type of covered funding (separate reports must be submitted for CDBG and HOME funding).
- Use the online Section 3 Summary Reporting System at: www.hud.gov/section3 to ensure that form HUD- 60002 is received by the Economic Opportunity Division in HUD Headquarters in a timely manner.
- The "reporting period" option in the online Section 3 Summary Reporting System (box #7) lists quarters but the Section 3 reporting is an annual requirement. Accordingly, recipients should select **Quarter 4** to document the total amount of covered activities/projects that were completed during the entire reporting period.
- If the recipient (or its covered contractors, subcontractors and subrecipients) did not hire any new employees during the reporting period, and/or if no covered construction or non-construction contracts were awarded, the recipient must indicate this in Part III of form HUD-60002 and certify that this information is true and accurate by penalty of law.

Where Are Reports Submitted

Form HUD-60002 must be submitted to HUD's Economic Opportunity Division, in Washington, DC. Recipients are strongly encouraged to submit form HUD-60002 online at: www.hud.gov/section3.

Recipients can also download a hard copy of form-HUD 60002 from the website listed above. Hard copies shall be submitted via fax or mail to:

U.S. Department of Housing and Urban Development
Attn: Economic Opportunity Division
451 Seventh Street, SW
Room 5235
Washington, DC 20410
202-708-1286 (fax)

Additional Section 3 Guidance and Technical Assistance

The Economic Opportunity Division is committed to providing recipient's guidance and technical assistance for compliance with the requirements of Section 3.

For additional information, please visit the Section 3 website at www.hud.gov/section3. This webpage provides the following tools and information:

- Section 3 Statute—12 U.S.C. 1701u
- Section 3 Regulation—24 CFR Part 135
- Frequently Asked Questions
- Section 3 Model Programs
- Guidance on Section 3 and Economic Stimulus Funding
- Guidance on Section 3 and the Neighborhood Stimulus Program (NSP)
- Sample Section 3 Certification Forms (residents and business concerns)
- Link to HUD's Local Income Eligibility Calculator
- Link to Section 3 Annual Reporting System (form HUD-60002)
- Downloadable Forms
- Contact Information for Economic Opportunity Division staff
- Email inquiries on Section 3 can be sent to section3@hud.gov

Fulton County Community Development Block Grant Program
ATTACHMENT H: Form HUD 40076 RHED (03/2002)

Environmental Review Assurances

The award of funds under this program is subject to the environmental review requirements of 24 CFR part 50. These requirements only apply to grant-funded projects fully or partially funded by HUD, undertaken by grantees and all tiers of subgrantees and subcontractors.

When a project is limited to activities described in 24 CFR 50.19, it does not require an environmental review. All other activities (for example, acquisition of real property, construction, and alteration) are subject to an environmental review. Since the approval of the initial grants in this program must occur prior to the identification of properties to be treated, as is provided for in 24 CFR 50.3(h), the applicant hereby agrees that it will assist Fulton County CDBG (FC CDBG) Program to comply with 24 CFR part 50, and that the applicant shall:

1. Advise FC CDBG Program of all projects requiring a review under 24 CFR part 50 prior to their approval and supply FC CDBG Program with all available and relevant information necessary for FC CDBG Program to perform for each property any environmental review required by 24 CFR part 50;

2. Carry out mitigating measures required by FC CDBG Program or select an alternate property or project;

3. Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend FC CDBG Program or local funds for these program activities on a HUD-assisted project until FC CDBG Program has completed an environmental review to the extent required under 24 CFR 50 and has given notification of its approval in accordance with 24 CFR 50.3(h) (3); and

4. Include the above requirements in all subgrants and subcontracts.

Signature of Authorized Certifying Official	Applicant
X	City of Fairburn
Title	Date
Elizabeth Carr-Hurst, Mayor	



CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: APPROVAL OF THE 2017 CDBG CONTRACT WITH FULTON COUNTY

() AGREEMENT () POLICY / DISCUSSION (X) CONTRACT
() ORDINANCE () RESOLUTION () OTHER

Submitted: 05/09/2019 Work Session: 05/13/2018 Council Meeting: 05/13/2019

DEPARTMENT: Engineering

BUDGET IMPACT: The 2018 CDBG Contract award is \$16,000. These funds are received through a reimbursement request to Fulton County.

PUBLIC HEARING? () Yes (X) No

PURPOSE: For Mayor and Council to approve the 2018 CDBG Contract with Fulton County for the demolition of 155 Dodd Street.

HISTORY: In addition to the 2017 grant award, Fulton County allocated additional CDBG funding that can be used for demolition and general infrastructure. The demolition component consisted of the demolition of 155 Dodd Street, a property within the Lightning Neighborhood that was on the City of Fairburn's Blighted Properties List.

FACTS AND ISSUES: This property was dangerous, dilapidated, and unsightly. This property was also vacant and uninhabitable and was found to present an imminent danger to the safety and welfare of the community in general. Approval of this contract will allow the City of Fairburn to be reimbursed for the completed demolition.

RECOMMENDED ACTION: Staff recommends that Mayor and City Council to approve the 2018 CDBG Contract with Fulton County for \$16,000.


Elizabeth Carr-Hurst, Mayor



**FULTON COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
Community Development Block Grant Program
137 Peachtree Street, Suite 300
Atlanta GA, 30303**

**AN AGREEMENT BETWEEN FULTON COUNTY
and**

The City of Fairburn

STATE OF GEORGIA, COUNTY OF FULTON

2018 PUBLIC FACILITIES/INFRASTRUCTURE CONTRACT I

CFDA Number 14.218 – Community Development Block Grants

Federal Award Identification Number: B-18-UC-13-0003

City of Fairburn's DUNS Number: 099631004

Federal Award Date: 01/01/2018

Total Fulton County 2018 CDBG Municipality Agreement: \$16,000.00

THIS AGREEMENT, between Fulton County, Georgia, the Department of Community Development (hereinafter referred to as "the County"), a political subdivision of the State of Georgia, acting by and through its duly elected Board of Commissioners, and the **City of Fairburn** (hereinafter referred to as "the Subrecipient"), a municipality organized and existing in Fulton County under the laws of the State of Georgia.

WITNESSETH THAT:

WHEREAS, in August, 2018 the Fulton County Board of Commissioners approved the 2018 Annual Action Plan and substantial amendments as part of the overall Fulton County 2015 – 2019 Consolidated Planning document which includes Community Development objectives and the projected uses of funds for the Community Development Block Grant (CDBG) program activities, as prescribed under the Housing and Community Development Act of 1974, as amended; and

WHEREAS, the City of Fairburn has been provided CDBG funds by Fulton County for **Public Facility and Improvements** services as set forth in 24 CFR §570.201(c) and to meet a national objective benefiting low/moderate income persons; as set forth in 24 CFR §570.208(a)(1)(i); and

WHEREAS, the Twenty Percent (20%) cap on Administrative Cost expenditures pursuant to CFR §570.200(g) has been reached; and,

WHEREAS, the year 2018 CDBG allocation awarded to the City of Fairburn in the amount of **\$16,000.00**, shall be specifically used for the demolition of 155 Dodd Street in the Lightning Community to address public health and safety concerns and shall not be used towards any Program Administrative Costs. The activities are designed to benefit low-/moderate income persons as required to meet the CDBG national objective; and

WHEREAS, contract I starts on 03/02/2019 in the amount of \$16,000.00

WHEREAS, these activities are designed to benefit low and moderate income persons as required to meet the CDBG national objective; and

WHEREAS, this Agreement constitutes the contractual arrangement for said improvements and/or

1
2 **WHEREAS**, this Agreement constitutes the contractual arrangement for said improvements and/or
3 services that have been prepared for execution between the County and the City as consistent with the Fulton
4 County's Consolidated Plan Annual Action Plan for fiscal year 2018 to support the 2015-2019 Consolidated
5 Plan goals.
6

7
8 **NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the parties hereby
9 agree as follows:
10

11 **SECTION 1.0 – STATEMENT OF WORK**
12

- 13 1. Under this Agreement, the Subrecipient shall provide the services under this Agreement in accordance
14 with the "Statement of Work" attached hereto and made a part hereof as *Attachment A*, consistent with
15 applicable federal rules and regulations governing the use of CDBG funds. Additionally, the
16 Subrecipient shall perform the work according to the "Implementation Schedule" attached hereto and
17 made a part hereof as *Attachment A*.
18
19 2. Under this Agreement, the Subrecipient shall perform the public facility or improvements work
20 according to the "Implementation Schedule," which shall be executed in accordance with the
21 Agreement. The "Implementation Schedule" was submitted in the Subrecipient's year 2018 CDBG
22 application and is attached hereto and made a part hereof as *Attachment B*.
23
24 3. Under this Agreement, the Subrecipient shall also provide a CDBG "Cost Reimbursement Budget" for
25 the project that is being executed with CDBG funds, as submitted in the Subrecipient's 2018 CDBG
26 application. The "Cost Reimbursement Budget" is attached hereto and made a part hereof as
27 *Attachment C*.
28
29 4. Under this Agreement, the Subrecipient shall submit, on not less than a monthly basis, a "Monthly
30 Performance Report" detailing project progress as attached hereto and made a part hereof as
31 *Attachment D and Attachment D-2*.
32
33 5. All work described in *Attachments A, B, and C* must be consistent with applicable federal rules and
34 regulations governing the use of CDBG funds, and the Subrecipient shall ensure that none of the work
35 described constitutes a Program Administrative Cost.
36

37 **SECTION 2.0 – COMPENSATION FOR SERVICES AND WORK**
38

- 39 1. The County shall make reimbursement compensation for the services described in Section 1.0
40 (*Statement of Work*) herein, during the performance of this contract, in accordance with the "Cost
41 Reimbursement Budget" attached hereto and made a part hereof as *Attachment C*.
42
43 2. The County shall make payment to the Subrecipient upon conditional commitment of funds as the
44 project is subject to Environmental Review. Payment shall then be made through reimbursement of
45 costs incurred by the Subrecipient in the performance and execution of the services under this
46 contract. Payments shall be made timely upon the County's receipt of proper and sufficient
47 documentation of such costs and as satisfactory to the County. The County shall have the right not to
48 pay any request for reimbursement or part thereof if not properly supported, or if the costs requested
49 or a part thereof, as determined by the County, are reasonably in excess of the actual stage of
50 completion.
51
52 3. Such documentation shall include, but not be limited to time sheets, vendors' and suppliers' invoices or
53 vouchers, mileage logs, etc.
54
55 4. This documentation, along with a written request for reimbursement and a statement of costs incurred
56 shall be submitted to the attention of the assigned Community Development Specialist at the Fulton
57 County Department of Housing and Community Development, 137 Peachtree Street, SW, Suite 300,
58 Atlanta, GA, 30303. A minimum of one copy of the request and the statement shall be included with
59 the submission. One copy must be accompanied by documentation supporting the eligible costs.

1
2 **SECTION 3.0 – TERM OF AGREEMENT**
3

- 4 1. The completion date of this Agreement shall be March 31, 2021, unless otherwise extended in writing,
5 terminated by mutual agreement, or by the County, or in accordance with other terms and provisions
6 contained herein. Any modifications to the term of the Agreement shall be documented through an
7 amendment process as outlined in the County's Citizen Participation Plan as executed by the County.
8 The term of this Agreement shall be in compliance with the Fiscal Year 2018-2020 Cooperative
9 Agreement between Fulton County and the City.
- 10
- 11 2. The completion date of this Agreement is computed on the basis that the Subrecipient is eligible to
12 receive retroactive costs incurred on or after March 2, 2019. The United States Department of
13 Housing and Urban Development (HUD) with the County will make funds available for eligible incurred
14 costs upon execution of the year 2017 grant agreement.
- 15
- 16 3. Although the completion date shall be (24) months and the completion date shall be March 31, 2021,
17 the County periodically reports CDBG accomplishments and expenditures to HUD. By November 1,
18 2019, HUD traditionally reviews the County's collective accomplishments and expenditures, thus the
19 County strongly encourages all Subrecipient services and work to be near completion by September
20 15, 2019 with no less than seventy percent (70%) of its eligible reimbursement costs submitted
21 appropriately for review.
22
23
24

25 **SECTION 4.0 - MODIFICATIONS TO AGREEMENT**
26

- 27 1. In the event the Subrecipient chooses to modify its pre-approved "Statement of Work" by adding or
28 deleting a project, the Subrecipient shall submit to the County a written request for the approval of
29 such changes 30 days after execution of the contract. No such modification shall become effective
30 unless and until approved by the County in the form of a formal amendment to the Subrecipient's
31 "Statement of Work".
32
- 33 2. Additions or deletions to the "Statement of Work", which have been approved as a part of the County's
34 Consolidated Plan may be allowed one time per Fiscal Year, subject to County approval. The
35 Subrecipient must submit its request within the time frame referenced above.
36
- 37 3. The County must adhere to 24 CFR 91.505 "Amendments to the Consolidated Plan". The
38 Subrecipient's failure to request modifications 30 days after execution of the contract shall result in the
39 County's automatic denial of any such modifications to said Agreement and shall be construed as the
40 Subrecipient's failure to properly and timely fulfill its obligations under this Agreement and will result in
41 the County's right to exercise its options under Section 6.0 (*Termination of Agreement for Cause*) of
42 this Agreement.
43
- 44 4. This Agreement constitutes the entire contractual arrangement between the County and the
45 Subrecipient, and there are no further written or oral agreements with respect thereto. No variation or
46 modification of this Agreement and no waiver of its provisions shall be valid unless in writing and
47 signed by the County's and the Subrecipients' duly authorized representatives.
48
- 49 5. Further, in the event of any material change or modification in the Subrecipient's Agreement or
50 agreement with any other funding source during the course of this Agreement, the Subrecipient shall
51 immediately notify the County of such change. In such event, the County shall have the right to
52 terminate its obligations under this Agreement, discontinue future funding hereunder, and demand the
53 refund or return of funds previously advanced.
54

55 **SECTION 5.0 – EXTENSIONS**
56

57 In the event the Subrecipient determines that it cannot begin projects as scheduled or complete
58 projects within the time frame indicated by the Subrecipient in Attachment B, no extension will be
59 granted.

1
2 **SECTION 6.0 – SUSPENSION OF WORK**
3

- 4 1. The County may by written notice to the Subrecipient suspend at any time the performance of all or
5 any portion of the services to be performed under this Agreement. Upon receipt of a suspension
6 notice, the Subrecipient must unless the notices requires otherwise: (i) immediately discontinue
7 suspended services; (ii) place no further orders or subcontracts for material, services or facilities with
8 respect to suspended services, other than to the extent required in the notice; and (iii) take any other
9 reasonable steps to minimize costs associated with the suspension.
10
11 2. The County may elect to resume suspended service upon written notice to the Subrecipient. Upon
12 receipt of notice to resume suspended services, the Subrecipient will immediately resume performance
13 under this Agreement as required in the notice.
14

15
16 **SECTION 7.0 – TERMINATION OF AGREEMENT**
17

18 **1. Termination for Cause**
19

20 Time is of the essence and if, through any cause, the Subrecipient shall fail to fulfill in a timely and
21 proper manner its obligations under this Agreement, or in the event that any of the provisions or
22 stipulations of this Agreement are violated by the Subrecipient, the County shall thereupon have the
23 right to terminate this Agreement by providing written notice to the Subrecipient of the County's intent
24 to terminate the Agreement, specifying the reasons for such intention for termination. Unless within
25 ten (10) calendar days after serving of such notice (by hand delivery or posting in the U.S. Mail) to the
26 Subrecipient such violation or delay shall cease or arrangements for correction satisfactory to the
27 County be made, the Agreement shall, upon expiration of said ten (10) calendar days, be terminated
28 without further notice. Upon such termination, the Subrecipient will be compensated by the County for
29 expenses deemed by the County to be due and reasonable.
30

31 The Subrecipient shall be liable for any damage to the County resulting from the Subrecipient's refusal
32 or failure to complete the work within the specified time period, and said damages shall include, but not
33 be limited to, any additional costs associated with the County obtaining the services of another
34 Subrecipient to complete the project.
35

36 **2. Termination for Convenience of the County**
37

38 In the event the County determines that it is no longer feasible or in its best interest to continue
39 assisting the service covered by this Agreement, or should the U.S. Department of Housing and Urban
40 Development institute corrective and/or remedial actions against the County in accordance with
41 regulations under the CDBG program where such actions impede or halt the disbursement of the
42 County CDBG funds for this project, the County may terminate this Agreement by giving at least fifteen
43 (15) calendar days prior notice in writing (by hand delivery or posting in the U.S. mail) to the
44 Subrecipient.
45

46 In addition, in the event this agreement has been terminated due to the default of the Subrecipient, and
47 if it is later determined that the Subrecipient was not in default pursuant to the provisions of this
48 Agreement at the time of termination, then such termination shall be considered a termination for
49 convenience pursuant to this paragraph.
50

51 **SECTION 8.0 – INDEPENDENT SUBRECIPIENT STATUS**
52

53 Nothing herein contained shall be deemed to create a relationship other than that of independent
54 Subrecipient between the County and the Subrecipient. Under no circumstances shall the
55 Subrecipient, its principals, employees, subcontractors, associates, or agents be deemed employees,
56 agents, partners, successors, assigns, or legal representatives of the County except as specifically
57 required herein.
58

59 **SECTION 9.0 – ASSIGNMENT OF AGREEMENT**

1 The Subrecipient shall not make any purported assignment of this Agreement or any part thereof, or
2 delegate the duties herewith without prior written consent of the County. Any attempted assignment or
3 delegation of duties by the Subrecipient without prior expressed written consent of the County shall at
4 the County's sole option terminate this Agreement without any notice to the Subrecipient of such
5 termination. The Subrecipient binds itself, its successors, assigns, and legal representatives of such
6 other party in respect to all covenants, agreements and obligations contained herein.
7
8

9 **SECTION 10.0 – PROGRAM INCOME**

- 10
11 1. Program income, as defined in 24 CFR 570.500 (a), means any gross income received by the recipient
12 (County) or a Subrecipient (the Subrecipient) directly generated from the use of CDBG funds, except
13 as provided in paragraph (a)(4) of 570.500. When program income is generated by an activity that is
14 only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of
15 CDBG funds used. The Subrecipient shall provide information regarding program income, with a
16 breakdown of the CDBG allocation, to the County concurrently with the quarterly reports described and
17 required by Section 13.0 of this Agreement.
18
19 2. Any program income received or generated by the Subrecipient as a result of the CDBG assistance
20 provided under this Agreement is to be retained by the Subrecipient during the duration of this
21 Agreement. The activities undertaken with any program income generated shall conform to
22 *Attachment A* of this Agreement ("Statement of Work") and shall comply with all other provisions of this
23 Agreement.
24
25 3. If at any time during the duration of this Agreement the Subrecipient retains program income, transfers
26 of grant funds by the County to the Subrecipient shall be adjusted according to the principles described
27 in paragraphs (b) (2) (i) and (ii) of §570.504, which state that all program income must be disbursed for
28 eligible activities before additional cash withdrawals are made by the recipient from the U.S. Treasury.
29

30 **SECTION 11.0 – REVERSION OF ASSETS**

- 31
32 1. Upon expiration or termination of this Agreement, any remaining program income that is either on hand
33 or to be received after the Agreement's expiration, shall be transferred by the Subrecipient to the
34 County as required by 24 CFR 570.503(b)(7) "Agreements with Subrecipients".
35
36 2. Further, in the event that the Subrecipient should sell or otherwise dispose of any property acquired
37 with the County CDBG funds, the manner of said disposition shall result in the County being
38 reimbursed in the amount of the current fair market value of the property at that time less any portion
39 of the value attributable to expenditures of non-County CDBG funds. In the event that such a sale or
40 disposition occurs more than ten (10) years after expiration or termination of this Agreement, such
41 reimbursement shall not be required.
42

43 **SECTION 12.0 – COPYRIGHT AND PUBLICITY**

- 44
45 1. No report, map, or other document produced in whole or in part under this Agreement shall be the
46 subject of an application for copyright by or on behalf of the Subrecipient without the prior written
47 consent of the County. All such reports, maps, or other documents shall become and be deemed the
48 property of the County and title therein shall automatically vest in the County.
49
50 2. Further, any publicity given to this project must identify the County prominently as a sponsoring
51 agency. Specifically, at all places of, and in all publications concerning, this project, the Subrecipient
52 agrees to display and make known that the project was assisted under the auspices of the Fulton
53 County Community Development Block Grant program. In the event of new construction or substantial
54 rehabilitation, and at the County's discretion, the Subrecipient shall acknowledge the use of CDBG
55 funds for the project by installation of a permanent plaque at the project site. The County in
56 collaboration with the Subrecipient shall determine design and replica for the plaque.
57

58 **SECTION 13.0 – RECORDS AND REPORTS**

59

1 **1. Records**

2 The Subrecipient shall maintain accounts and records, (including an annual Audit) personal property
3 and financial records, adequate to identify and account for all costs pertaining to this Agreement and
4 such other records as may be requested by the County including financial data pertaining to the
5 preparation of the U.S. Department of Housing and Urban Development (HUD) Consolidated Annual
6 Performance and Evaluation Report (CAPER) to assure proper accounting for all funds, both public
7 and private. Said records shall be made available for audit purposes to the County, HUD, or any
8 authorized representative thereof, upon reasonable request and within three (3) days of said request.
9

10 **Retention**

11 Pursuant to 24 CFR 570.502(a) (7) (ii), the retention period of individual CDBG activities shall be the
12 longer of 3 years after the expiration or termination of the subrecipient agreement under 24 CFR
13 507.503, or 3 years after the submission of the annual performance and evaluation report, as
14 prescribed in 24 CFR 91.520 of this title, in which the specific activity is reported on for the final time.
15 In addition, records for individual activities subject to the reversion of assets provisions at §570.503(b)
16 (7) or change of use provisions at §570.505 must be maintained for as long as those provisions
17 continue to apply to the activity. Moreover, records for individual activities for which there are
18 outstanding loan balances, other receivables, or contingent liabilities must be retained until such
19 receivables or liabilities have been satisfied.

