



**CITY OF MOUNT VERNON  
SPECIAL CITY COUNCIL MEETING  
AGENDA  
June 24, 2020 6:00 p.m.  
(Virtual Meeting)**

*The Mount Vernon City Councilmembers will be participating in this meeting via video/teleconference technology.*

**To virtually attend the meeting, the public may:**

- 1. Call the conference line:** 1-888-924-9240; Access Code: 3366211  
(please 'mute' your phone, if possible, to minimize distractions)
- 2. Watch the meeting live on TV10:** Comcast/Xfinity Channel 10
- 3. Watch the meeting live, online:**  
[https://www.youtube.com/channel/UCUob\\_hcQUmd4S93YkletdrA](https://www.youtube.com/channel/UCUob_hcQUmd4S93YkletdrA)

**I. OPENING CEREMONIES**

- A. Call to Order
- B. Roll Call of Councilmembers

**II. CONSENT AGENDA**

- A. Approval of June 3, 2020 Study Session Minutes
- B. Approval of June 10, 2020 Regular Council Meeting Minutes
- C. Approval of June 19, 2020 payroll checks numbered 110102 - 110123 direct deposit checks numbered 77436 - 77641, and wire transfers numbered 866 – 870 in the amount of \$1,042,084.77
- D. Approval of June 24, 2020 Claims numbered 9457 – 9597 in the amount of \$1,990,790.29

**III. REPORTS**

- A. Review of Emails from the Public  
(All public comments must be sent via email to [council@mountvernonwa.gov](mailto:council@mountvernonwa.gov). The comments will be read aloud into the record during the public comment portion of the agenda.)

**IV. NEW BUSINESS**

- A. 2020 Surplus Equipment  
(Staff is requesting that Council approve a resolution declaring equipment surplus to the City's needs and authorize the sale of these at auction or disposal as scrap.)  
(required action – resolution)  
(staff contact – Gary Owens)
- B. Approval of Agreement with Skagit County and City of Anacortes for Fiber Installation  
(Staff is requesting that Council authorize the Mayor to enter into an agreement with Skagit County and City of Anacortes to connect the City of Mount Vernon's fiber infrastructure to the City of Anacortes's fiber infrastructure.)  
(required action – motion)  
(staff contact – Kim Kleppe)

**C. CDBG Subrecipient Agreement with EDASC**

(Staff is requesting that Council authorize the Mayor to enter into an agreement with the Economic Development Alliance of Skagit County to provide funding received through the CDBG Program due to the COVID-19 pandemic. The funds will provide for Microenterprise {small business} grants for qualifying business in Mount Vernon.)

*(required action – motion)*

*(staff contact – Peter Donovan)*

**D. For the Good of the Order:**

- COVID 19 pandemic response and discussion
- Revenue Update
- Development Services Update
- Library Update
- Parks Update

**COMMITTEE MEETINGS**

Finance and Parks & Enrichment Services                      Cancelled

Next Ordinance    3805

Next Resolution    977



**DATE:** June 24, 2020  
**TO:** Mayor Boudreau and City Council  
**FROM:** Gary Owens, Equipment Maintenance Manager  
**SUBJECT:** 2020 SURPLUS EQUIPMENT

**