20 The Subrecipient's records and accounts shall at all times meet or exceed the applicable requirements
21 of federal, state, and local laws, rules, and regulations. The Subrecipient's duty to retain records and
22 permit inspections and copying shall remain in force and effect even after the expiration or termination
23 of this Agreement.
24

25 **2. Reports**

26 The Subrecipient shall provide the County with a written plan that outlines the activities and processes
27 of the program that will be funded by CDBG. Further, the Subrecipient shall submit detailed reports on
28 the progress made and services of their programs based on the objectives they establish in response
29 to local needs and goals. Objectives reflect the common ways that Subrecipients work to achieve their
30 goals. The Objectives incorporated into the proposed Outcome Measurement System are: Suitable
31 Living Environment, Decent Housing, and Economic Opportunity. Outcome measurements will be
32 based on (a) Availability /Accessibility (b) Affordability (c) Sustainability. Outcomes show how
33 programs benefit a community or people served. Indicators tell whether an outcome is occurring.
34

35 At a minimum, these reports shall be submitted on a monthly basis. The monthly reports are due the
36 fifth (5th) of the following month for activities which occurred in the previous month, and shall be
37 submitted on the "Public Facility Monthly Performance Report" attached hereto and made a part hereof
38 as *Attachment D*. The year-end reports are due no later than thirty (30) days after the contract expires
39 for activities which occurred during the funding year in the "Year End Performance Report" attached
40 hereto and made a part hereof as *Attachment D-2*.
41

42 Said reports shall be submitted to the County, to the attention of the assigned Community
43 Development Specialist at the Fulton County Department of Housing and Community Development,
44 137 Peachtree Street, SW, Suite 300, Atlanta, GA., 30303. Two (2) copies of the report shall be
45 included in each submission, one (1) copy for the Community Development Specialist and the other
46 one (1) copy addressed to the CDBG Community Development Grant Manager.
47

48 **SECTION 14.0 – INSPECTION OF FILES AND RECORDS**

49
50 The County shall at all reasonable times have access to the pertinent offices and books and records
51 (including an annual Balance Sheet or Independent Audit) of the Subrecipient for inspection of the
52 activities performed and expenses incurred under this Agreement. The County will perform and the
53 Subrecipient shall be prepared to meet the requirements of, at least, one (1) audit per year.
54

55 **SECTION 15.0 – CITIZEN PARTICIPATION MEETINGS AND TECHNICAL ASSISTANCE MEETINGS**

56
57 Subrecipient representative must attend at least one (1) CDBG related Citizen Participation meeting,
58 participate in every Technical Assistance (TA)/Needs Assessment session and the annual Monitoring
59 session during each contract year. The County shall provide meeting dates and locations timely, and

shall provide comprehensive information to assist the Subrecipient to perform efficiently and effectively.

SECTION 16.0 -- MONITORING

Through on-site and remote monitoring, the County determines whether the Subrecipient's performance meets CDBG program requirements and assists to improve the Subrecipient's performance by providing guidance and making recommendations. Monitoring visits are conducted no less than once per contract term with a specific purpose to validate the accuracy of information presented in the program participant's performance reports. On-site and remote monitoring is also conducted to follow-up on problems identified during the Consolidated Annual Performance and Evaluation Report (CAPER) assessment that are not resolved as of the date of the monitoring, to determine compliance for those activities where there is sufficient information, to make eligibility and/or national objective determinations, and to ascertain the Subrecipient's ability to ensure that activities meet compliance requirements.

SECTION 17.0 - FINDINGS / NON-COMPLIANCE

1. The Subrecipient shall be notified in writing by the County of any Findings or Concerns identified during each monitoring visit. The Subrecipient shall be given thirty (30) calendar days from the time of written notification by the County for corrective actions to take place. The County will not unreasonably withhold acceptance of corrective actions taken in good faith by the Subrecipient. Upon the Subrecipient proving satisfactory corrective action, a letter shall be sent to the Subrecipient stating that such findings or concerns have been addressed. Pursuant to 24 CFR 570.501, in the event the Subrecipient fails to correct the findings or fails to comply with terms and provisions of this Agreement, the County may take corrective and remedial actions such as those described in 24 CFR 570.910. Such remedial actions may include, but are not limited to, the following:
 - a. Temporarily withhold cash payments pending correction of the deficiency;
 - b. Disallow all or part of the cost of the activity or action not in compliance;
 - c. Wholly or partly suspend or terminate the current award;
 - d. Withhold further award; or
 - e. Take other remedies that may be legally available.

SECTION 18.0 -- UNIFORM ADMINISTRATIVE REQUIREMENTS

During its performance under this Agreement, the Subrecipient shall comply with the requirements and standards of the Office of Management and Budget (OMB) codified at 2 CFR part 200 and guidance at a new part, 2 CFR part 2400 which streamlines the Federal government's guidance on administrative requirements, cost principles, and audit requirements to more effectively focus Federal resources on improving performance and outcomes, while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. <https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-andbudgets-uniform>)

The uniform guidance supersedes, consolidates, and streamlines requirements from eight OMB Circulars:

- A-21, Cost Principles for Educational Institutions,
- A-87, Cost Principles for State, Local and Indian Tribal Governments,
- A-89, Catalog of Federal Domestic Assistance,
- A-102, Grants and Cooperative Agreements With State and Local Governments,
- A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,
- A-122, Cost Principles for Non-Profit Organizations,

- A-133, Audits of States, Local Governments, and Non-Profit Organizations, and
- The guidance in OMB Circular A-50, Audit Follow-up, on Single Audit Act follow-up.

SECTION 19.0 – EQUAL OPPORTUNITY AND NON-DISCRIMINATION

1. Civil Rights Act of 1964 (As amended)

The Subrecipient shall comply with all Federal requirements imposed by or pursuant to Title VI and Title VII of the Civil Rights Acts, as Amended; Age Discrimination In Employment Act; Rehabilitation Act of 1973, as Amended, Section 504; Equal Pay Act; The American with Disabilities Act of 1990, as Amended; Fair Housing Act, as Amended; and other applicable Acts which prohibits discrimination on the ground of race, color, religion, sex, age, national origin, handicap, disability, or familial status. No person in the United States shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Agreement.

2. Section 109 of the Housing and Community Development Act of 1974 (As amended)

The Subrecipient shall also comply with Section 109 of the Housing and Community Development Act of 1974, as amended, which requires that no person in the United States shall on the ground of race, color, national origin, sex, age, disability, or familial status, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available pursuant to said Act.

3. Further, during the performance of this Agreement, the Subrecipient agrees as follows

- (A) The Subrecipient shall not discriminate against any employee, or applicant for employment, because of race, religion, color, sex, national origin, age, disability, or familial status. As used herein, the word "employment" means and includes without limitation the following:
 - Recruiting, whether by advertising or other means; compensation or wages, whether in the form of rates of pay, or other forms of compensation; selection for training including apprenticeship; promotions; upgrades; demotions; downgrades; transfers; layoffs; and terminations.
 - The Subrecipient shall post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.
- (B) The Subrecipient shall in all solicitations or advertisements for employees, placed by or on behalf of itself, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, age, disability or familial status.
- (C) The Subrecipient shall, when applicable, send to each labor union or representative of workers with which the Subrecipient has a collective bargaining agreement or other Agreement or understanding, a notice representative of the Subrecipient's commitment under the Equal Opportunity Program of the County and under this Article and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (D) The Subrecipient shall file compliance reports at reasonable times and intervals with the County in the form and to the extent prescribed by the County. Compliance reports filed when directed shall contain information as to the employment practices, policies, programs, and statistics of the Subrecipient and his Subrecipients.
- (E) The Subrecipient shall include the provisions of paragraph (A) through (F) of this Equal Employment Opportunity Clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

- 1
2 (F) The Subrecipient shall comply with the provisions of Section 109 of the Act which provides, in
3 part, that any prohibition against discrimination on the basis of age under the Age
4 Discrimination Act of 1975, or as provided in Section 504 of the Rehabilitation Act of 1973,
5 shall also apply to any program or activity funded in whole or in part with funds made available
6 pursuant to the Act and provided hereunder. These provisions shall also be binding upon
7 each subcontractor or vendor.
8

9 **4. Section 3 of the Housing and Urban Development Act of 1968**

- 10
11 (A) The work to be performed under this Agreement is subject to the requirements of Section 3 of
12 the Housing and Urban Development Act of 1968, as amended. Section 3 requires that, to the
13 greatest extent feasible, opportunities for training and employment be given to low income
14 persons residing within the unit of local government in which the project is located, and that
15 Agreements for work in connection with the project be awarded to businesses which are
16 located in, or owned in substantial part, by persons residing in the area of the project.
17
18 (B) Accordingly, the Subrecipient shall, when applicable, send to each labor organization or
19 representative of workers with which it has a collective bargaining agreement or other
20 Agreement or understanding, a notice of its commitment under this Section 3 clause and shall
21 post copies of the notice in conspicuous places available to employees and applicants for
22 employment or training.
23
24 (C) The Subrecipient shall include this Section 3 clause in every subcontract for work in
25 connection with the project and will take appropriate action pursuant to the subcontract upon a
26 finding that the subcontractor is in violation of regulations issued by the Secretary of Housing
27 and Urban Development, 24 CFR Part 135. The Subrecipient shall not subcontract with any
28 subcontractor where it has notice or knowledge that the latter has been found in violation of
29 regulations under 24 CFR Part 135, unless the subcontractor has first provided it with a
30 preliminary statement of ability to comply with the requirements of those regulations. The
31 Federal Section 3 Provisions are attached hereto and made a part hereof as *Attachment G*.
32

33 **5. Equal Access to Housing in HUD Programs**

- 34
35 (A) Through final rule effective March 5, 2012 (Equal Access to Housing in HUD Programs
36 Regardless of Sexual Orientation or Gender Identity) 24 CFR Parts 5, 200, 203, 236, 400, 570,
37 574, 882, 891, and 982, HUD implements a policy to ensure that its core programs are open to
38 all eligible individuals and families regardless of sexual orientation, gender identity, or marital
39 status.
40
41 (B) It is important that HUD and Fulton County ensure that their programs do not involve
42 discrimination against any individual or family otherwise eligible for HUD-assisted or -insured
43 housing, but that its policies and programs serve as models for equal housing opportunity.
44 Failure to comply with the requirements of this Rule will be considered a violation of the
45 program requirements and will subject the non-compliant grantee to all sanctions and
46 penalties available for program requirement violations.
47
48 (C) Under 24 CFR 5.100 "sexual orientation" is defined -as "homosexuality, heterosexuality, or
49 bisexuality," a definition that the Office of Personnel Management (OPM) uses in the context of
50 the federal workforce in its publication "Addressing Sexual Orientation in Federal Civilian
51 Employment: A Guide to Employee Rights."
52
53 (D) To promote equal access to HUD's housing programs without regard to sexual orientation or
54 gender identity, HUD prohibits unlawful inquiries regarding sexual orientation or gender
55 identity. The prohibition precludes owners and operators of HUD-assisted housing or housing
56 whose financing is insured by HUD from inquiring about sexual orientation or gender identity of
57 an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied.
58
59

SECTION 20.0 – MINORITY BUSINESS ENTERPRISE (MBE/FBE) PARTICIPATION

1
2 **Federal MBE/FBE Policy**
3

4 It is national policy to award a fair share of contracts to small and minority business firms. All HUD
5 grantees and subrecipients must take appropriate affirmative action to support minority and women's
6 enterprises, and are encouraged to procure goods and services from labor surplus areas. Therefore,
7 the Subrecipient shall take affirmative steps to ensure that minority (MBE) and female (FBE) business
8 enterprises are utilized during the course of this Agreement, and that a fair share of any contracts
9 generated during such course are awarded to such firms.

10
11 **SECTION 21.0 – LABOR STANDARDS**
12

13 The Subrecipient shall comply with all Federal Labor Standards Requirements imposed by the Davis-
14 Bacon Act; the Contract Work Hours and Safety Standards Act; the Copeland Act; and the Fair Labor
15 Standards Act. As a requirement of the Fair Labor Standards Act, the Subrecipient must ensure that a
16 copy of the applicable wage rate decision is included in each contract and subcontract and the Notice
17 to Employees poster that pertains to all federally-funded projects is to be posted, along with a copy of
18 the wage decision, on all construction sites. This information must be posted in a conspicuous location
19 accessible to those employed under any contract funded with CDBG funds. The Federal Labor
20 Standards Provisions are attached hereto and made a part hereof as *Attachment E*.

21
22 **SECTION 22.0 - HB 87 ILLEGAL IMMIGRATION REFORM**
23

24 Among other measures, the Illegal Immigration and Reform Enforcement Act of 2011 requires
25 subcontractor and sub-subcontractors to submit their E-Verify affidavits to the Subrecipients working
26 on public projects. The Subrecipient then must forward affidavits to the local government within five
27 (5) days of receipt. The Department of Audits will create a form affidavit.

28
29 Attached hereto and made a part hereof as *Attachment F* is The Georgia Security and Immigration
30 Compliance Act Applicant for Public Benefits Affidavit, the Subrecipient, Subcontractor and Sub-
31 subcontractor Affidavits.

32
33 **SECTION 23.0 – ENVIRONMENTAL REQUIREMENTS**
34

35 The County, Sub-Recipients, Contractors, Owners, and Developers shall not undertake any activities
36 that would adversely impact or limit the choice of reasonable alternatives for a project until an
37 Environmental Review has been completed and approved by the County. To this end, the County,
38 Sub-Recipients, Subcontractors, Owners, and Developers must not expend public or private funds
39 (HUD, other Federal, or non-Federal funds) or execute a legally binding agreement for property
40 acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until
41 environmental clearance has been achieved. Using any portion of federal funds for acquisition,
42 rehabilitation, conversion, leasing, repair or construction before, completing the Environmental Review
43 process requires the denial of any federal funds for that project. The Environmental Review
44 Assurances are attached hereto and made a part hereof as *Attachment H*.

45
46 **Conditional Commitment of Funds**

47 Further, notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge
48 that this Agreement does not constitute a commitment of funds or site approval, and that such
49 commitment of funds or approval may occur only upon satisfactory completion of Environmental
50 Review and receipt by the County of a release of funds from the U.S. Department of Housing and
51 Urban Development (HUD), under 24 CFR Part §58. Additionally, the Sub-Recipient or Subcontractor
52 are prohibited from undertaking or committing any funds to physical or choice-limiting actions,
53 including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction
54 prior to the environmental clearance, and must indicate that the violation of this provision may result in
55 the denial of any funds under the Agreement. The parties further agree that the provision of any funds
56 to the project is conditioned on the County's determination to proceed with, modify or cancel the
57 project based on the results of a subsequent Environmental Review.
58
59

1 **Environmental Conditional Clause**

2 Responsible entities may enter into an Agreement for the conditional commitment of CDBG funds for a
3 specific project prior to the completion of the Environmental Review process. The responsible entity
4 must ensure that any such agreement does not provide the County Recipient, Sub-Recipient, or
5 Subcontractor any legal claim to any amount of CDBG fund to be used for the specific project or site
6 unless and until the site has received environmental clearance.
7

8 **SECTION 24.0 – LEAD BASED PAINT**

9 On September 15, 2000, HUD published the final rule concerning the control of lead-based paint
10 hazards in housing receiving federal assistance and federally owned housing being sold. These
11 regulations published at 24 CFR Part 35 specify the requirements for treating lead hazards to protect
12 those who occupy housing constructed before 1978. This regulation also implements the new
13 requirements, concepts, and terminology established by the Residential Lead-Based Paint Hazard
14 Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992.
15 Should the Subrecipient propose to use CDBG funds for the rehabilitation or conversion of residential
16 units, the Subrecipient must meet the requirements of 24 CFR Part 35. The County shall provide
17 ongoing technical assistance to the Subrecipient to assist in meeting these requirements.
18

19 **SECTION 25.0 – CONFLICT OF INTEREST**

20 No member, officer, or employee of the County or its designee or agents, no member of the governing
21 body of the County, and no other official of the County who exercises or has exercised any functions or
22 responsibilities with respect to the CDBG-assigned activities or who is in a position to participate in a
23 decision making process or gain inside information with regard to such activities, may obtain a
24 personal or financial interest or benefit in any Agreement, subcontract or agreement with respect
25 thereto, or the proceeds there under, either for themselves or for those with whom they have family or
26 business ties, during their tenure or for one (1) year thereafter, unless an exemption in writing from this
27 provision is specifically granted by the U. S. Department of Housing and Urban Development.
28

29 **SECTION 26.0 – PROHIBITION OF USE OF FEDERAL FUNDS FOR LOBBYING**

- 30
- 31 1. By signing this Agreement, the undersigned Subrecipient certifies that all activities under this
32 Agreement will adhere to 24 CFR Part 87 (New Restrictions on Lobbying) and, to the best of his/her
33 knowledge and belief, that:
- 34
- 35 (A) No Federal appropriated funds have been paid or will be paid, by or on behalf of the
36 Subrecipient or the undersigned, to any person for influencing or attempting to influence an
37 officer or employee of any agency, a Member of Congress, an officer or employee of
38 Congress, or an employee of a Member of Congress in connection with the awarding of any
39 federal Agreement, the making of any federal grant, the making of any federal loan, the
40 entering into of any cooperative agreement, or the extension, continuation, renewal,
41 amendment, or modification of any federal Agreement, grant, loan or cooperative agreement.
42
- 43 (B) If any funds other than federal appropriated funds have been paid or will be paid to any person
44 for influencing or attempting to influence an officer or employee of any agency, a Member of
45 Congress, an officer or employee of Congress, or an employee of a Member of Congress in
46 connection with this federal Agreement, grant, loan, or cooperative agreement, the
47 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report
48 Lobbying," in accordance with its instructions.
49
- 50 (C) The undersigned shall require that the language of this certification be included in the award
51 documents for all sub-awards at all tiers (including subcontracts, subgrants, and Agreements
52 under grants, loans, and cooperative agreements) and that all subrecipients shall certify and
53 disclose accordingly.
54
- 55 (D) This certification is a material representation of fact upon which reliance was placed when this
56 transaction was made or entered into. Submission of this certification is a prerequisite for
57 making or entering into this transaction imposed by Title 31, U. S. Code, Section 1352. Any
58 person who fails to file the required certification shall be subject to a civil penalty of not less
59 than \$10,000 and not more than \$100,000 for each such failure.

1 **SECTION 27.0 – INDEMNIFICATION AND HOLD HARMLESS**

2
3 The Subrecipient hereby warrants, represents, covenants and agrees to release, indemnify, defend
4 and hold harmless the County, its commissioners, officers, and employees, from any and all claims,
5 losses, liabilities, damages, deficiencies or costs (including without limitation, reasonable attorney's
6 fees and legal expenses) suffered or incurred by such parties, whether arising in tort, contract, strict
7 liability or otherwise, and including without limitation, personal injury, wrongful death or property
8 damage, arising in any way from the actions or omissions of the Subrecipient, its agents, employees,
9 Subrecipients, officers, or directors. The Subrecipient does further hereby agree to release, indemnify,
10 defend and hold harmless the County, its commissioners, officers, and employees, from any injury
11 (including death resulting there from), loss, claim or damage sustained by the Subrecipient's agents
12 and employees, without regard to negligence. The language of this indemnification clause shall survive
13 termination of this Agreement, even if the County terminates the Agreement for its convenience.
14

15
16 **SECTION 28.0 – GOVERNING LAW**

- 17
18 1. This Agreement shall be governed in all respects, as to validity, construction, capacity, and
19 performance or otherwise, by the laws of the State of Georgia.
20
21 2. A waiver by either party of any breach or any provision, term, covenant or condition of this Agreement
22 shall not be deemed a waiver of any subsequent breach of the same or any other provision, term,
23 covenant or condition.
24
25 3. The parties agree that each of the provisions included in this Agreement is separate, distinct and
26 severable from the other remaining provisions of this Agreement, and that the invalidity of any
27 agreement provision shall not affect the validity of any other provision of this agreement.
28
29 4. The parties agree that the terms of this Agreement include the entire Agreement between the parties
30 and as such, shall exclusively bind the parties. No other representations, either oral or written, may be
31 used to contradict the terms of this Agreement.
32
33 5. Any notices or communications required or permitted herein shall be sufficiently given if sent by
34 Registered or certified mail, return receipt request, postage prepaid, addressed as follows:
35
36
37

38 As to the County:

39 Kim Benjamin, Community Development Specialist
40 Fulton County Community Development Department
41 137 Peachtree Street, SW, Suite 300
42 Atlanta, GA 30303
43

44 As to the Subrecipient:

45 Elizabeth Carr-Hurst, Mayor
46 City of Fairburn
47 56 Malone Street
48 Fairburn, Georgia 30213
49

50 Alternatively, such other addressed as shall be furnished by such notice of the other party.
51
52

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS HEREOF, the parties hereunto have set their hands and seal.

CITY OF FAIRBURN

FULTON COUNTY

Elizabeth Carr-Hurst, Mayor
City of Fairburn

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST

ATTEST

Shana Moss, Interim City Clerk
City of Fairburn

Dr. Jesse A. Harris, Clerk to the Commission
Fulton County Board of Commissioners

DATE:

DATE:

SEAL:

SEAL:
APPROVED AS TO CONTENT:

Dr. Pamela Roshell, Interim Director
Department of Community Development

Dawn Robinson Butler, Division Manager
Department of Community Development

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Office of the County Attorney

DATE:

DATE:

Fulton County Community Development Block Grant Program
ATTACHMENT A: Statement of Work
City of Fairburn – Demolition Project

This project consists of the demolition of one (1) home within the Lightning Neighborhood that are on the City of Fairburn's Blighted Properties List. These properties are dangerous, dilapidated, and unsightly. These structures are also vacant and uninhabitable and have been found to present an imminent danger to the safety and welfare of the community in general. The address of this property is:

- 155 A-D Dodd Street, Fairburn, GA 30213

The home is within the predominantly residential L/M income Lightning Community, which has been suffering from years of neglect and deterioration. The service area of the Fairburn program is approximately 500 homes within the quarter-mile radius of the project limits. Based on our occupancy records, we anticipate this project will positively impact over 1,000 residents in the area. Job creation is most likely negligible; however, the project will create work for approximately 10 employees, contractors, and suppliers. Because the intent of the project is to demolish vacant and uninhabitable houses, no continuing employment will be affected by it.

Fulton County Community Development Block Grant Program
ATTACHMENT B: Project Implementation Schedule
City of Fairburn – Demolition Project

FACILITY/IMPROVEMENT PROVISIONS	TASKS	DATE
Request for Proposals from Architects/Engineers/Consultants	Pro Bono or Invitation for Bid- (Architect/Engineering Services)	
Selection of A&E/Consultants by City	Selection Completed/Services Awarded	
Design Phase by Architect/Engineer	Design/Specifications in process	
Environmental Review	Specify COMPLETION date of w/Annual update of.....	
Construction Drawings & Request for Proposals by Architect/Engineer	All plans/drawings/specifications in accordance with construction documentation is prepared and completed for advertisement.	
Solicitation for sealed bids by the City of Hapeville for Proposal Bids/Offer	Invitation for Bid- (Description of the requirements that the bidder/offeree must fulfill with other factors to be used in evaluating the bids or proposals submitted).	
Costs and Price Analysis (Specification List)	Perform a cost or price analysis for each procurement activity undertaken with Federal funds to include: A comparison of price quotations submitted, market prices, and similar indicators, together with discounts.	
City Award of Bid/Offer	Renovation/Improvement RECORDS - The City of will maintain procurement records and files for all purchases made with Federal funds, to include: Basis for bidder/offeree selection; Justification for lack of competition when bids or offers are not obtained; and Basis for the award cost or price.	
Letter to Proceed for Contractor	Award Conference	
Contract Administration	The City of will maintain a system of contract administration to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequately and timely follow up of all procurement activities and purchases. The agency will evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.	
Contract Start Date of Project	Notice to Proceed	
Demolition / Clearance activities	Clear & accurate description of the technical requirements for the project to be demolished/cleared by City of	
Contract Provisions	Insurance requirements, bonding requirements, housing location & care of products, etc.	
Project Mid-Status	Renovation/Improvement (clear & accurate description of the technical requirements for the work to be procured by City of	
Project Completion	Close out documentation, final title documentation/retainage of funds/release of liens.	

**Fulton County Community Development Block Grant Program
ATTACHMENT C: Cost Reimbursement Budget
City of Fairburn – Demolition Project**

PROJECT DELIVERY OPERATING BUDGET

PROJECT EXPENSES	DATE	CDBG	CITY
Construction Cost (Labor, Equipment/Supplies, Permits) – \$	08/2018-2019	\$ 16,000	\$0.00
Total for Year 2019 – \$	08/2018-2019	\$ 16,000	\$0.00

REIMBURSEMENT EXPENDITURE SCHEDULE

Municipality Expenses	January-December Projections	Submission Date	Total Operating Budget
Construction Costs ▪ Labor ▪ Equipment/Supplies	\$30,000	June 2019	\$30,000
TOTAL EXPENSES	\$30,000		\$30,000

Fulton County Community Development Block Grant Program

ATTACHMENT D: Monthly Performance Report

Municipality: City of Fairburn CDBG Funding Year: 2018

Project Name: 155 Dodd Street Demolition Single Family Home

Administering Department: City of Fairburn

Reporting Period From: March 2, 2019 To: _____

I. **Project Status:**

CDBG allocation amount: \$ 16,000.00

Number of Contracts Awarded: 1 (If contract was awarded this reporting period, attach a copy of the fully executed contract).

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Has CDBG spending occurred for this project?

☐ Yes ☐ No

(If payments have been made toward contracts with CDBG funds, attach up-to-date expenditure and revenue account printouts or similar official financial report)

CDBG project fund balance: \$ _____

Agency's Local Match project fund balance: \$ _____

Date of Construction start-up: _____

Date of Notice to Proceed (if different): _____

Number of days worked on project: _____

Percentage (%) of project complete: _____ %

Percentage (%) of CDBG funds spent: _____ %

Number of employees/workers on the job site: _____

Number of subcontractors on site: _____

Number of subcontractor's employees on site: _____

Wage decision or modification in use: _____

Number of submitted payrolls within reporting period: _____

Number of draw downs within reporting period: _____

Total amount of draw downs to date: \$ _____

CDBG remaining balance: \$ _____

Anticipated project completion date: _____

II. **Narrative Description of Project Progress (attach additional sheets as necessary):**

III. **Project Issues, Considerations, or Problems (attach additional sheets as necessary):**

1. BENEFICIARY DEMOGRAPHICS

Quarter	Jan 1st – March 31st		April 1st – June 30 th		July 1st – Sept 30 th		Oct 1st – Dec 31 st	
Race Categories	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity
American Indian or Alaska Native								
American Indian or Alaska Native & Black or African American								
American Indian or Alaska Native & White								
Asian								
Asian and White								
Black or African American								
Black or African American & White								
Native Hawaiian or Other Pacific Islander								
Other Multi Racial								
White								
TOTAL								

2. INCOME

FY 2019 INCOME LIMITS SUMMARY								
Fulton County, GA FY 2019 Median Income \$79,700								
	Persons in Family							
	1	2	3	4	5	6	7	8
Very Low Income (50%)	\$27,900	\$31,900	\$35,900	\$39,850	\$43,050	\$46,250	\$49,456	\$52,650
Extremely Low Income	\$16,750	\$19,150	\$21,550	\$25,750	\$30,170	\$34,590	\$39,010	\$43,430
Low Income (80%)	\$44,650	\$51,900	\$57,400	\$63,750	\$68,850	\$73,950	\$79,050	\$84,150

FY 2019 Income Limit Category	Jan 1st – March 31st	April 1 st – June 30 th	July 1 st – Sept 30 th	Oct 1 st – Dec 31 st
Very Low Income				
Extremely Low Income				
Low Income (80%)				
Total				

3. NEW/CONTINUING OR IMPROVED SERVICE OR BENEFIT

Of the total number of persons assisted and represented above, enter the number of those persons that received a NEW or Continued Access to the service or benefit provided by the CDBG funded activity	
Of the total number of persons assisted and represented above, enter the number of those persons that received IMPROVED ACCESS to the service or benefit provided by the CDBG funded activity	
Total	

4. LEVERAGED FUNDS: Provide the amount of money leveraged from other federal, state, local, and private sources to carry out this program.

Cumulative amount of funds leveraged this this reporting period that supported this CDBG funded activity	
---	--

Submitted by:

Name

Signature

Date: _____

Title: _____

Approved by:

Name

Signature

Date: _____

Title: _____

Fulton County Community Development Block Grant Program

ATTACHMENT D2: Year End Performance Report

Municipality: City of Fairburn

CDBG Funding Year: 2018

Project Name: 155 Dodd Street Demolition Project

Administering Department: City of Fairburn

Reporting Period From: March 2, 2019 To: _____

I. **Project Status:**

CDBG allocation amount: \$ 16,000.00

Number of Contracts Awarded: _____ (If contract was awarded this reporting period, attach a copy of the fully executed contract).

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Has CDBG spending occurred for this project?

☐ Yes ☐ No

(If payments have been made toward contracts with CDBG funds, attach up-to-date expenditure and revenue account printouts or similar official financial report)

CDBG project fund balance: \$ _____

Agency's Local Match project fund balance: \$ _____

Date of Construction start-up: _____

Date of Notice to Proceed (if different): _____

Number of days worked on project: _____

Percentage (%) of project complete: _____ %

Percentage (%) of CDBG funds spent: _____ %

Number of employees/workers on the job site: _____

Number of subcontractors on site: _____

Number of subcontractor's employees on site: _____

Wage decision or modification in use: _____

Number of submitted payrolls within reporting period: _____

Number of draw downs within reporting period: _____

Total amount of draw downs to date: \$ _____

CDBG remaining balance: \$ _____

Anticipated project completion date: _____

II. **Narrative Description of Project Progress (attach additional sheets as necessary):**

III. **Project Issues, Considerations, or Problems (attach additional sheets as necessary):**

Did the Contractor / Subcontractor hire new employees to complete the construction job? If so how many and if any how many were local Section 3 residents? (Section 3 residents: Local/ area residents who are of Low- and Very Low Income who were hired by the Contractor / Subcontractor specifically to work on this construction job.)

A	B	C	D	E	F
Job Category	Number of New Hires	Number of New Hires that are Section 3 Residents	% of Aggregate Number of Staff Hours of new hires that are Section 3 Residents	% of Total Staff Hours for Section 3 Employees and Trainees	Number of Section 3 Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade:					
Trade:					
Trade:					
Trade:					
Trade:					
Trade:					
Other (List):					
Total:					
* Program Codes 1 = Flexible Subsidy 2 = Section 202/811	3 = Public/Indian Housing A = Development B = Operation C = Modernization		4 = Homeless Assistance 5 = HOME 6 = HOME State/Administered 7 = CDBG Entitlement	8 = CDBG State Administered 9 = Other CD Programs 10 = Other Housing Programs	

Description of Scope of Work: Provide a complete description of the actual activity undertaken including 1) what products or services were performed, 2) where they were provided, 3) for whom they were provided, and 4) how they were provided.

Description of Specific use of CDBG funds: Provide a summary of what expenses the CDBG funds were utilized to support the activity listed above.

Income Benefit: Complete the following statement.

It is documented that _____ unduplicated low-moderate income clients/participants were served over the course of the January – December of this grant award. Of those served, _____ clients/participants had household income levels at the 0-30% area median income (AMI) level; _____ clients/participants had household income levels at the 31-50% area median income (AMI) level; _____, and clients/participants had household income levels at the 51-80% area median income (AMI) level.

Anticipated Accomplishments: _____
 Actual Accomplishment: _____
 Total Number of Beneficiaries: _____
 Zip Code of Project Location: _____

Census Tract(s) and Block Groups Impacted: _____

Commission District(s) Impacted: € District 1 € District 2 € District 3
 € District 4 € District 5 € District 6

Outcome Measurement System: Check the box which identifies the best generalized Outcome Statement for the activity funded by the Fulton County Community Development Block Grant.

	<u>Outcome 1:</u> Availability/Accessibility	<u>Outcome 2:</u> Affordability	<u>Outcome 3:</u> Sustainability
<u>Objective #1:</u> Suitable Living Environment	€ Accessibility for the purpose of creating Suitable Living Environments	€ Affordability for the purpose of creating Suitable Living Environments	€ Sustainability for the purpose of creating Suitable Living Environments
<u>Objective #2:</u> Decent Housing	€ Accessibility for the purpose of providing Decent Housing	€ Affordability for the purpose of providing Decent Housing	€ Sustainability for the purpose of providing Decent Housing
<u>Objective #3:</u> Economic Opportunity	€ Accessibility for the purpose of creating Economic Opportunities	€ Affordability for the purpose of creating Economic Opportunities	€ Sustainability for the purpose of creating Economic Opportunities

Submitted by: _____
 Name

 Signature

Date: _____

Title: _____

Approved by: _____
 Name

 Signature

Date: _____

Title: _____

Fulton County Community Development Block Grant Program

ATTACHMENT E: Form HUD-4010 (07/2003)

Federal Labor Standards Provisions

U.S. Department of Housing
And Urban Development
Office of Labor Relations

Applicability

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

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a) (1) (ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3)

(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

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

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

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

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) (1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration.....makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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

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

subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

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

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

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

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

THE DAVIS BACON ACT (DBA). The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works. Labor standard provisions apply to any contract for the construction of 12 or more HOME-assisted units (Section 286, National Affordable Housing Act of 1990, as amended). Specifically:

Davis Bacon Wage Requirements

Acknowledgement Form

☐ Affordable housing with 12 or more units assisted with funds made available under this subtitle. Unlike CDBG, the standard for coverage is “assisted” not “financed” – which provides for much broader application. The requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services.

☐ Any contract for the construction of affordable housing with 12 or more units assisted with HOME funds. Davis-Bacon requirements do not follow “construction work” or “projects”. This factor has two implications:

- First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for avoiding Davis-Bacon.)
- Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide down payment assistance to individual homebuyers. (See also HUD Regulations at 24 CFR 92.354(a)(2). This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. Once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project – including the portions of the project that are not assisted with HOME funds.

DEPARTMENT OF LABOR REGULATIONS The Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in **29CFR Parts 1, 3, 5, 6 and 7**. Part 1 explains how the DOL establishes and publishes DBA wage determinations (aka wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in your contract relating to Davis- Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

RESPONSIBILITY OF THE PRINCIPAL CONTRACTOR The principal contractor (also referred to as the *prime* or *general contractor*) is responsible for the full compliance of all employers

(the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the Owner (Developer) only through the prime contractor.

PRE-CONSTRUCTION CONFERENCE Present the Federal statutory compliance requirements as well as performance expectations.

- Provide and review a copy of the "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects."
- Emphasize that A copy of the wage decision (or the Project Wage Rate Sheet) and a copy of the DOL Davis-Bacon poster titled Employee Rights under the Davis-Bacon Act (Form WH- 1321) should be in a place at the job site that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The Employee Rights under the Davis-Bacon Act poster is available in English and Spanish on-line at HUDClips.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency recognized by BAT. If apprentices or trainees are to be used, the contractor must provide the grantee/PJ with a copy of the individuals' registration in the apprenticeship program.
- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee.
- Describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making final payment to the contractor. Remind the contractor that willful violations may be subject to contract termination and debarment from future contracts for up to three years. Failure to pay specified wages may result in contractor payments being withheld to satisfy liabilities for unpaid wages and liquidated damages.

NOTICE TO PROCEED Following execution of the contract documents and completion of the pre-construction conference, it is typical practice to issue a Notice to Proceed to the prime/general contractor to provide the date that work can begin and contract time for completion. The Notice to Proceed marks the start of contract performance and, if applicable, provides the basis for assessing liquidated damages (other than CWHSSA liquidated damages). The construction period and basis for assessing liquidated damages specified in the Notice to Proceed must be consistent with those sections of the contract documents. Note, however, that issuance of a Notice to Proceed is not mandatory. If a Notice to Proceed is not issued, an alternate method to provide notification of construction commencement is recommended.

ON-SITE INTERVIEWS to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive.

- Interviews should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a

reasonable judgment as to compliance. Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).

- The interview should take place on the job site and be conducted privately. Interviews are confidential. The interviewer should observe the duties of workers and take notes before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed.

CERTIFIED PAYROLL REPORTS The prime contractor is required to submit a weekly certified payroll report (CPR) to the County beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

PAYROLL SUBMISSION AND REVIEW Once construction starts, the general contractor must complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. Make sure the payroll is signed with an original signature in ink. The payroll must be signed by a principal of the firm, owner, officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. Signatures in pencil; signature stamps; Xerox, pdf and other facsimiles are not acceptable. To ensure compliance, Grantees/PJs should review/ spot check payrolls to guarantee that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no discrepancies or violations. The prime contractor is responsible for the full compliance of all subcontractors and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the County.

PAYROLL RETENTION Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as employee addresses and full SSNs, time cards, tax records; evidence of fringe benefit payments, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

PAYROLLS AND BASIC RECORDS Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

CONTRACT TERMINATION/DEBARMENT A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

RECIPIENT ACKNOWLEDGEMENT AND STATEMENT OF UNDERSTANDING

This is to acknowledge that I have reviewed the aforementioned standards regarding the Davis Bacon requirements. I understand that the above provides general guidelines and summary information about some of the wage provisions but it is not intended to be all inclusive of Davis Bacon labor standards. I also understand that it is my responsibility to read, understand, become familiar with, and comply with Davis Bacon standards that have been established by the U.S. Department of Housing and Urban Development (HUD). I further understand that HUD reserves the right to modify, supplement, rescind, or revise any standard or policy from time to time, with or without notice, as it deems necessary or appropriate and I am responsible for full compliance.

Company Official

Date

Fulton County Community Development Block Grant Program
ATTACHMENT F: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Georgia Security and Immigration Compliance Act

Policy

It is the policy of Fulton County Government, its agencies, departments, and agents to comply with the Georgia Security and Immigration Compliance Act (GSICA), as amended from time to time. The Illegal Immigration and Reform Enforcement Act of 2011: requires Fulton County to require at a minimum, Subrecipients and sub-contractors to submit their E-Verify affidavits to the Subrecipients working on public projects. The Subrecipient then must forward affidavits to the local government within five days of receipt. The Department of Audits will create a form affidavit by August 1, 2011. Until Fulton County is in receipt of the forms, the Subrecipients shall submit forms indicated as "Affidavit Verifying Status of Benefit Applicant, City's Affidavit, Subrecipient's Affidavit and Subcontractor's Affidavit" attached hereto.

This law requires Fulton County to enforce among other measures, the Illegal Immigration and Reform Enforcement Act of 2011:

HB 87 ILLEGAL IMMIGRATION REFORM

- Requires Subrecipients and sub-subcontractors to submit their E-Verify affidavits to the Subrecipients working on public projects. The Subrecipient then must forward affidavits to the local government within five days of receipt. The Department of Audits will create a form affidavit by August 1, 2011.
- Requires local governments to submit E-Verify compliance reports to the state auditor annually by December 31. If the auditor finds a violation in this reporting, the county or city has 30 days to demonstrate compliance or will lose their qualified local government status. Local governments in disagreement may seek relief through the Office of State Administrative hearings. Counties will not be held responsible for the failure of Constitutional Officers failing to abide by this requirement.
- Creates an offense of aggravated identify fraud for those knowingly using fake identification to obtain employment with the punishment being from 1-15 years in prison and a fine of up to \$250,000.
- Authorizes law enforcement officers to verify, through one of several listed documents or immigration verification programs, the immigration status of those they have probable cause to suspect of committing a criminal offense. If the person is found to be an illegal immigrant, the officer may take any action authorized by state or federal law, and has immunity from damages or liability in the process.
- Allows, local law enforcement agencies to arrest any person for a violation of federal immigration law when authorized by federal law.
- Requires private businesses with more than 10 employees to sign an affidavit and attest they are registered to use E-Verify in order to obtain or renew a local business license, occupation tax certificate or other document required to operate a business. Counties and cities must file a report annually, to the Department of Audits, which identifies each license or certificate they issued during the year - to include the name of the person and business and their E-Verify number. Any person, including county employees, who knowingly violate this reporting requirement, shall be guilty of a misdemeanor.

– Requires any applicant who applies for a public benefit (or who must provide identification for any official purpose) to provide secure and verifiable documents to the county to prove their legal status. Local government employees in willful violation are guilty of a misdemeanor. Each year the Attorney General will provide a list of "secure and verifiable" documents.

- Creates the Immigration Enforcement Review Board, attached to the Department of Audits, which will take complaints, investigate and enforce the provisions of this Act.

Background

Senate Bill 529, the "Georgia Security and Immigration Compliance Act" of 2006, established new work eligibility verification requirements for Fulton County and its Subrecipients and subcontractors, effective July 1, 2007. The Act further prohibited the provision of certain services or benefits to any adult without a verification of their immigration status. Additionally, GSCIA required the County to make a reasonable effort to verify the immigration status of any foreign national charged with and jailed for a felony or DUI.

During the 2009 Legislative Session, House Bill 2 amended several sections of the Georgia Code that make up the GSCIA. Effective January 1, 2009, HB 2 --

- Mandates public employers to post their federal identification number and date of authorization on their website;
- Requires a signed, notarized affidavit from Subrecipients attesting registration and participation in E-Verify;
- Defines the term "applicant" for public benefits;
- Expands the definition of "public benefits";
- Clarifies the annual reporting requirement;
- Calls for a reasonable effort to determine a person's nationality when any person is confined in compliance with Article 36 of the Vienna Convention on Consular Relations.
- Directs the County Jailer to inform a foreign national prisoner of their right to have their native country's local consular office notified of their detention and to allow a consular officer from their native country to visit, converse, correspond, and arrange for legal representation; and
- Establishes penalties for noncompliance.

Applicability

Effective January 1, 2010, this policy will apply to Fulton County departments and agencies, Subrecipients, and to the staffs of elected officials.

Definitions

- (1) *Applicant* means any person 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.
- (2) *Subrecipient* means Subrecipients, contract employees, staffing agencies, or subcontractors.
- (3) *Public benefit* means –
 - a). any grant, contract, loan, professional license, or commercial license provided by Fulton County or by appropriated funds of the United States, State of Georgia or Fulton County;
 - b). Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments of assistance are provided to an individual, household, or family eligibility unit by an agency of Fulton County government, or by appropriated Federal, State or County funds including –

- Adult education
- Authorization to conduct a commercial enterprise or business
- Business certificate, license or registration
- Business loan
- Cash allowance
- Disability assistance or insurance
- Down payment assistance
- Energy assistance
- Food stamps
- Gaming license
- Health benefits
- Housing allowance, grant, guarantee or loan
- Loan guarantee
- Medicaid
- Occupational license
- Professional license
- Registration of a regulated business
- Rent assistance or subsidy
- State grant or loan
- Tax certificate required to conduct a commercial business
- Temporary assistance for needy families (TANF)
- Unemployment insurance
- Welfare to work

(4) *Foreign national* means any individual who is a citizen of a country other than the United States.

(5) *Qualified alien* means –

- a). an alien who is lawfully admitted for permanent residence under the federal Immigration and Nationality Act (INA);
- b). an alien who is granted asylum under Section 208 of the INA;
- c). a refugee who is admitted to the United States under Section 207 of the INA;
- d). an alien who is paroled into the United States under Section 212(d) (5) of the INA for a period of at least one year;
- e). an alien whose deportation is being withheld under Section 243(h) of the INA (as in effect prior to April 1, 1997) or whose removal has been withheld under Section 241(b)(3);
- f). an alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- g). an alien who is a Cuban/Haitian Entrant as defined by Section 501(e) of the Refugee Education Assistance Act of 1980; and
- h). an alien who has been battered or subjected to extreme cruelty, or whose child or parent has been battered or subject to extreme cruelty.

(6) *Systematic Alien Verification for Entitlements Program* (SAVE) means an intergovernmental information sharing initiative of the United States Department of

Homeland Security designed to assist in determining a non-citizen applicant's immigration status.

Responsibilities and Procedures

(1) *Generally.*

- a). All appointing authorities shall verify the immigration status of every newly hired employee according to County Policy 100-27.
- b). All agencies providing a public benefit shall register with the SAVE program at <https://save.uscis.gov/Registration>, enter into a Memorandum of Understanding with the SAVE program, and establish a purchase order for the payment of transaction fees.
- c). All agencies providing a public benefit, shall verify the lawful presence of every person 18 years of age or older who applies for state or local public benefits by requiring each applicant to execute an affidavit in the format attached as "Attachment A", affirming that he or she is a legal permanent resident, or a qualified alien lawfully present in the United States. The affidavit is presumed to be proof of lawful presence until eligibility verification is made through the federal Systematic Alien Verification Entitlement (SAVE) program.
- d). All agencies providing a public benefit shall verify the lawful status of all applicants stating that they are aliens lawfully present in the United States through the SAVE program.
- e). All applicants that are not lawfully present in the United States shall be ineligible to receive public benefits.
- e). Verification of lawful presence is not required for the following benefits:
 - Treatment of emergency medical conditions;
 - Short-term, non-cash emergency disaster relief;
 - Immunizations;
 - Certain in-kind services, such as soup kitchens, short-term shelter, crisis counseling and intervention provided by public and nonprofit agencies that are necessary for the protection of life or safety;
 - Prenatal care;
 - Postsecondary education under specified circumstances;
 - Certain community development assistance or financial assistance programs administered by HUD;
 - Other Federal programs including certain social security and Medicare benefits under specified conditions.

(2) *Office of the County Attorney.* The Office of the County Attorney shall --

- a). Require each contract or agreement for the performance of services between Fulton County and a Subrecipient or subcontractor to include a provision stating that compliance with OCGA § 13-10-91 is a condition of the contract and directs the Subrecipient or subcontractor to register and participate in a Federal work authorization program.
- b). Ensure that each agreement between Fulton County and a Subrecipient/subcontractor for the performance of services includes an executed affidavit verifying compliance with OCGA § 13-10-91 in the form provided for in Attachments "F-1" and/or "F-2".

(3) *Office of Intergovernmental Affairs.* The Office of Intergovernmental Affairs shall --

- a). Submit to the Board of Commissioners for its approval during a Regular or Recess Meeting in December of each year, a report documenting Fulton County's compliance with the GSICA.

- b). Provide an annual report on or before January 1 to the Georgia Department of Community Affairs (DCA), in a format prescribed by DCA, documenting Fulton County's compliance with the GSICA, and identifying each public benefit administered by Fulton County.
- (4) *Department of Information Technology.* The Department of Information Technology shall post the County's federally issued identification number (58-6001729) and date of authorization (*date to be provided*) on the County's website.
- (5) *Personnel Department.* The Personnel Department shall monitor new employee work eligibility as required by OCGA § 13-10-91.
- (6) *Department of Purchasing and Contract Compliance.* The Department of Purchasing and Contract Compliance shall –
- a). Require all Subrecipients and subcontractors to register and participate in the federal work authorization program "E-Verify". No Subrecipient shall perform any services unless the Subrecipient or subcontractor registers and participates in a federal work authorization program.
 - b). Require a signed, notarized affidavit from Subrecipients attesting to their registration and participation in the E-Verify program before considering a bid from the subcontractor for the performance of any service.
- (7) *Sheriff's Office.* The Fulton County Sheriff's Office shall –
- a). Make a reasonable effort to determine the nationality of a person confined to the Fulton County Jail for any period of time and charged with a felony, DUI, driving without a license, or a serious misdemeanor.
 - b). If the Jail identifies the prisoner as a foreign national, the Sheriff's Office shall make a reasonable effort to determine if the detainee has been lawfully admitted into the United States, and if lawfully admitted, that such lawful status has not expired.
 - c). Inform a detained foreign national of their right to have their native country's local consular office notified of their detention and of their right to have a consular officer from their country arrange for legal representation.
 - d). Contact the Law Enforcement Support Center of the United States Department of Homeland Security within 48 hours if verification of lawful status cannot be made from documents in possession of the detainee.
 - e). Release from custody, pursuant to the admissions and release policies of the Fulton County Sheriff's Office, a detained foreign national unless the Jail receives a valid notification of pending charges from the United States Department of Homeland Security or another agency.
 - f). Follow the guidelines and procedures developed by the Georgia Sheriff's Association pertaining to the determination of national and immigration status of certain persons admitted into the Fulton County Jail.

Departmental Sponsor: Office of the County Manager.

Policy Review Date: December 31, 2014

References

- Vienna Convention on Consular Relations, Article 36 "*Communication and Contact with Nationals of the Sending State*"
- 8 U.S.C. § 1611, 1621 and 1623
- 42 U.S.C. § 1396 b(v)(30)
- Immigration Reform and Control Act of 1986, Public Law 99-603
- Georgia Security and Immigration Compliance Act of 2006, Act 457 2006 Georgia General Assembly

- Official Code of Georgia sections 13-10-90, 13-10-91, 42-4-14, 50-13-1, 50-36-1
- Georgia Department of Labor Rules § 300-10-1-01 through 300-10-1-.09
- Fulton County Policy 100-27, "*Immigration Reform and Control Act (IRCA)*"

Attachments

Attachment F-1: Applicant for Public Benefits Affidavit

Attachment F-2: Subrecipient/Subcontractor/Sub Sub-subcontractor Affidavit

Fulton County Community Development Block Grant Program
ATTACHMENT F-1: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Affidavit Verifying Status of Benefit Applicant

Pursuant to the Georgia Security and Immigration Compliance Act (O.C.G.A. § 50-36-1), effective July 1, 2007, every agency in **FULTON COUNTY** providing public benefits through any local program is responsible for determining the immigration status of citizen applicants for said benefits.

By executing this affidavit under oath, as an applicant for benefits, I am stating the following with respect to my application for benefits from Fulton County Government:

_____ I am a United States citizen or legal permanent resident 18 years of age or older;

OR

_____ I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act, Title 8 U.S.C., as amended, 18 years of age or older and lawfully present in the United States. My alien number issued by the U.S. Department of Homeland Security or other federal immigration agency is _____.

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20.

Signature of Applicant

Date

Printed Name

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE
____ DAY OF _____, 20____.

Notary Public
My Commission Expires:

Fulton County Community Development Block Grant Program
ATTACHMENT F-2: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Subrecipient Affidavit

By executing this affidavit, the undersigned Subrecipient verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that **City of Fairburn** (hereinafter "Prime Subrecipient") engaged in the physical performance of services under a contract with **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Prime Subrecipient further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services to this contract with **Fulton County Government**, the Prime Subrecipient will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit attached hereto. The Prime Subrecipient further agrees to maintain records of such compliance and provide a copy of each verification to the **Fulton County Government** at the time the subcontractor(s) is retained to perform such service.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent
(Insert Prime Contractor Name)

Title of Authorized Officer or Agent of Prime Contractor

Printed Name of Authorized Officer or Agent

Subrecipient Affidavit

Page 2 of 6

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20__.

Notary Public

My Commission Expires:

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)

Subcontractor Affidavit

Page 3 of 6

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **City of Fairburn** on behalf of **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Subcontractor further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent

(Insert Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20____.

Subcontractor Affidavit

Page 4 of 6

Notary Public
My Commission Expires:

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)

Sub Subcontractor Affidavit

Page 5 of 6

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **City of Fairburn** on behalf of **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Sub Subcontractor further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent

(Insert Sub Subcontractor Name)

Title of Authorized Officer or Agent of Sub Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20__.

Sub Subcontractor Affidavit

Page 6 of 6

Notary Public
My Commission Expires:

NOTE:

*** As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)**

Fulton County Community Development Block Grant Program
ATTACHMENT G: Form HUD 60002 (06/2001)

Compliance with Section 3 Assurance

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 8080(e) (6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Upon signing this document, recipients receiving Federal financial assistance for Housing and Community Development projects and activities covered by Section 3, will adhere to the reporting requirements as specified by 24 CFR Part 135 and HUD Form 60002.

If the recipient agency [Fulton County] receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract with a subrecipient exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient agency and not to the subrecipient.

Signature of Authorized Certifying Official	Applicant
X	City of Fairburn
Title	Date
Elizabeth Carr-Hurst, Mayor	

Fulton County Community Development Block Grant Program ATTACHMENT G-2: Section 3 Reporting Requirements Summary)

ANNUAL SECTION 3 SUMMARY REPORTING REQUIREMENTS

FOR RECIPIENTS OF HUD COMMUNITY PLANNING & DEVELOPMENT FUNDING

***TECHNICAL ASSISTANCE ON FORM HUD-60002**

Why HUD Enforces Section 3?

Each year the U.S. Department of Housing and Urban Development invests billions of federal dollars into distressed communities for projects designed to build and rehabilitate housing, improve roads, develop community centers, and otherwise assist families achieve the American Dream.

The Section 3 regulation recognizes that HUD funding typically results in projects/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide “bricks and mortar”, but can also positively impact the lives of local residents who live in the neighborhoods being redeveloped.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

Further, as a condition of receiving HUD Community Planning and Development assistance, recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, the Department has the legal responsibility to monitor recipients for compliance and can impose penalties upon those that fail to meet these obligations.

Applicability of Section 3 to Community Planning & Development Assistance

The requirements of Section 3 apply to recipients of HUD Community Planning and Development funding exceeding **\$200,000**.

Section 3 covered projects are those in which a (or aggregate) amount of covered funding exceeding \$200,000, is invested into activities involving **housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, community centers, etc.**

[Example: Section 3 applies to the combined investment of more than \$200,000 into multiple single-family housing rehabilitation projects during a program year].

Subrecipients, Contractors or subcontractors that receive contracts in excess of **\$100,000** for Section 3 covered projects/activities are required to comply with the Section 3 regulations in the same manner as direct recipients.

If the recipient agency receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient.

Accordingly, the recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by: 1) Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and 2) Offering 30 percent of new employment opportunities to Section 3 businesses.

Section 3 Covered Community Planning and Development funding

- Community Development Block Grants (CDBG)
- Home Investment Partnership Assistance
- Housing Opportunities for Persons with Aids (HOPWA)
- Economic Development Initiative (EDI)
- Brownfield Economic Development Initiative (BEDI)
- Emergency Shelter Grants
- Homeless Assistance
- University Partnership Grants
- Neighborhood Stimulus Program (NSP)
- Certain Grants Awarded Under HUD Notices of Funding Availability (NOFAs)

*NOTE: The requirements of Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction.

Section 3 applies to the **entire** covered project or activity regardless of whether the activity was fully or partially funded with covered assistance.

Section 3 Covered Recipient Agencies

"Recipient" refers to any entity that receives Section 3 covered financial assistance directly from HUD or from another recipient and includes, but is not limited to any of the following:

- States; Units of Local Government; Native American Tribes; or other Public Bodies
- Public or Private Nonprofit Organizations
- Private Agencies or Institutions
- Mortgagors; Developers; Limited Dividend Sponsors; Builders; Property Managers; Community Housing Development Organizations
- Successors, assignees, or transferees of any such entity listed above
- Recipients do **NOT** include any ultimate beneficiary under the HUD program that Section 3 applies and does **NOT** refer to contractors.

Triggering the Requirements of Section 3

Section 3 is triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting, or training opportunities.

The Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, each agency must still submit Section 3 annual reports indicating this information.

Recipient Responsibilities Pursuant to Section 3

Each recipient (and their covered contractors, subcontractors, or subrecipients) are required to comply with the requirements of Section 3 for employment, training, or contracting opportunities resulting from the expenditure of covered funding. This responsibility includes:

1. Implementing procedures to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance;
2. Notifying potential contractors working on Section 3 covered projects of their responsibilities;
3. Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];
4. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
5. Assisting and actively cooperating with the Department in making contractors and subcontractors comply;
6. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
7. Documenting actions taken to comply with Section 3; and
8. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.

In addition to the responsibilities described above, **State and County agencies or consortia** that distribute covered funds to units of local government, nonprofit organizations, or other subrecipients, must attempt to reach the minimum numerical goals set forth at 24 CFR Part 135.30, regardless of the number of subrecipients that receive covered funding. State or County agencies must also do the following:

1. Inform subrecipients about the requirements of Section 3;
2. Assist subrecipients and their contractors with achieving compliance;
3. Monitor subrecipients' performance with respect to meeting the requirements of Section 3; and
4. Report to HUD on the cumulative Section 3 activities taking place within their jurisdiction on an annual basis.

Section 3 Residents and Business Concerns

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or
2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

Recipients can use their discretion for determining the type of verification that is required by prospective Section 3 residents and business concerns. Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

Section 3 Summary Reports (Form HUD-60002)

Annually, each direct recipient of Community Planning and Development funding is required to submit form HUD-60002 to HUD's Economic Opportunity Division in Washington, DC. , preferably online from the following website: www.hud.gov/section3.

Due Date: Form HUD-60002 is due at the same time as annual performance (e.g., CAPERS) reports

The Section 3 Summary Report shall follow the same program, fiscal, or calendar year as the annual performance report and should correspond to the covered projects and activities that were administered during the reporting period.

NOTE: Section 3 reports must be submitted by all agencies that receive Community Planning and Development funding in excess of \$200,000 whether the requirements were triggered or not.

Determining What Should Be Reported on Form HUD-60002

Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations **AND** those of its covered contractors, subcontractors, and subrecipients. Each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HUD funding that was received by the recipient for covered projects/ activities during the specified reporting period.
- The total number of new employees that were hired by the recipient and/or its covered contractors, subcontractors, and subrecipients, as a result of performing or completing covered project/activities.
- The number of new employees that were hired by the recipient (or its covered contractors, subcontractors, and subrecipients), as a result of covered projects/activities, that met the definition of a Section 3 resident.
- The total number of man hours worked on covered projects (optional).
- The aggregate number of hours worked by Section 3 residents on covered projects (optional).
- The total number of Section 3 residents that participated in training opportunities that were made available by the recipient agency, its contractors, subrecipients, or other local community resource agencies.
- The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with covered funding.

- The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, subrecipients, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

Section 3 Reporting and Compliance Determinations

Absent evidence to the contrary, the Department considers recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

- a. 30 percent of the aggregate number of new hires shall be Section 3 residents;
- b. 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- c. 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.

Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.

Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 to HUD.

Important Notes for Submitting Form HUD-60002

- Recipients must submit a separate form HUD-60002 for each type of covered funding (separate reports must be submitted for CDBG and HOME funding).
- Use the online Section 3 Summary Reporting System at: www.hud.gov/section3 to ensure that form HUD- 60002 is received by the Economic Opportunity Division in HUD Headquarters in a timely manner.
- The "reporting period" option in the online Section 3 Summary Reporting System (box #7) lists quarters but the Section 3 reporting is an annual requirement. Accordingly, recipients should select **Quarter 4** to document the total amount of covered activities/projects that were completed during the entire reporting period.
- If the recipient (or its covered contractors, subcontractors and subrecipients) did not hire any new employees during the reporting period, and/or if no covered construction or non-construction contracts were awarded, the recipient must indicate this in Part III of form HUD-60002 and certify that this information is true and accurate by penalty of law.

Where Are Reports Submitted

Form HUD-60002 must be submitted to HUD's Economic Opportunity Division, in Washington, DC. Recipients are strongly encouraged to submit form HUD-60002 online at: www.hud.gov/section3.

Recipients can also download a hard copy of form-HUD 60002 from the website listed above. Hard copies shall be submitted via fax or mail to:

U.S. Department of Housing and Urban Development
Attn: Economic Opportunity Division
451 Seventh Street, SW
Room 5235
Washington, DC 20410
202-708-1286 (fax)

Additional Section 3 Guidance and Technical Assistance

The Economic Opportunity Division is committed to providing recipient's guidance and technical assistance for compliance with the requirements of Section 3.

For additional information, please visit the Section 3 website at www.hud.gov/section3. This webpage provides the following tools and information:

- Section 3 Statute—12 U.S.C. 1701u
- Section 3 Regulation—24 CFR Part 135
- Frequently Asked Questions
- Section 3 Model Programs
- Guidance on Section 3 and Economic Stimulus Funding
- Guidance on Section 3 and the Neighborhood Stimulus Program (NSP)
- Sample Section 3 Certification Forms (residents and business concerns)
- Link to HUD's Local Income Eligibility Calculator
- Link to Section 3 Annual Reporting System (form HUD-60002)
- Downloadable Forms
- Contact Information for Economic Opportunity Division staff
- Email inquiries on Section 3 can be sent to section3@hud.gov

Fulton County Community Development Block Grant Program
ATTACHMENT H: Form HUD 40076 RHED (03/2002)

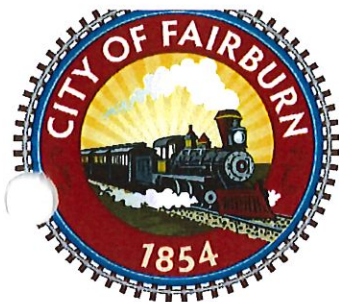
Environmental Review Assurances

The award of funds under this program is subject to the environmental review requirements of 24 CFR part 50. These requirements only apply to grant-funded projects fully or partially funded by HUD, undertaken by grantees and all tiers of subgrantees and subcontractors.

When a project is limited to activities described in 24 CFR 50.19, it does not require an environmental review. All other activities (for example, acquisition of real property, construction, and alteration) are subject to an environmental review. Since the approval of the initial grants in this program must occur prior to the identification of properties to be treated, as is provided for in 24 CFR 50.3(h), the applicant hereby agrees that it will assist Fulton County CDBG (FC CDBG) Program to comply with 24 CFR part 50, and that the applicant shall:

1. Advise FC CDBG Program of all projects requiring a review under 24 CFR part 50 prior to their approval and supply FC CDBG Program with all available and relevant information necessary for FC CDBG Program to perform for each property any environmental review required by 24 CFR part 50;
 2. Carry out mitigating measures required by FC CDBG Program or select an alternate property or project;
 3. Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend FC CDBG Program or local funds for these program activities on a HUD-assisted project until FC CDBG Program has completed an environmental review to the extent required under 24 CFR 50 and has given notification of its approval in accordance with 24 CFR 50.3(h) (3); and
4. Include the above requirements in all subgrants and subcontracts.

Signature of Authorized Certifying Official	Applicant
X	City of Fairburn
Title	Date
Elizabeth Carr-Hurst, Mayor	



CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: APPROVAL OF THE 2018 CDBG CONTRACT WITH FULTON COUNTY

() AGREEMENT () POLICY / DISCUSSION (X) CONTRACT
() ORDINANCE () RESOLUTION () OTHER

Submitted: 05/09/2019 Work Session: 05/13/2018 Council Meeting: 05/13/2019

DEPARTMENT: Engineering

BUDGET IMPACT: The 2018 CDBG Contract award is \$162,487. These funds are received through reimbursement request(s).

PUBLIC HEARING? () Yes (X) No

PURPOSE: For Mayor and Council to approve the 2018 CDBG Contract with Fulton County for the Dodd Street Underground Utility Relocation Project.

HISTORY: In addition to the 2017 grant award, Fulton County allocated additional CDBG funding that could be used for demolition and general infrastructure. The 2017 additional infrastructure funding was used to pay for some of the materials required to do the proposed overhead to underground utility relocation on Dodd Street.

FACTS AND ISSUES: It is our goal to use the funds derived from the 2018 Fulton County CDBG Program to continue the infrastructure project initiated with the additional 2017 grant funding. This project consists of the purchase of the remaining material and the actual infrastructure/utility relocation work required to install sidewalks on the north side of Dodd Street (from W. Campbellton St. to Mullis St.) on a future project.

RECOMMENDED ACTION: Staff recommends that Mayor and City Council to approve the 2018 CDBG Contract with Fulton County for \$162,487.


Elizabeth Carr-Hurst, Mayor



**FULTON COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
Community Development Block Grant Program
137 Peachtree Street, Suite 300
Atlanta GA, 30303**

***AN AGREEMENT BETWEEN FULTON COUNTY
and
The City of Fairburn
STATE OF GEORGIA, COUNTY OF FULTON***

2018 PUBLIC FACILITIES/INFRASTRUCTURE CONTRACT II

CFDA Number 14.218 – Community Development Block Grants

Federal Award Identification Number: B-18-UC-13-0003

City of Fairburn's DUNS Number: 099631004

Federal Award Date: 01/01/2018

Total Fulton County 2018 CDBG Municipality Agreement: \$162,487.00

THIS AGREEMENT, between Fulton County, Georgia, the Department of Community Development (hereinafter referred to as "the County"), a political subdivision of the State of Georgia, acting by and through its duly elected Board of Commissioners, and the **City of Fairburn** (hereinafter referred to as "the Subrecipient"), a municipality organized and existing in Fulton County under the laws of the State of Georgia.

WITNESSETH THAT:

WHEREAS, in August, 2018 the Fulton County Board of Commissioners approved the 2018 Annual Action Plan and substantial amendments as part of the overall Fulton County 2015 – 2019 Consolidated Planning document which includes Community Development objectives and the projected uses of funds for the Community Development Block Grant (CDBG) program activities, as prescribed under the Housing and Community Development Act of 1974, as amended; and

WHEREAS, the City of Fairburn has been provided CDBG funds by Fulton County for **Public Facility and Improvements** services as set forth in 24 CFR §570.201(c) and to meet a national objective benefiting low/moderate income persons; as set forth in 24 CFR §570.208(a)(1)(i); and

WHEREAS, the Twenty Percent (20%) cap on Administrative Cost expenditures pursuant to CFR §570.200(g) has been reached; and,

WHEREAS, the year 2018 CDBG allocation awarded to the City of Fairburn in the amount of **\$162,487.00**, shall be specifically used for Dodd Street: Road Underground Utilities Relocation and Sidewalk in the Lightning Community to address public health and safety concerns and shall not be used towards any Program Administrative Costs. The activities are designed to benefit low-/moderate income persons as required to meet the CDBG national objective; and

WHEREAS, the contract I, ended on 03/01/2019, and \$zero amount of work was completed.

WHEREAS, contract II starts on 03/02/2019 in the amount of \$162,487.00

WHEREAS, these activities are designed to benefit low and moderate income persons as required to

1 **WHEREAS**, these activities are designed to benefit low and moderate income persons as required to
2 meet the CDBG national objective; and
3

4 **WHEREAS**, this Agreement constitutes the contractual arrangement for said improvements and/or
5 services that have been prepared for execution between the County and the City as consistent with the Fulton
6 County's Consolidated Plan Annual Action Plan for fiscal year 2018 to support the 2015-2019 Consolidated
7 Plan goals.
8
9

10 **NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the parties hereby
11 agree as follows:
12

13 **SECTION 1.0 – STATEMENT OF WORK**
14

- 15 1. Under this Agreement, the Subrecipient shall provide the services under this Agreement in accordance
16 with the "Statement of Work" attached hereto and made a part hereof as *Attachment A*, consistent with
17 applicable federal rules and regulations governing the use of CDBG funds. Additionally, the
18 Subrecipient shall perform the work according to the "Implementation Schedule" attached hereto and
19 made a part hereof as *Attachment A*.
20
- 21 2. Under this Agreement, the Subrecipient shall perform the public facility or improvements work
22 according to the "Implementation Schedule," which shall be executed in accordance with the
23 Agreement. The "Implementation Schedule" was submitted in the Subrecipient's year 2018 CDBG
24 application and is attached hereto and made a part hereof as *Attachment B*.
25
- 26 3. Under this Agreement, the Subrecipient shall also provide a CDBG "Cost Reimbursement Budget" for
27 the project that is being executed with CDBG funds, as submitted in the Subrecipient's 2018 CDBG
28 application. The "Cost Reimbursement Budget" is attached hereto and made a part hereof as
29 *Attachment C*.
30
- 31 4. Under this Agreement, the Subrecipient shall submit, on not less than a monthly basis, a "Monthly
32 Performance Report" detailing project progress as attached hereto and made a part hereof as
33 *Attachment D and Attachment D-2*.
34
- 35 5. All work described in *Attachments A, B, and C* must be consistent with applicable federal rules and
36 regulations governing the use of CDBG funds, and the Subrecipient shall ensure that none of the work
37 described constitutes a Program Administrative Cost.
38

39 **SECTION 2.0 – COMPENSATION FOR SERVICES AND WORK**
40

- 41 1. The County shall make reimbursement compensation for the services described in Section 1.0
42 (*Statement of Work*) herein, during the performance of this contract, in accordance with the "Cost
43 Reimbursement Budget" attached hereto and made a part hereof as *Attachment C*.
44
- 45 2. The County shall make payment to the Subrecipient upon conditional commitment of funds as the
46 project is subject to Environmental Review. Payment shall then be made through reimbursement of
47 costs incurred by the Subrecipient in the performance and execution of the services under this
48 contract. Payments shall be made timely upon the County's receipt of proper and sufficient
49 documentation of such costs and as satisfactory to the County. The County shall have the right not to
50 pay any request for reimbursement or part thereof if not properly supported, or if the costs requested
51 or a part thereof, as determined by the County, are reasonably in excess of the actual stage of
52 completion.
53
- 54 3. Such documentation shall include, but not be limited to time sheets, vendors' and suppliers' invoices or
55 vouchers, mileage logs, etc.
56
- 57 4. This documentation, along with a written request for reimbursement and a statement of costs incurred
58 shall be submitted to the attention of the assigned Community Development Specialist at the Fulton
59 County Department of Housing and Community Development, 137 Peachtree Street, SW, Suite 300,

Atlanta, GA, 30303. A minimum of one copy of the request and the statement shall be included with the submission. One copy must be accompanied by documentation supporting the eligible costs.

SECTION 3.0 – TERM OF AGREEMENT

1. The completion date of this Agreement shall be March 31, 2021, unless otherwise extended in writing, terminated by mutual agreement, or by the County, or in accordance with other terms and provisions contained herein. Any modifications to the term of the Agreement shall be documented through an amendment process as outlined in the County's Citizen Participation Plan as executed by the County. The term of this Agreement shall be in compliance with the Fiscal Year 2018-2020 Cooperative Agreement between Fulton County and the City.
2. The completion date of this Agreement is computed on the basis that the Subrecipient is eligible to receive retroactive costs incurred on or after March 2, 2019. The United States Department of Housing and Urban Development (HUD) with the County will make funds available for eligible incurred costs upon execution of the year 2017 grant agreement.
3. Although the completion date shall be (24) months and the completion date shall be March 31, 2021, the County periodically reports CDBG accomplishments and expenditures to HUD. By November 1, 2019, HUD traditionally reviews the County's collective accomplishments and expenditures, thus the County strongly encourages all Subrecipient services and work to be near completion by September 15, 2019 with no less than seventy percent (70%) of its eligible reimbursement costs submitted appropriately for review.

SECTION 4.0 - MODIFICATIONS TO AGREEMENT

1. In the event the Subrecipient chooses to modify its pre-approved "Statement of Work" by adding or deleting a project, the Subrecipient shall submit to the County a written request for the approval of such changes 30 days after execution of the contract. No such modification shall become effective unless and until approved by the County in the form of a formal amendment to the Subrecipient's "Statement of Work".
2. Additions or deletions to the "Statement of Work", which have been approved as a part of the County's Consolidated Plan may be allowed one time per Fiscal Year, subject to County approval. The Subrecipient must submit its request within the time frame referenced above.
3. The County must adhere to 24 CFR 91.505 "Amendments to the Consolidated Plan". The Subrecipient's failure to request modifications 30 days after execution of the contract shall result in the County's automatic denial of any such modifications to said Agreement and shall be construed as the Subrecipient's failure to properly and timely fulfill its obligations under this Agreement and will result in the County's right to exercise its options under Section 6.0 (*Termination of Agreement for Cause*) of this Agreement.
4. This Agreement constitutes the entire contractual arrangement between the County and the Subrecipient, and there are no further written or oral agreements with respect thereto. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by the County's and the Subrecipients' duly authorized representatives.
5. Further, in the event of any material change or modification in the Subrecipient's Agreement or agreement with any other funding source during the course of this Agreement, the Subrecipient shall immediately notify the County of such change. In such event, the County shall have the right to terminate its obligations under this Agreement, discontinue future funding hereunder, and demand the refund or return of funds previously advanced.

SECTION 5.0 – EXTENSIONS

In the event the Subrecipient determines that it cannot begin projects as scheduled or complete

1 projects within the time frame indicated by the Subrecipient in Attachment B, no extension will be
2 granted.
3

4 **SECTION 6.0 – SUSPENSION OF WORK**

- 5
6 1. The County may by written notice to the Subrecipient suspend at any time the performance of all or
7 any portion of the services to be performed under this Agreement. Upon receipt of a suspension
8 notice, the Subrecipient must unless the notices requires otherwise: (i) immediately discontinue
9 suspended services; (ii) place no further orders or subcontracts for material, services or facilities with
10 respect to suspended services, other than to the extent required in the notice; and (iii) take any other
11 reasonable steps to minimize costs associated with the suspension.
12
13 2. The County may elect to resume suspended service upon written notice to the Subrecipient. Upon
14 receipt of notice to resume suspended services, the Subrecipient will immediately resume performance
15 under this Agreement as required in the notice.
16
17

18 **SECTION 7.0 – TERMINATION OF AGREEMENT**

19 20 1. **Termination for Cause**

21
22 Time is of the essence and if, through any cause, the Subrecipient shall fail to fulfill in a timely and
23 proper manner its obligations under this Agreement, or in the event that any of the provisions or
24 stipulations of this Agreement are violated by the Subrecipient, the County shall thereupon have the
25 right to terminate this Agreement by providing written notice to the Subrecipient of the County's intent
26 to terminate the Agreement, specifying the reasons for such intention for termination. Unless within
27 ten (10) calendar days after serving of such notice (by hand delivery or posting in the U.S. Mail) to the
28 Subrecipient such violation or delay shall cease or arrangements for correction satisfactory to the
29 County be made, the Agreement shall, upon expiration of said ten (10) calendar days, be terminated
30 without further notice. Upon such termination, the Subrecipient will be compensated by the County for
31 expenses deemed by the County to be due and reasonable.
32

33 The Subrecipient shall be liable for any damage to the County resulting from the Subrecipient's refusal
34 or failure to complete the work within the specified time period, and said damages shall include, but not
35 be limited to, any additional costs associated with the County obtaining the services of another
36 Subrecipient to complete the project.
37

38 2. **Termination for Convenience of the County**

39 In the event the County determines that it is no longer feasible or in its best interest to continue
40 assisting the service covered by this Agreement, or should the U.S. Department of Housing and Urban
41 Development institute corrective and/or remedial actions against the County in accordance with
42 regulations under the CDBG program where such actions impede or halt the disbursement of the
43 County CDBG funds for this project, the County may terminate this Agreement by giving at least fifteen
44 (15) calendar days prior notice in writing (by hand delivery or posting in the U.S. mail) to the
45 Subrecipient.
46

47 In addition, in the event this agreement has been terminated due to the default of the Subrecipient, and
48 if it is later determined that the Subrecipient was not in default pursuant to the provisions of this
49 Agreement at the time of termination, then such termination shall be considered a termination for
50 convenience pursuant to this paragraph.
51

52 **SECTION 8.0 – INDEPENDENT SUBRECIPIENT STATUS**

53
54 Nothing herein contained shall be deemed to create a relationship other than that of independent
55 Subrecipient between the County and the Subrecipient. Under no circumstances shall the
56 Subrecipient, its principals, employees, subcontractors, associates, or agents be deemed employees,
57 agents, partners, successors, assigns, or legal representatives of the County except as specifically
58 required herein.
59

1 **SECTION 9.0 – ASSIGNMENT OF AGREEMENT**

2
3 The Subrecipient shall not make any purported assignment of this Agreement or any part thereof, or
4 delegate the duties herewith without prior written consent of the County. Any attempted assignment or
5 delegation of duties by the Subrecipient without prior expressed written consent of the County shall at
6 the County's sole option terminate this Agreement without any notice to the Subrecipient of such
7 termination. The Subrecipient binds itself, its successors, assigns, and legal representatives of such
8 other party in respect to all covenants, agreements and obligations contained herein.
9

10
11 **SECTION 10.0 – PROGRAM INCOME**

- 12
13 1. Program income, as defined in 24 CFR 570.500 (a), means any gross income received by the recipient
14 (County) or a Subrecipient (the Subrecipient) directly generated from the use of CDBG funds, except
15 as provided in paragraph (a)(4) of 570.500. When program income is generated by an activity that is
16 only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of
17 CDBG funds used. The Subrecipient shall provide information regarding program income, with a
18 breakdown of the CDBG allocation, to the County concurrently with the quarterly reports described and
19 required by Section 13.0 of this Agreement.
20
21 2. Any program income received or generated by the Subrecipient as a result of the CDBG assistance
22 provided under this Agreement is to be retained by the Subrecipient during the duration of this
23 Agreement. The activities undertaken with any program income generated shall conform to
24 *Attachment A* of this Agreement ("Statement of Work") and shall comply with all other provisions of this
25 Agreement.
26
27 3. If at any time during the duration of this Agreement the Subrecipient retains program income, transfers
28 of grant funds by the County to the Subrecipient shall be adjusted according to the principles described
29 in paragraphs (b) (2) (i) and (ii) of §570.504, which state that all program income must be disbursed for
30 eligible activities before additional cash withdrawals are made by the recipient from the U.S. Treasury.
31

32 **SECTION 11.0 – REVERSION OF ASSETS**

- 33
34 1. Upon expiration or termination of this Agreement, any remaining program income that is either on hand
35 or to be received after the Agreement's expiration, shall be transferred by the Subrecipient to the
36 County as required by 24 CFR 570.503(b)(7) "Agreements with Subrecipients".
37
38 2. Further, in the event that the Subrecipient should sell or otherwise dispose of any property acquired
39 with the County CDBG funds, the manner of said disposition shall result in the County being
40 reimbursed in the amount of the current fair market value of the property at that time less any portion
41 of the value attributable to expenditures of non-County CDBG funds. In the event that such a sale or
42 disposition occurs more than ten (10) years after expiration or termination of this Agreement, such
43 reimbursement shall not be required.
44

45 **SECTION 12.0 – COPYRIGHT AND PUBLICITY**

- 46
47 1. No report, map, or other document produced in whole or in part under this Agreement shall be the
48 subject of an application for copyright by or on behalf of the Subrecipient without the prior written
49 consent of the County. All such reports, maps, or other documents shall become and be deemed the
50 property of the County and title therein shall automatically vest in the County.
51
52 2. Further, any publicity given to this project must identify the County prominently as a sponsoring
53 agency. Specifically, at all places of, and in all publications concerning, this project, the Subrecipient
54 agrees to display and make known that the project was assisted under the auspices of the Fulton
55 County Community Development Block Grant program. In the event of new construction or substantial
56 rehabilitation, and at the County's discretion, the Subrecipient shall acknowledge the use of CDBG
57 funds for the project by installation of a permanent plaque at the project site. The County in
58 collaboration with the Subrecipient shall determine design and replica for the plaque.
59

1 **SECTION 13.0 – RECORDS AND REPORTS**

2
3 **1. Records**

4 The Subrecipient shall maintain accounts and records, (including an annual Audit) personal property
5 and financial records, adequate to identify and account for all costs pertaining to this Agreement and
6 such other records as may be requested by the County including financial data pertaining to the
7 preparation of the U.S. Department of Housing and Urban Development (HUD) Consolidated Annual
8 Performance and Evaluation Report (CAPER) to assure proper accounting for all funds, both public
9 and private. Said records shall be made available for audit purposes to the County, HUD, or any
10 authorized representative thereof, upon reasonable request and within three (3) days of said request.

11
12 **Retention**

13 Pursuant to 24 CFR 570.502(a) (7) (ii), the retention period of individual CDBG activities shall be the
14 longer of 3 years after the expiration or termination of the subrecipient agreement under 24 CFR
15 507.503, or 3 years after the submission of the annual performance and evaluation report, as
16 prescribed in 24 CFR 91.520 of this title, in which the specific activity is reported on for the final time.
17 In addition, records for individual activities subject to the reversion of assets provisions at §570.503(b)
18 (7) or change of use provisions at §570.505 must be maintained for as long as those provisions
19 continue to apply to the activity. Moreover, records for individual activities for which there are
20 outstanding loan balances, other receivables, or contingent liabilities must be retained until such
21 receivables or liabilities have been satisfied.

22 The Subrecipient's records and accounts shall at all times meet or exceed the applicable requirements
23 of federal, state, and local laws, rules, and regulations. The Subrecipient's duty to retain records and
24 permit inspections and copying shall remain in force and effect even after the expiration or termination
25 of this Agreement.

26
27 **2. Reports**

28 The Subrecipient shall provide the County with a written plan that outlines the activities and processes
29 of the program that will be funded by CDBG. Further, the Subrecipient shall submit detailed reports on
30 the progress made and services of their programs based on the objectives they establish in response
31 to local needs and goals. Objectives reflect the common ways that Subrecipients work to achieve their
32 goals. The Objectives incorporated into the proposed Outcome Measurement System are: Suitable
33 Living Environment, Decent Housing, and Economic Opportunity. Outcome measurements will be
34 based on (a) Availability /Accessibility (b) Affordability (c) Sustainability. Outcomes show how
35 programs benefit a community or people served. Indicators tell whether an outcome is occurring.

36
37 At a minimum, these reports shall be submitted on a monthly basis. The monthly reports are due the
38 fifth (5th) of the following month for activities which occurred in the previous month, and shall be
39 submitted on the "Public Facility Monthly Performance Report" attached hereto and made a part hereof
40 as *Attachment D*. The year-end reports are due no later than thirty (30) days after the contract expires
41 for activities which occurred during the funding year in the "Year End Performance Report" attached
42 hereto and made a part hereof as *Attachment D-2*.

43
44 Said reports shall be submitted to the County, to the attention of the assigned Community
45 Development Specialist at the Fulton County Department of Housing and Community Development,
46 137 Peachtree Street, SW, Suite 300, Atlanta, GA., 30303. Two (2) copies of the report shall be
47 included in each submission, one (1) copy for the Community Development Specialist and the other
48 one (1) copy addressed to the CDBG Community Development Grant Manager.

49
50 **SECTION 14.0 – INSPECTION OF FILES AND RECORDS**

51
52 The County shall at all reasonable times have access to the pertinent offices and books and records
53 (including an annual Balance Sheet or Independent Audit) of the Subrecipient for inspection of the
54 activities performed and expenses incurred under this Agreement. The County will perform and the
55 Subrecipient shall be prepared to meet the requirements of, at least, one (1) audit per year.

56
57 **SECTION 15.0 – CITIZEN PARTICIPATION MEETINGS AND TECHNICAL ASSISTANCE MEETINGS**

58
59 Subrecipient representative must attend at least one (1) CDBG related Citizen Participation meeting,

participate in every Technical Assistance (TA)/Needs Assessment session and the annual Monitoring session during each contract year. The County shall provide meeting dates and locations timely, and shall provide comprehensive information to assist the Subrecipient to perform efficiently and effectively.

SECTION 16.0 -- MONITORING

Through on-site and remote monitoring, the County determines whether the Subrecipient's performance meets CDBG program requirements and assists to improve the Subrecipient's performance by providing guidance and making recommendations. Monitoring visits are conducted no less than once per contract term with a specific purpose to validate the accuracy of information presented in the program participant's performance reports. On-site and remote monitoring is also conducted to follow-up on problems identified during the Consolidated Annual Performance and Evaluation Report (CAPER) assessment that are not resolved as of the date of the monitoring, to determine compliance for those activities where there is sufficient information, to make eligibility and/or national objective determinations, and to ascertain the Subrecipient's ability to ensure that activities meet compliance requirements.

SECTION 17.0 - FINDINGS / NON-COMPLIANCE

1. The Subrecipient shall be notified in writing by the County of any Findings or Concerns identified during each monitoring visit. The Subrecipient shall be given thirty (30) calendar days from the time of written notification by the County for corrective actions to take place. The County will not unreasonably withhold acceptance of corrective actions taken in good faith by the Subrecipient. Upon the Subrecipient proving satisfactory corrective action, a letter shall be sent to the Subrecipient stating that such findings or concerns have been addressed. Pursuant to 24 CFR 570.501, in the event the Subrecipient fails to correct the findings or fails to comply with terms and provisions of this Agreement, the County may take corrective and remedial actions such as those described in 24 CFR 570.910. Such remedial actions may include, but are not limited to, the following:
 - a. Temporarily withhold cash payments pending correction of the deficiency;
 - b. Disallow all or part of the cost of the activity or action not in compliance;
 - c. Wholly or partly suspend or terminate the current award;
 - d. Withhold further award; or
 - e. Take other remedies that may be legally available.

SECTION 18.0 – UNIFORM ADMINISTRATIVE REQUIREMENTS

During its performance under this Agreement, the Subrecipient shall comply with the requirements and standards of the Office of Management and Budget (OMB) codified at 2 CFR part 200 and guidance at a new part, 2 CFR part 2400 which streamlines the Federal government's guidance on administrative requirements, cost principles, and audit requirements to more effectively focus Federal resources on improving performance and outcomes, while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. <https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-andbudgets-uniform>)

The uniform guidance supersedes, consolidates, and streamlines requirements from eight OMB Circulars:

- A-21, Cost Principles for Educational Institutions,
- A-87, Cost Principles for State, Local and Indian Tribal Governments,
- A-89, Catalog of Federal Domestic Assistance,
- A-102, Grants and Cooperative Agreements With State and Local Governments,
- A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions

- of Higher Education, Hospitals and Other Non-Profit Organizations,
- A-122, Cost Principles for Non-Profit Organizations,
- A-133, Audits of States, Local Governments, and Non-Profit Organizations, and
- The guidance in OMB Circular A-50, Audit Follow-up, on Single Audit Act follow-up.

SECTION 19.0 – EQUAL OPPORTUNITY AND NON-DISCRIMINATION

1. Civil Rights Act of 1964 (As amended)

The Subrecipient shall comply with all Federal requirements imposed by or pursuant to Title VI and Title VII of the Civil Rights Acts, as Amended; Age Discrimination In Employment Act; Rehabilitation Act of 1973, as Amended, Section 504; Equal Pay Act; The American with Disabilities Act of 1990, as Amended; Fair Housing Act, as Amended; and other applicable Acts which prohibits discrimination on the ground of race, color, religion, sex, age, national origin, handicap, disability, or familial status. No person in the United States shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Agreement.

2. Section 109 of the Housing and Community Development Act of 1974 (As amended)

The Subrecipient shall also comply with Section 109 of the Housing and Community Development Act of 1974, as amended, which requires that no person in the United States shall on the ground of race, color, national origin, sex, age, disability, or familial status, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available pursuant to said Act.

3. Further, during the performance of this Agreement, the Subrecipient agrees as follows

- (A) The Subrecipient shall not discriminate against any employee, or applicant for employment, because of race, religion, color, sex, national origin, age, disability, or familial status. As used herein, the word "employment" means and includes without limitation the following:
- Recruiting, whether by advertising or other means; compensation or wages, whether in the form of rates of pay, or other forms of compensation; selection for training including apprenticeship; promotions; upgrades; demotions; downgrades; transfers; layoffs; and terminations.
 - The Subrecipient shall post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.
- (B) The Subrecipient shall in all solicitations or advertisements for employees, placed by or on behalf of itself, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, age, disability or familial status.
- (C) The Subrecipient shall, when applicable, send to each labor union or representative of workers with which the Subrecipient has a collective bargaining agreement or other Agreement or understanding, a notice representative of the Subrecipient's commitment under the Equal Opportunity Program of the County and under this Article and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (D) The Subrecipient shall file compliance reports at reasonable times and intervals with the County in the form and to the extent prescribed by the County. Compliance reports filed when directed shall contain information as to the employment practices, policies, programs, and statistics of the Subrecipient and his Subrecipients.
- (E) The Subrecipient shall include the provisions of paragraph (A) through (F) of this Equal

1 Employment Opportunity Clause in every subcontract or purchase order so that such
2 provisions will be binding upon each subcontractor or vendor.

- 3
4 (F) The Subrecipient shall comply with the provisions of Section 109 of the Act which provides, in
5 part, that any prohibition against discrimination on the basis of age under the Age
6 Discrimination Act of 1975, or as provided in Section 504 of the Rehabilitation Act of 1973,
7 shall also apply to any program or activity funded in whole or in part with funds made available
8 pursuant to the Act and provided hereunder. These provisions shall also be binding upon
9 each subcontractor or vendor.

10
11 **4. Section 3 of the Housing and Urban Development Act of 1968**

- 12
13 (A) The work to be performed under this Agreement is subject to the requirements of Section 3 of
14 the Housing and Urban Development Act of 1968, as amended. Section 3 requires that, to the
15 greatest extent feasible, opportunities for training and employment be given to low income
16 persons residing within the unit of local government in which the project is located, and that
17 Agreements for work in connection with the project be awarded to businesses which are
18 located in, or owned in substantial part, by persons residing in the area of the project.
19
20 (B) Accordingly, the Subrecipient shall, when applicable, send to each labor organization or
21 representative of workers with which it has a collective bargaining agreement or other
22 Agreement or understanding, a notice of its commitment under this Section 3 clause and shall
23 post copies of the notice in conspicuous places available to employees and applicants for
24 employment or training.
25
26 (C) The Subrecipient shall include this Section 3 clause in every subcontract for work in
27 connection with the project and will take appropriate action pursuant to the subcontract upon a
28 finding that the subcontractor is in violation of regulations issued by the Secretary of Housing
29 and Urban Development, 24 CFR Part 135. The Subrecipient shall not subcontract with any
30 subcontractor where it has notice or knowledge that the latter has been found in violation of
31 regulations under 24 CFR Part 135, unless the subcontractor has first provided it with a
32 preliminary statement of ability to comply with the requirements of those regulations. The
33 Federal Section 3 Provisions are attached hereto and made a part hereof as *Attachment G*.

34
35 **5. Equal Access to Housing in HUD Programs**

- 36
37 (A) Through final rule effective March 5, 2012 (Equal Access to Housing in HUD Programs
38 Regardless of Sexual Orientation or Gender Identity) 24 CFR Parts 5, 200,203, 236, 400, 570,
39 574, 882, 891, and 982, HUD implements a policy to ensure that its core programs are open to
40 all eligible individuals and families regardless of sexual orientation, gender identity, or marital
41 status.
42
43 (B) It is important that HUD and Fulton County ensure that their programs do not involve
44 discrimination against any individual or family otherwise eligible for HUD-assisted or -insured
45 housing, but that its policies and programs serve as models for equal housing opportunity.
46 Failure to comply with the requirements of this Rule will be considered a violation of the
47 program requirements and will subject the non-compliant grantee to all sanctions and
48 penalties available for program requirement violations.
49
50 (C) Under 24 CFR 5.100 "sexual orientation" is defined -as "homosexuality, heterosexuality, or
51 bisexuality," a definition that the Office of Personnel Management (OPM) uses in the context of
52 the federal workforce in its publication "Addressing Sexual Orientation in Federal Civilian
53 Employment: A Guide to Employee Rights."
54
55 (D) To promote equal access to HUD's housing programs without regard to sexual orientation or
56 gender identity, HUD prohibits unlawful inquiries regarding sexual orientation or gender
57 identity. The prohibition precludes owners and operators of HUD-assisted housing or housing
58 whose financing is insured by HUD from inquiring about sexual orientation or gender identity of
59 an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied.

1
2 **SECTION 20.0 – MINORITY BUSINESS ENTERPRISE (MBE/FBE) PARTICIPATION**
3

4 **Federal MBE/FBE Policy**
5

6 It is national policy to award a fair share of contracts to small and minority business firms. All HUD
7 grantees and subrecipients must take appropriate affirmative action to support minority and women's
8 enterprises, and are encouraged to procure goods and services from labor surplus areas. Therefore,
9 the Subrecipient shall take affirmative steps to ensure that minority (MBE) and female (FBE) business
10 enterprises are utilized during the course of this Agreement, and that a fair share of any contracts
11 generated during such course are awarded to such firms.
12

13 **SECTION 21.0 – LABOR STANDARDS**
14

15 The Subrecipient shall comply with all Federal Labor Standards Requirements imposed by the Davis-
16 Bacon Act; the Contract Work Hours and Safety Standards Act; the Copeland Act; and the Fair Labor
17 Standards Act. As a requirement of the Fair Labor Standards Act, the Subrecipient must ensure that a
18 copy of the applicable wage rate decision is included in each contract and subcontract and the Notice
19 to Employees poster that pertains to all federally-funded projects is to be posted, along with a copy of
20 the wage decision, on all construction sites. This information must be posted in a conspicuous location
21 accessible to those employed under any contract funded with CDBG funds. The Federal Labor
22 Standards Provisions are attached hereto and made a part hereof as *Attachment E*.
23

24 **SECTION 22.0 - HB 87 ILLEGAL IMMIGRATION REFORM**
25

26 Among other measures, the Illegal Immigration and Reform Enforcement Act of 2011 requires
27 subcontractor and sub-subcontractors to submit their E-Verify affidavits to the Subrecipients working
28 on public projects. The Subrecipient then must forward affidavits to the local government within five
29 (5) days of receipt. The Department of Audits will create a form affidavit.
30

31 Attached hereto and made a part hereof as *Attachment F* is The Georgia Security and Immigration
32 Compliance Act Applicant for Public Benefits Affidavit, the Subrecipient, Subcontractor and Sub-
33 subcontractor Affidavits.
34

35 **SECTION 23.0 – ENVIRONMENTAL REQUIREMENTS**
36

37 The County, Sub-Recipients, Contractors, Owners, and Developers shall not undertake any activities
38 that would adversely impact or limit the choice of reasonable alternatives for a project until an
39 Environmental Review has been completed and approved by the County. To this end, the County,
40 Sub-Recipients, Subcontractors, Owners, and Developers must not expend public or private funds
41 (HUD, other Federal, or non-Federal funds) or execute a legally binding agreement for property
42 acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until
43 environmental clearance has been achieved. Using any portion of federal funds for acquisition,
44 rehabilitation, conversion, leasing, repair or construction before, completing the Environmental Review
45 process requires the denial of any federal funds for that project. The Environmental Review
46 Assurances are attached hereto and made a part hereof as *Attachment H*.
47

48 **Conditional Commitment of Funds**

49 Further, notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge
50 that this Agreement does not constitute a commitment of funds or site approval, and that such
51 commitment of funds or approval may occur only upon satisfactory completion of Environmental
52 Review and receipt by the County of a release of funds from the U.S. Department of Housing and
53 Urban Development (HUD), under 24 CFR Part §58. Additionally, the Sub-Recipient or Subcontractor
54 are prohibited from undertaking or committing any funds to physical or choice-limiting actions,
55 including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction
56 prior to the environmental clearance, and must indicate that the violation of this provision may result in
57 the denial of any funds under the Agreement. The parties further agree that the provision of any funds
58 to the project is conditioned on the County's determination to proceed with, modify or cancel the
59 project based on the results of a subsequent Environmental Review.

1
2 **Environmental Conditional Clause**

3 Responsible entities may enter into an Agreement for the conditional commitment of CDBG funds for a
4 specific project prior to the completion of the Environmental Review process. The responsible entity
5 must ensure that any such agreement does not provide the County Recipient, Sub-Recipient, or
6 Subcontractor any legal claim to any amount of CDBG fund to be used for the specific project or site
7 unless and until the site has received environmental clearance.
8

9 **SECTION 24.0 – LEAD BASED PAINT**

10
11 On September 15, 2000, HUD published the final rule concerning the control of lead-based paint
12 hazards in housing receiving federal assistance and federally owned housing being sold. These
13 regulations published at 24 CFR Part 35 specify the requirements for treating lead hazards to protect
14 those who occupy housing constructed before 1978. This regulation also implements the new
15 requirements, concepts, and terminology established by the Residential Lead-Based Paint Hazard
16 Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992.
17 Should the Subrecipient propose to use CDBG funds for the rehabilitation or conversion of residential
18 units, the Subrecipient must meet the requirements of 24 CFR Part 35. The County shall provide
19 ongoing technical assistance to the Subrecipient to assist in meeting these requirements.
20

21 **SECTION 25.0 – CONFLICT OF INTEREST**

22
23 No member, officer, or employee of the County or its designee or agents, no member of the governing
24 body of the County, and no other official of the County who exercises or has exercised any functions or
25 responsibilities with respect to the CDBG-assigned activities or who is in a position to participate in a
26 decision making process or gain inside information with regard to such activities, may obtain a
27 personal or financial interest or benefit in any Agreement, subcontract or agreement with respect
28 thereto, or the proceeds there under, either for themselves or for those with whom they have family or
29 business ties, during their tenure or for one (1) year thereafter, unless an exemption in writing from this
30 provision is specifically granted by the U. S. Department of Housing and Urban Development.
31

32 **SECTION 26.0 – PROHIBITION OF USE OF FEDERAL FUNDS FOR LOBBYING**

- 33
34 1. By signing this Agreement, the undersigned Subrecipient certifies that all activities under this
35 Agreement will adhere to 24 CFR Part 87 (New Restrictions on Lobbying) and, to the best of his/her
36 knowledge and belief, that:
37
38 (A) No Federal appropriated funds have been paid or will be paid, by or on behalf of the
39 Subrecipient or the undersigned, to any person for influencing or attempting to influence an
40 officer or employee of any agency, a Member of Congress, an officer or employee of
41 Congress, or an employee of a Member of Congress in connection with the awarding of any
42 federal Agreement, the making of any federal grant, the making of any federal loan, the
43 entering into of any cooperative agreement, or the extension, continuation, renewal,
44 amendment, or modification of any federal Agreement, grant, loan or cooperative agreement.
45
46 (B) If any funds other than federal appropriated funds have been paid or will be paid to any person
47 for influencing or attempting to influence an officer or employee of any agency, a Member of
48 Congress, an officer or employee of Congress, or an employee of a Member of Congress in
49 connection with this federal Agreement, grant, loan, or cooperative agreement, the
50 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report
51 Lobbying," in accordance with its instructions.
52
53 (C) The undersigned shall require that the language of this certification be included in the award
54 documents for all sub-awards at all tiers (including subcontracts, subgrants, and Agreements
55 under grants, loans, and cooperative agreements) and that all subrecipients shall certify and
56 disclose accordingly.
57
58 (D) This certification is a material representation of fact upon which reliance was placed when this
59 transaction was made or entered into. Submission of this certification is a prerequisite for

1 making or entering into this transaction imposed by Title 31, U. S. Code, Section 1352. Any
2 person who fails to file the required certification shall be subject to a civil penalty of not less
3 than \$10,000 and not more than \$100,000 for each such failure.
4
5
6
7

8 **SECTION 27.0 – INDEMNIFICATION AND HOLD HARMLESS**
9

10 The Subrecipient hereby warrants, represents, covenants and agrees to release, indemnify, defend
11 and hold harmless the County, its commissioners, officers, and employees, from any and all claims,
12 losses, liabilities, damages, deficiencies or costs (including without limitation, reasonable attorney's
13 fees and legal expenses) suffered or incurred by such parties, whether arising in tort, contract, strict
14 liability or otherwise, and including without limitation, personal injury, wrongful death or property
15 damage, arising in any way from the actions or omissions of the Subrecipient, its agents, employees,
16 Subrecipients, officers, or directors. The Subrecipient does further hereby agree to release, indemnify,
17 defend and hold harmless the County, its commissioners, officers, and employees, from any injury
18 (including death resulting there from), loss, claim or damage sustained by the Subrecipient's agents
19 and employees, without regard to negligence. The language of this indemnification clause shall survive
20 termination of this Agreement, even if the County terminates the Agreement for its convenience.
21
22

23 **SECTION 28.0 – GOVERNING LAW**
24

- 25 1. This Agreement shall be governed in all respects, as to validity, construction, capacity, and
26 performance or otherwise, by the laws of the State of Georgia.
27
28 2. A waiver by either party of any breach or any provision, term, covenant or condition of this Agreement
29 shall not be deemed a waiver of any subsequent breach of the same or any other provision, term,
30 covenant or condition.
31
32 3. The parties agree that each of the provisions included in this Agreement is separate, distinct and
33 severable from the other remaining provisions of this Agreement, and that the invalidity of any
34 agreement provision shall not affect the validity of any other provision of this agreement.
35
36 4. The parties agree that the terms of this Agreement include the entire Agreement between the parties
37 and as such, shall exclusively bind the parties. No other representations, either oral or written, may be
38 used to contradict the terms of this Agreement.
39
40 5. Any notices or communications required or permitted herein shall be sufficiently given if sent by
41 Registered or certified mail, return receipt request, postage prepaid, addressed as follows:
42
43
44

45 As to the County:

46 Kim Benjamin, Community Development Specialist
47 Fulton County Community Development Department
48 137 Peachtree Street, SW, Suite 300
49 Atlanta, GA 30303
50

51 As to the Subrecipient:

52 Elizabeth Carr-Hurst, Mayor
53 City of Fairburn
54 56 Malone Street
55 Fairburn, Georgia 30213
56

57 Alternatively, such other address as shall be furnished by such notice of the other party.
58
59

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS HEREOF, the parties hereunto have set their hands and seal.

CITY OF FAIRBURN

FULTON COUNTY

Elizabeth Carr-Hurst, Mayor
City of Fairburn

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST

ATTEST

Shana Moss, Interim City Clerk
City of Fairburn

Dr. Jesse A. Harris, Clerk to the Commission
Fulton County Board of Commissioners

DATE:

DATE:

SEAL:

SEAL:
APPROVED AS TO CONTENT:

Dr. Pamela Roshell, Interim Director
Department of Community Development

Dawn Robinson Butler, Division Manager
Department of Community Development

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Office of the County Attorney

DATE:

DATE:

Fulton County Community Development Block Grant Program
ATTACHMENT A: Statement of Work
City of Fairburn – Dodd Street Utility Relocation Project

It is our goal to use the funds derived from the 2018 Fulton County CDBG Program to continue an infrastructure project initiated with additional 2017 grant funding. This project consists of the infrastructure/utility relocation required for the City of Fairburn to install sidewalks on the north side of Dodd Street (from W. Campbellton St. to Mullis St.) on a future project. In order to do so it is required to relocate the overhead utilities underground to provide the necessary clear space for the proposed sidewalk. Due to the order of magnitude of such a project and their existing work load, the City's Electric Department would not be able to perform this work. As such, it will be necessary for the City to hire a qualified contractor to perform the proposed relocation work. It will also be necessary for cable television and telephone to convert their overhead facilities to underground as well. It is anticipated that this work will be done on a future phase using additional CDBG funding. However, it is important to note that the required utility coordination with AT&T and Comcast has already begun. Below are the three phases in which this project will be completed and associated funding required:

- I. The initial 2017 additional funding was used to pay for *some* of the **materials** required to do the proposed overhead & underground utility relocation.
- II. 2018 CDBG funding will be used to pay for the additional materials required and the proposed overhead & underground work.
- III. Additional 2018 CDBG funding will be requested to pay for the proposed relocation requirements by Comcast and AT&T.

The service area of the Fairburn program is approximately 500 homes within the quarter-mile radius of the project limits. Based on our occupancy records, we anticipate this project will positively impact over 1,000 residents in the area. Job creation is most likely negligible; however, the project will create work for approximately 20 employees, contractors, and suppliers. Because the intent of the project is to complete a construction project and create a fixed asset, no continuing employment will be affected by it.

The City of Fairburn completed a planning initiative in 2009, with significant public involvement, which identified this type of project as being a priority for the Lightning neighborhood. This program is the result of the 2009 Livable Centers Initiative (LCI) study and aligns with the recommendations identified in the short-term strategies for the City as we forward to improve the Lightning District.

Fulton County Community Development Block Grant Program
ATTACHMENT B: Project Implementation Schedule
City of Fairburn – Dodd Street Utility Relocation Project

FACILITY/IMPROVEMENT PROVISIONS	TASKS	DATE
Request for Proposals from Architects/Engineers/Consultants	Pro Bono or Invitation for Bid- (Architect/Engineering Services)	04/26/2018
Selection of A&E/Consultants by City	Selection Completed/Services Awarded	04/26/2018
Design Phase by Architect/Engineer	Design/Specifications in process	04/26/2018
Environmental Review	Specify COMPLETION date of w/Annual update	05/1/2019
Construction Drawings & Request for Proposals by Architect/Engineer	All plans/drawings/specifications in accordance with construction documentation is prepared and completed for advertisement.	06/29/2019
Solicitation for sealed bids by the City of Fairburn for Proposal Bids/Offer	Invitation for Bid- (Description of the requirements that the bidder/offeree must fulfill with other factors to be used in evaluating the bids or proposals submitted).	06/29/2019
Costs and Price Analysis (Specification List)	Perform a cost or price analysis for each procurement activity undertaken with Federal funds to include: A comparison of price quotations submitted, market prices, and similar indicators, together with discounts.	07/30/2019
City Award of Bid/Offer	Renovation/Improvement RECORDS - The City of Fairburn will maintain procurement records and files for all purchases made with Federal funds, to include: Basis for bidder/offeree selection; Justification for lack of competition when bids or offers are not obtained; and Basis for the award cost or price.	07/30/2019
Letter to Proceed for Contractor	Award Conference	08/13/2019
Contract Administration	The City of Fairburn will maintain a system of contract administration to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequately and timely follow up of all procurement activities and purchases. The agency will evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.	08/13/2019
Contract Start Date of Project	Notice to Proceed	08/27/2019
Demolition / Clearance activities	Clear & accurate description of the technical requirements for the project to be demolished/cleared by City of Fairburn	08/27/2019
Contract Provisions	Insurance requirements, bonding requirements, housing location & care of products, etc.	08/27/2019
Project Mid-Status	Renovation/Improvement (clear & accurate description of the technical requirements for the work to be procured by City of Fairburn	10/22/2019
Project Completion	Close out documentation, final title documentation/retainage of funds/release of liens.	12/17/2019

Fulton County Community Development Block Grant Program
ATTACHMENT C: Cost Reimbursement Budget
City of Fairburn – Dodd Street Utility Relocation Project

PROJECT DELIVERY OPERATING BUDGET

PROJECT EXPENSES	DATE	CDBG	CITY
Construction Cost (Labor, Equipment/Supplies, Permits) – \$	August 2018	\$ 200,000	\$ 50,000
Total for Year 2019 – \$	December 2019	\$ 200,000	\$ 50,000

REIMBURSEMENT EXPENDITURE SCHEDULE

Municipality Expenses	January-December Projections	Submission Date	Total Operating Budget
Construction Costs <ul style="list-style-type: none"> ▪ Labor ▪ Equipment/Supplies 	\$200,000	December 2019	\$200,000
TOTAL EXPENSES	\$200,000		\$200,000

Fulton County Community Development Block Grant Program

ATTACHMENT D: Monthly Performance Report

Municipality: City of Fairburn

CDBG Funding Year: 2018

Project Name: Dodd Street : Road Underground Utilities Relocation and Sidewalk in Lightning Community

Administering Department: City of Fairburn

Reporting Period From: March 2, 2019 To: _____

I. *Project Status:*

CDBG allocation amount: \$ 162,487.00

Number of Contracts Awarded: 1 (If contract was awarded this reporting period, attach a copy of the fully executed contract).

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Has CDBG spending occurred for this project?

☐ Yes ☐ No

(If payments have been made toward contracts with CDBG funds, attach up-to-date expenditure and revenue account printouts or similar official financial report)

CDBG project fund balance: \$ _____

Agency's Local Match project fund balance: \$ _____

Date of Construction start-up: _____

Date of Notice to Proceed (if different): _____

Number of days worked on project: _____

Percentage (%) of project complete: _____ %

Percentage (%) of CDBG funds spent: _____ %

Number of employees/workers on the job site: _____

Number of subcontractors on site: _____

Number of subcontractor's employees on site: _____

Wage decision or modification in use: _____

Number of submitted payrolls within reporting period: _____

Number of draw downs within reporting period: _____

Total amount of draw downs to date: \$ _____

CDBG remaining balance: \$ _____

Anticipated project completion date: _____

II. *Narrative Description of Project Progress (attach additional sheets as necessary):*

III. *Project Issues, Considerations, or Problems (attach additional sheets as necessary):*

1. BENEFICIARY DEMOGRAPHICS

Quarter	Jan 1st – March 31st		April 1 st – June 30 th		July 1 st – Sept 30 th		Oct 1 st – Dec 31 st	
Race Categories	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity	Number Served	of Hispanic Ethnicity
American Indian or Alaska Native								
American Indian or Alaska Native & Black or African American								
American Indian or Alaska Native & White								
Asian								
Asian and White								
Black or African American								
Black or African American & White								
Native Hawaiian or Other Pacific Islander								
Other Multi Racial								
White								
TOTAL								

2. INCOME

FY 2019 INCOME LIMITS SUMMARY								
Fulton County, GA FY 2019 Median Income \$79,700								
	Persons in Family							
	1	2	3	4	5	6	7	8
Very Low Income (50%)	\$27,900	\$31,900	\$35,900	\$39,850	\$43,050	\$46,250	\$49,456	\$52,650
Extremely Low Income	\$16,750	\$19,150	\$21,550	\$25,750	\$30,170	\$34,590	\$39,010	\$43,430
Low Income (80%)	\$44,650	\$51,900	\$57,400	\$63,750	\$68,850	\$73,950	\$79,050	\$84,150

FY 2019 Income Limit Category	Jan 1st – March 31st	April 1 st – June 30 th	July 1 st – Sept 30 th	Oct 1 st – Dec 31 st
Very Low Income				
Extremely Low Income				
Low Income (80%)				
Total				

3. NEW/CONTINUING OR IMPROVED SERVICE OR BENEFIT

Of the total number of persons assisted and represented above, enter the number of those persons that received a NEW or Continued Access to the service or benefit provided by the CDBG funded activity	
Of the total number of persons assisted and represented above, enter the number of those persons that received IMPROVED ACCESS to the service or benefit provided by the CDBG funded activity	
Total	

4. LEVERAGED FUNDS: Provide the amount of money leveraged from other federal, state, local, and private sources to carry out this program.

Cumulative amount of funds leveraged this this reporting period that supported this CDBG funded activity	
---	--

Submitted by:

Name

Signature

Date: _____

Title: _____

Approved by:

Name

Signature

Date: _____

Title: _____

Fulton County Community Development Block Grant Program

ATTACHMENT D2: Year End Performance Report

Municipality: City of Fairburn CDBG Funding Year: 2018
Project Name: Dobb Street: Road Underground Utilities Relocation and Sidewalk in Lightning Community
Administering Department: City of Fairburn
Reporting Period From: March 2, 2019 To: _____

I. **Project Status:**

CDBG allocation amount: \$ 162,487

Number of Contracts Awarded: _____ (If contract was awarded this reporting period, attach a copy of the fully executed contract).

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Contract Amounts: \$ _____

CDBG Amount: \$ _____

Has CDBG spending occurred for this project?

☐ Yes ☐ No

(If payments have been made toward contracts with CDBG funds, attach up-to-date expenditure and revenue account printouts or similar official financial report)

CDBG project fund balance: \$ _____

Agency's Local Match project fund balance: \$ _____

Date of Construction start-up: _____

Date of Notice to Proceed (if different): _____

Number of days worked on project: _____

Percentage (%) of project complete: _____ %

Percentage (%) of CDBG funds spent: _____ %

Number of employees/workers on the job site: _____

Number of subcontractors on site: _____

Number of subcontractor's employees on site: _____

Wage decision or modification in use: _____

Number of submitted payrolls within reporting period: _____

Number of draw downs within reporting period: _____

Total amount of draw downs to date: \$ _____

CDBG remaining balance: \$ _____

Anticipated project completion date: _____

II. **Narrative Description of Project Progress (attach additional sheets as necessary):**

III. **Project Issues, Considerations, or Problems (attach additional sheets as necessary):**

Did the Contractor / Subcontractor hire new employees to complete the construction job? If so how many and if any how many were local Section 3 residents? (Section 3 residents: Local/ area residents who are of Low- and Very Low Income who were hired by the Contractor / Subcontractor specifically to work on this construction job.)

A	B	C	D	E	F
Job Category	Number of New Hires	Number of New Hires that are Section 3 Residents	% of Aggregate Number of Staff Hours of new hires that are Section 3 Residents	% of Total Staff Hours for Section 3 Employees and Trainees	Number of Section 3 Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade:					
Trade:					
Trade:					
Trade:					
Trade:					
Trade:					
Other (List):					
Total:					
* Program Codes 1 = Flexible Subsidy 2 = Section 202/811	3 = Public/Indian Housing A = Development B = Operation C = Modernization		4 = Homeless Assistance 5 = HOME 6 = HOME State/Administered 7 = CDBG Entitlement	8 = CDBG State Administered 9 = Other CD Programs 10 = Other Housing Programs	

Description of Scope of Work: Provide a complete description of the actual activity undertaken including 1) what products or services were performed, 2) where they were provided, 3) for whom they were provided, and 4) how they were provided.

Description of Specific use of CDBG funds: Provide a summary of what expenses the CDBG funds were utilized to support the activity listed above.

Income Benefit: Complete the following statement.

It is documented that _____ unduplicated low-moderate income clients/participants were served over the course of the January – December of this grant award. Of those served, _____ clients/participants had household income levels at the 0-30% area median income (AMI) level; _____ clients/participants had household income levels at the 31-50% area median income (AMI) level; _____, and clients/participants had household income levels at the 51-80% area median income (AMI) level.

Anticipated Accomplishments: _____
 Actual Accomplishment: _____
 Total Number of Beneficiaries: _____
 Zip Code of Project Location: _____

Census Tract(s) and Block Groups Impacted: _____

Commission District(s) Impacted: € District 1 € District 2 € District 3
 € District 4 € District 5 € District 6

Outcome Measurement System: Check the box which identifies the best generalized Outcome Statement for the activity funded by the Fulton County Community Development Block Grant.

	<u>Outcome 1:</u> Availability/Accessibility	<u>Outcome 2:</u> Affordability	<u>Outcome 3:</u> Sustainability
<u>Objective #1:</u> Suitable Living Environment	€ Accessibility for the purpose of creating Suitable Living Environments	€ Affordability for the purpose of creating Suitable Living Environments	€ Sustainability for the purpose of creating Suitable Living Environments
<u>Objective #2:</u> Decent Housing	€ Accessibility for the purpose of providing Decent Housing	€ Affordability for the purpose of providing Decent Housing	€ Sustainability for the purpose of providing Decent Housing
<u>Objective #3:</u> Economic Opportunity	€ Accessibility for the purpose of creating Economic Opportunities	€ Affordability for the purpose of creating Economic Opportunities	€ Sustainability for the purpose of creating Economic Opportunities

Submitted by: _____
 Name

 Signature

Date: _____

Title: _____

Approved by: _____
 Name

 Signature

Date: _____

Title: _____

Fulton County Community Development Block Grant Program

ATTACHMENT E: Form HUD-4010 (07/2003)

Federal Labor Standards Provisions

U.S. Department of Housing
And Urban Development
Office of Labor Relations

Applicability

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

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a) (1) (ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3)

(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

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

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

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

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) (1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration.....makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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

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

subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

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

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

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

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

THE DAVIS BACON ACT (DBA). The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works. Labor standard provisions apply to any contract for the construction of 12 or more HOME-assisted units (Section 286, National Affordable Housing Act of 1990, as amended). Specifically:

Davis Bacon Wage Requirements

Acknowledgement Form

☐ Affordable housing with 12 or more units assisted with funds made available under this subtitle. Unlike CDBG, the standard for coverage is “assisted” not “financed” – which provides for much broader application. The requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services.

☐ Any contract for the construction of affordable housing with 12 or more units assisted with HOME funds. Davis-Bacon requirements do not follow “construction work” or “projects”. This factor has two implications:

- First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for avoiding Davis-Bacon.)
- Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide down payment assistance to individual homebuyers. (See also HUD Regulations at 24 CFR 92.354(a)(2). This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. Once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project – including the portions of the project that are not assisted with HOME funds.

DEPARTMENT OF LABOR REGULATIONS The Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in **29CFR Parts 1, 3, 5, 6 and 7**. Part 1 explains how the DOL establishes and publishes DBA wage determinations (aka wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in your contract relating to Davis- Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

RESPONSIBILITY OF THE PRINCIPAL CONTRACTOR The principal contractor (also referred to as the *prime* or *general contractor*) is responsible for the full compliance of all employers

(the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the Owner (Developer) only through the prime contractor.

PRE-CONSTRUCTION CONFERENCE Present the Federal statutory compliance requirements as well as performance expectations.

- Provide and review a copy of the "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects."
- Emphasize that A copy of the wage decision (or the Project Wage Rate Sheet) and a copy of the DOL Davis-Bacon poster titled Employee Rights under the Davis-Bacon Act (Form WH- 1321) should be in a place at the job site that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The Employee Rights under the Davis-Bacon Act poster is available in English and Spanish on-line at HUDClips.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency recognized by BAT. If apprentices or trainees are to be used, the contractor must provide the grantee/PJ with a copy of the individuals' registration in the apprenticeship program.
- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee.
- Describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making final payment to the contractor. Remind the contractor that willful violations may be subject to contract termination and debarment from future contracts for up to three years. Failure to pay specified wages may result in contractor payments being withheld to satisfy liabilities for unpaid wages and liquidated damages.

NOTICE TO PROCEED Following execution of the contract documents and completion of the pre-construction conference, it is typical practice to issue a Notice to Proceed to the prime/general contractor to provide the date that work can begin and contract time for completion. The Notice to Proceed marks the start of contract performance and, if applicable, provides the basis for assessing liquidated damages (other than CWHSSA liquidated damages). The construction period and basis for assessing liquidated damages specified in the Notice to Proceed must be consistent with those sections of the contract documents. Note, however, that issuance of a Notice to Proceed is not mandatory. If a Notice to Proceed is not issued, an alternate method to provide notification of construction commencement is recommended.

ON-SITE INTERVIEWS to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive.

- Interviews should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a

reasonable judgment as to compliance. Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).

- The interview should take place on the job site and be conducted privately. Interviews are confidential. The interviewer should observe the duties of workers and take notes before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed.

CERTIFIED PAYROLL REPORTS The prime contractor is required to submit a weekly certified payroll report (CPR) to the County beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

PAYROLL SUBMISSION AND REVIEW Once construction starts, the general contractor must complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. Make sure the payroll is signed with an original signature in ink. The payroll must be signed by a principal of the firm, owner, officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. Signatures in pencil; signature stamps; Xerox, pdf and other facsimiles are not acceptable. To ensure compliance, Grantees/PJs should review/ spot check payrolls to guarantee that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no discrepancies or violations. The prime contractor is responsible for the full compliance of all subcontractors and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the County.

PAYROLL RETENTION Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as employee addresses and full SSNs, time cards, tax records; evidence of fringe benefit payments, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

PAYROLLS AND BASIC RECORDS Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

CONTRACT TERMINATION/DEBARMENT A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

RECIPIENT ACKNOWLEDGEMENT AND STATEMENT OF UNDERSTANDING

This is to acknowledge that I have reviewed the aforementioned standards regarding the Davis Bacon requirements. I understand that the above provides general guidelines and summary information about some of the wage provisions but it is not intended to be all inclusive of Davis Bacon labor standards. I also understand that it is my responsibility to read, understand, become familiar with, and comply with Davis Bacon standards that have been established by the U.S. Department of Housing and Urban Development (HUD). I further understand that HUD reserves the right to modify, supplement, rescind, or revise any standard or policy from time to time, with or without notice, as it deems necessary or appropriate and I am responsible for full compliance.

Company Official

Date

Fulton County Community Development Block Grant Program
ATTACHMENT F: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Georgia Security and Immigration Compliance Act

Policy

It is the policy of Fulton County Government, its agencies, departments, and agents to comply with the Georgia Security and Immigration Compliance Act (GSICA), as amended from time to time. The Illegal Immigration and Reform Enforcement Act of 2011: requires Fulton County to require at a minimum, Subrecipients and sub-contractors to submit their E-Verify affidavits to the Subrecipients working on public projects. The Subrecipient then must forward affidavits to the local government within five days of receipt. The Department of Audits will create a form affidavit by August 1, 2011. Until Fulton County is in receipt of the forms, the Subrecipients shall submit forms indicated as "Affidavit Verifying Status of Benefit Applicant, City's Affidavit, Subrecipient's Affidavit and Subcontractor's Affidavit" attached hereto.

This law requires Fulton County to enforce among other measures, the Illegal Immigration and Reform Enforcement Act of 2011:

HB 87 ILLEGAL IMMIGRATION REFORM

- Requires Subrecipients and sub-subcontractors to submit their E-Verify affidavits to the Subrecipients working on public projects. The Subrecipient then must forward affidavits to the local government within five days of receipt. The Department of Audits will create a form affidavit by August 1, 2011.
- Requires local governments to submit E-Verify compliance reports to the state auditor annually by December 31. If the auditor finds a violation in this reporting, the county or city has 30 days to demonstrate compliance or will lose their qualified local government status. Local governments in disagreement may seek relief through the Office of State Administrative hearings. Counties will not be held responsible for the failure of Constitutional Officers failing to abide by this requirement.
- Creates an offense of aggravated identify fraud for those knowingly using fake identification to obtain employment with the punishment being from 1-15 years in prison and a fine of up to \$250,000.
- Authorizes law enforcement officers to verify, through one of several listed documents or immigration verification programs, the immigration status of those they have probable cause to suspect of committing a criminal offense. If the person is found to be an illegal immigrant, the officer may take any action authorized by state or federal law, and has immunity from damages or liability in the process.
- Allows, local law enforcement agencies to arrest any person for a violation of federal immigration law when authorized by federal law.
- Requires private businesses with more than 10 employees to sign an affidavit and attest they are registered to use E-Verify in order to obtain or renew a local business license, occupation tax certificate or other document required to operate a business. Counties and cities must file a report annually, to the Department of Audits, which identifies each license or certificate they issued during the year - to include the name of the person and business and their E-Verify number. Any person, including county employees, who knowingly violate this reporting requirement, shall be guilty of a misdemeanor.
- Requires any applicant who applies for a public benefit (or who must provide identification for any official purpose) to provide secure and verifiable documents to the county to prove their legal status. Local

government employees in willful violation are guilty of a misdemeanor. Each year the Attorney General will provide a list of "secure and verifiable" documents.

- Creates the Immigration Enforcement Review Board, attached to the Department of Audits, which will take complaints, investigate and enforce the provisions of this Act.

Background

Senate Bill 529, the "Georgia Security and Immigration Compliance Act" of 2006, established new work eligibility verification requirements for Fulton County and its Subrecipients and subcontractors, effective July 1, 2007. The Act further prohibited the provision of certain services or benefits to any adult without a verification of their immigration status. Additionally, GSCIA required the County to make a reasonable effort to verify the immigration status of any foreign national charged with and jailed for a felony or DUI.

During the 2009 Legislative Session, House Bill 2 amended several sections of the Georgia Code that make up the GSCIA. Effective January 1, 2009, HB 2 --

- Mandates public employers to post their federal identification number and date of authorization on their website;
- Requires a signed, notarized affidavit from Subrecipients attesting registration and participation in E-Verify;
- Defines the term "applicant" for public benefits;
- Expands the definition of "public benefits";
- Clarifies the annual reporting requirement;
- Calls for a reasonable effort to determine a person's nationality when any person is confined in compliance with Article 36 of the Vienna Convention on Consular Relations.
- Directs the County Jailer to inform a foreign national prisoner of their right to have their native country's local consular office notified of their detention and to allow a consular officer from their native country to visit, converse, correspond, and arrange for legal representation; and
- Establishes penalties for noncompliance.

Applicability

Effective January 1, 2010, this policy will apply to Fulton County departments and agencies, Subrecipients, and to the staffs of elected officials.

Definitions

- (1) *Applicant* means any person 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.
- (2) *Subrecipient* means Subrecipients, contract employees, staffing agencies, or subcontractors.
- (3) *Public benefit* means –
 - a). any grant, contract, loan, professional license, or commercial license provided by Fulton County or by appropriated funds of the United States, State of Georgia or Fulton County;
 - b). Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments of assistance are provided to an individual, household, or family eligibility unit by an agency of Fulton County government, or by appropriated Federal, State or County funds including –

- Adult education
- Authorization to conduct a commercial enterprise or business
- Business certificate, license or registration
- Business loan
- Cash allowance
- Disability assistance or insurance
- Down payment assistance
- Energy assistance
- Food stamps
- Gaming license
- Health benefits
- Housing allowance, grant, guarantee or loan
- Loan guarantee
- Medicaid
- Occupational license
- Professional license
- Registration of a regulated business
- Rent assistance or subsidy
- State grant or loan
- Tax certificate required to conduct a commercial business
- Temporary assistance for needy families (TANF)
- Unemployment insurance
- Welfare to work

(4) *Foreign national* means any individual who is a citizen of a country other than the United States.

(5) *Qualified alien* means –

- a). an alien who is lawfully admitted for permanent residence under the federal Immigration and Nationality Act (INA);
- b). an alien who is granted asylum under Section 208 of the INA;
- c). a refugee who is admitted to the United States under Section 207 of the INA;
- d). an alien who is paroled into the United States under Section 212(d) (5) of the INA for a period of at least one year;
- e). an alien whose deportation is being withheld under Section 243(h) of the INA (as in effect prior to April 1, 1997) or whose removal has been withheld under Section 241(b)(3);
- f). an alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- g). an alien who is a Cuban/Haitian Entrant as defined by Section 501(e) of the Refugee Education Assistance Act of 1980; and
- h). an alien who has been battered or subjected to extreme cruelty, or whose child or parent has been battered or subject to extreme cruelty.

(6) *Systematic Alien Verification for Entitlements Program* (SAVE) means an intergovernmental information sharing initiative of the United States Department of

Homeland Security designed to assist in determining a non-citizen applicant's immigration status.

Responsibilities and Procedures

(1) *Generally.*

- a). All appointing authorities shall verify the immigration status of every newly hired employee according to County Policy 100-27.
- b). All agencies providing a public benefit shall register with the SAVE program at <https://save.uscis.gov/Registration>, enter into a Memorandum of Understanding with the SAVE program, and establish a purchase order for the payment of transaction fees.
- c). All agencies providing a public benefit, shall verify the lawful presence of every person 18 years of age or older who applies for state or local public benefits by requiring each applicant to execute an affidavit in the format attached as "Attachment A", affirming that he or she is a legal permanent resident, or a qualified alien lawfully present in the United States. The affidavit is presumed to be proof of lawful presence until eligibility verification is made through the federal Systematic Alien Verification Entitlement (SAVE) program.
- d). All agencies providing a public benefit shall verify the lawful status of all applicants stating that they are aliens lawfully present in the United States through the SAVE program.
- e). All applicants that are not lawfully present in the United States shall be ineligible to receive public benefits.
- e). Verification of lawful presence is not required for the following benefits:
 - Treatment of emergency medical conditions;
 - Short-term, non-cash emergency disaster relief;
 - Immunizations;
 - Certain in-kind services, such as soup kitchens, short-term shelter, crisis counseling and intervention provided by public and nonprofit agencies that are necessary for the protection of life or safety;
 - Prenatal care;
 - Postsecondary education under specified circumstances;
 - Certain community development assistance or financial assistance programs administered by HUD;
 - Other Federal programs including certain social security and Medicare benefits under specified conditions.

(2) *Office of the County Attorney.* The Office of the County Attorney shall –

- a). Require each contract or agreement for the performance of services between Fulton County and a Subrecipient or subcontractor to include a provision stating that compliance with OCGA § 13-10-91 is a condition of the contract and directs the Subrecipient or subcontractor to register and participate in a Federal work authorization program.
- b). Ensure that each agreement between Fulton County and a Subrecipient/subcontractor for the performance of services includes an executed affidavit verifying compliance with OCGA § 13-10-91 in the form provided for in Attachments "F-1" and/or "F-2".

(3) *Office of Intergovernmental Affairs.* The Office of Intergovernmental Affairs shall --

- a). Submit to the Board of Commissioners for its approval during a Regular or Recess Meeting in December of each year, a report documenting Fulton County's compliance with the GSICA.

- b). Provide an annual report on or before January 1 to the Georgia Department of Community Affairs (DCA), in a format prescribed by DCA, documenting Fulton County's compliance with the GSICA, and identifying each public benefit administered by Fulton County.
- (4) *Department of Information Technology.* The Department of Information Technology shall post the County's federally issued identification number (58-6001729) and date of authorization (*date to be provided*) on the County's website.
- (5) *Personnel Department.* The Personnel Department shall monitor new employee work eligibility as required by OCGA § 13-10-91.
- (6) *Department of Purchasing and Contract Compliance.* The Department of Purchasing and Contract Compliance shall –
- a). Require all Subrecipients and subcontractors to register and participate in the federal work authorization program "E-Verify". No Subrecipient shall perform any services unless the Subrecipient or subcontractor registers and participates in a federal work authorization program.
 - b). Require a signed, notarized affidavit from Subrecipients attesting to their registration and participation in the E-Verify program before considering a bid from the subcontractor for the performance of any service.
- (7) *Sheriff's Office.* The Fulton County Sheriff's Office shall –
- a). Make a reasonable effort to determine the nationality of a person confined to the Fulton County Jail for any period of time and charged with a felony, DUI, driving without a license, or a serious misdemeanor.
 - b). If the Jail identifies the prisoner as a foreign national, the Sheriff's Office shall make a reasonable effort to determine if the detainee has been lawfully admitted into the United States, and if lawfully admitted, that such lawful status has not expired.
 - c). Inform a detained foreign national of their right to have their native country's local consular office notified of their detention and of their right to have a consular officer from their country arrange for legal representation.
 - d). Contact the Law Enforcement Support Center of the United States Department of Homeland Security within 48 hours if verification of lawful status cannot be made from documents in possession of the detainee.
 - e). Release from custody, pursuant to the admissions and release policies of the Fulton County Sheriff's Office, a detained foreign national unless the Jail receives a valid notification of pending charges from the United States Department of Homeland Security or another agency.
 - f). Follow the guidelines and procedures developed by the Georgia Sheriff's Association pertaining to the determination of national and immigration status of certain persons admitted into the Fulton County Jail.

Departmental Sponsor: Office of the County Manager.

Policy Review Date: December 31, 2014

References

- Vienna Convention on Consular Relations, Article 36 "*Communication and Contact with Nationals of the Sending State*"
- 8 U.S.C. § 1611, 1621 and 1623
- 42 U.S.C. § 1396 b(v)(30)
- Immigration Reform and Control Act of 1986, Public Law 99-603
- Georgia Security and Immigration Compliance Act of 2006, Act 457 2006 Georgia General Assembly

- Official Code of Georgia sections 13-10-90, 13-10-91, 42-4-14, 50-13-1, 50-36-1
- Georgia Department of Labor Rules § 300-10-1-01 through 300-10-1-.09
- Fulton County Policy 100-27, "*Immigration Reform and Control Act (IRCA)*"

Attachments

Attachment F-1: Applicant for Public Benefits Affidavit

Attachment F-2: Subrecipient/Subcontractor/Sub Sub-subcontractor Affidavit

Fulton County Community Development Block Grant Program
ATTACHMENT F-1: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Affidavit Verifying Status of Benefit Applicant

Pursuant to the Georgia Security and Immigration Compliance Act (O.C.G.A. § 50-36-1), effective July 1, 2007, every agency in **FULTON COUNTY** providing public benefits through any local program is responsible for determining the immigration status of citizen applicants for said benefits.

By executing this affidavit under oath, as an applicant for benefits, I am stating the following with respect to my application for benefits from Fulton County Government:

_____ I am a United States citizen or legal permanent resident 18 years of age or older;

OR

_____ I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act, Title 8 U.S.C., as amended, 18 years of age or older and lawfully present in the United States. My alien number issued by the U.S. Department of Homeland Security or other federal immigration agency is _____.

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20.

Signature of Applicant

Date

Printed Name

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE
_____ DAY OF _____, 20____.

Notary Public
My Commission Expires:

Fulton County Community Development Block Grant Program
ATTACHMENT F-2: Policy 100-28
Georgia Security and Immigration Compliance Act (01/01/2010)

Subrecipient Affidavit

By executing this affidavit, the undersigned Subrecipient verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that **City of Fairburn** (hereinafter "Prime Subrecipient") engaged in the physical performance of services under a contract with **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Prime Subrecipient further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services to this contract with **Fulton County Government**, the Prime Subrecipient will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit attached hereto. The Prime Subrecipient further agrees to maintain records of such compliance and provide a copy of each verification to the **Fulton County Government** at the time the subcontractor(s) is retained to perform such service.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent
(Insert Prime Contractor Name)

Title of Authorized Officer or Agent of Prime Contractor

Printed Name of Authorized Officer or Agent

Subrecipient Affidavit

Page 2 of 6

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20__.

Notary Public

My Commission Expires:

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)

Subcontractor Affidavit

Page 3 of 6

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **City of Fairburn** on behalf of **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Subcontractor further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent

(Insert Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20__.

Subcontractor Affidavit

Page 4 of 6

Notary Public

My Commission Expires:

NOTE:

*** As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)**

Sub Subcontractor Affidavit

Page 5 of 6

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **City of Fairburn** on behalf of **Fulton County Government** has registered with and is authorized to use the federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRA), [P.L. 99-6031], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91]. The Sub Subcontractor further declares that it is actively using and will continue to use the federal work authorization program throughout the contract period.

EEV/Basic Pilot Program* User Identification Number

EEV/Basic Pilot Program* Date of Authorization

BY: Authorized Officer of Agent

(Insert Sub Subcontractor Name)

Title of Authorized Officer or Agent of Sub Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED TO AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20__.

Sub Subcontractor Affidavit

Page 6 of 6

Notary Public
My Commission Expires:

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)

Fulton County Community Development Block Grant Program
ATTACHMENT G: Form HUD 60002 (06/2001)

Compliance with Section 3 Assurance

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 8080(e) (6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Upon signing this document, recipients receiving Federal financial assistance for Housing and Community Development projects and activities covered by Section 3, will adhere to the reporting requirements as specified by 24 CFR Part 135 and HUD Form 60002.

If the recipient agency [Fulton County] receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract with a subrecipient exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient agency and not to the subrecipient.

Signature of Authorized Certifying Official	Applicant
X	City of Fairburn
Title	Date
Elizabeth Carr-Hurst, Mayor	

Fulton County Community Development Block Grant Program ATTACHMENT G-2: Section 3 Reporting Requirements Summary)

ANNUAL SECTION 3 SUMMARY REPORTING REQUIREMENTS

FOR RECIPIENTS OF HUD COMMUNITY PLANNING & DEVELOPMENT FUNDING

***TECHNICAL ASSISTANCE ON FORM HUD-60002**

Why HUD Enforces Section 3?

Each year the U.S. Department of Housing and Urban Development invests billions of federal dollars into distressed communities for projects designed to build and rehabilitate housing, improve roads, develop community centers, and otherwise assist families achieve the American Dream.

The Section 3 regulation recognizes that HUD funding typically results in projects/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide “bricks and mortar”, but can also positively impact the lives of local residents who live in the neighborhoods being redeveloped.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

Further, as a condition of receiving HUD Community Planning and Development assistance, recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, the Department has the legal responsibility to monitor recipients for compliance and can impose penalties upon those that fail to meet these obligations.

Applicability of Section 3 to Community Planning & Development Assistance

The requirements of Section 3 apply to recipients of HUD Community Planning and Development funding exceeding **\$200,000**.

Section 3 covered projects are those in which a (or aggregate) amount of covered funding exceeding \$200,000, is invested into activities involving **housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, community centers, etc.**

[Example: Section 3 applies to the combined investment of more than \$200,000 into multiple single-family housing rehabilitation projects during a program year].

Subrecipients, Contractors or subcontractors that receive contracts in excess of **\$100,000** for Section 3 covered projects/activities are required to comply with the Section 3 regulations in the same manner as direct recipients.

If the recipient agency receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient.

Accordingly, the recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by: 1) Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and 2) Offering 30 percent of new employment opportunities to Section 3 businesses.

Section 3 Covered Community Planning and Development funding

- Community Development Block Grants (CDBG)
- Home Investment Partnership Assistance
- Housing Opportunities for Persons with Aids (HOPWA)
- Economic Development Initiative (EDI)
- Brownfield Economic Development Initiative (BEDI)
- Emergency Shelter Grants
- Homeless Assistance
- University Partnership Grants
- Neighborhood Stimulus Program (NSP)
- Certain Grants Awarded Under HUD Notices of Funding Availability (NOFAs)

*NOTE: The requirements of Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction.

Section 3 applies to the **entire** covered project or activity regardless of whether the activity was fully or partially funded with covered assistance.

Section 3 Covered Recipient Agencies

"Recipient" refers to any entity that receives Section 3 covered financial assistance directly from HUD or from another recipient and includes, but is not limited to any of the following:

- States; Units of Local Government; Native American Tribes; or other Public Bodies
- Public or Private Nonprofit Organizations
- Private Agencies or Institutions
- Mortgagors; Developers; Limited Dividend Sponsors; Builders; Property Managers; Community Housing Development Organizations
- Successors, assignees, or transferees of any such entity listed above
- Recipients do **NOT** include any ultimate beneficiary under the HUD program that Section 3 applies and does **NOT** refer to contractors.

Triggering the Requirements of Section 3

Section 3 is triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting, or training opportunities.

The Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, each agency must still submit Section 3 annual reports indicating this information.

Recipient Responsibilities Pursuant to Section 3

Each recipient (and their covered contractors, subcontractors, or subrecipients) are required to comply with the requirements of Section 3 for employment, training, or contracting opportunities resulting from the expenditure of covered funding. This responsibility includes:

1. Implementing procedures to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance;
2. Notifying potential contractors working on Section 3 covered projects of their responsibilities;
3. Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];
4. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
5. Assisting and actively cooperating with the Department in making contractors and subcontractors comply;
6. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
7. Documenting actions taken to comply with Section 3; and
8. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.

In addition to the responsibilities described above, **State and County agencies or consortia** that distribute covered funds to units of local government, nonprofit organizations, or other subrecipients, must attempt to reach the minimum numerical goals set forth at 24 CFR Part 135.30, regardless of the number of subrecipients that receive covered funding. State or County agencies must also do the following:

1. Inform subrecipients about the requirements of Section 3;
2. Assist subrecipients and their contractors with achieving compliance;
3. Monitor subrecipients' performance with respect to meeting the requirements of Section 3; and
4. Report to HUD on the cumulative Section 3 activities taking place within their jurisdiction on an annual basis.

Section 3 Residents and Business Concerns

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or
2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

Recipients can use their discretion for determining the type of verification that is required by prospective Section 3 residents and business concerns. Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

Section 3 Summary Reports (Form HUD-60002)

Annually, each direct recipient of Community Planning and Development funding is required to submit form HUD-60002 to HUD's Economic Opportunity Division in Washington, DC. , preferably online from the following website: www.hud.gov/section3.

Due Date: Form HUD-60002 is due at the same time as annual performance (e.g., CAPERS) reports

The Section 3 Summary Report shall follow the same program, fiscal, or calendar year as the annual performance report and should correspond to the covered projects and activities that were administered during the reporting period.

NOTE: Section 3 reports must be submitted by all agencies that receive Community Planning and Development funding in excess of \$200,000 whether the requirements were triggered or not.

Determining What Should Be Reported on Form HUD-60002

Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations **AND** those of its covered contractors, subcontractors, and subrecipients. Each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HUD funding that was received by the recipient for covered projects/ activities during the specified reporting period.
- The total number of new employees that were hired by the recipient and/or its covered contractors, subcontractors, and subrecipients, as a result of performing or completing covered project/activities.
- The number of new employees that were hired by the recipient (or its covered contractors, subcontractors, and subrecipients), as a result of covered projects/activities, that met the definition of a Section 3 resident.
- The total number of man hours worked on covered projects (optional).
- The aggregate number of hours worked by Section 3 residents on covered projects (optional).
- The total number of Section 3 residents that participated in training opportunities that were made available by the recipient agency, its contractors, subrecipients, or other local community resource agencies.
- The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with covered funding.

- The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, subrecipients, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

Section 3 Reporting and Compliance Determinations

Absent evidence to the contrary, the Department considers recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

- a. 30 percent of the aggregate number of new hires shall be Section 3 residents;
- b. 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- c. 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.

Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.

Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 to HUD.

Important Notes for Submitting Form HUD-60002

- Recipients must submit a separate form HUD-60002 for each type of covered funding (separate reports must be submitted for CDBG and HOME funding).
- Use the online Section 3 Summary Reporting System at: www.hud.gov/section3 to ensure that form HUD- 60002 is received by the Economic Opportunity Division in HUD Headquarters in a timely manner.
- The "reporting period" option in the online Section 3 Summary Reporting System (box #7) lists quarters but the Section 3 reporting is an annual requirement. Accordingly, recipients should select **Quarter 4** to document the total amount of covered activities/projects that were completed during the entire reporting period.
- If the recipient (or its covered contractors, subcontractors and subrecipients) did not hire any new employees during the reporting period, and/or if no covered construction or non-construction contracts were awarded, the recipient must indicate this in Part III of form HUD-60002 and certify that this information is true and accurate by penalty of law.

Where Are Reports Submitted

Form HUD-60002 must be submitted to HUD's Economic Opportunity Division, in Washington, DC. Recipients are strongly encouraged to submit form HUD-60002 online at: www.hud.gov/section3.

Recipients can also download a hard copy of form HUD 60002 from the website listed above. Hard copies shall be submitted via fax or mail to:

U.S. Department of Housing and Urban Development
Attn: Economic Opportunity Division
451 Seventh Street, SW
Room 5235
Washington, DC 20410
202-708-1286 (fax)

Additional Section 3 Guidance and Technical Assistance

The Economic Opportunity Division is committed to providing recipient's guidance and technical assistance for compliance with the requirements of Section 3.

For additional information, please visit the Section 3 website at www.hud.gov/section3. This webpage provides the following tools and information:

- Section 3 Statute—12 U.S.C. 1701u
- Section 3 Regulation—24 CFR Part 135
- Frequently Asked Questions
- Section 3 Model Programs
- Guidance on Section 3 and Economic Stimulus Funding
- Guidance on Section 3 and the Neighborhood Stimulus Program (NSP)
- Sample Section 3 Certification Forms (residents and business concerns)
- Link to HUD's Local Income Eligibility Calculator
- Link to Section 3 Annual Reporting System (form HUD-60002)
- Downloadable Forms
- Contact Information for Economic Opportunity Division staff
- Email inquiries on Section 3 can be sent to section3@hud.gov

Fulton County Community Development Block Grant Program
ATTACHMENT H: Form HUD 40076 RHED (03/2002)

Environmental Review Assurances

The award of funds under this program is subject to the environmental review requirements of 24 CFR part 50. These requirements only apply to grant-funded projects fully or partially funded by HUD, undertaken by grantees and all tiers of subgrantees and subcontractors.

When a project is limited to activities described in 24 CFR 50.19, it does not require an environmental review. All other activities (for example, acquisition of real property, construction, and alteration) are subject to an environmental review. Since the approval of the initial grants in this program must occur prior to the identification of properties to be treated, as is provided for in 24 CFR 50.3(h), the applicant hereby agrees that it will assist Fulton County CDBG (FC CDBG) Program to comply with 24 CFR part 50, and that the applicant shall:

1. Advise FC CDBG Program of all projects requiring a review under 24 CFR part 50 prior to their approval and supply FC CDBG Program with all available and relevant information necessary for FC CDBG Program to perform for each property any environmental review required by 24 CFR part 50;
2. Carry out mitigating measures required by FC CDBG Program or select an alternate property or project;
3. Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend FC CDBG Program or local funds for these program activities on a HUD-assisted project until FC CDBG Program has completed an environmental review to the extent required under 24 CFR 50 and has given notification of its approval in accordance with 24 CFR 50.3(h) (3); and
4. Include the above requirements in all subgrants and subcontracts.

Signature of Authorized Certifying Official	Applicant
X	City of Fairburn
Title	Date
Elizabeth Carr-Hurst, Mayor	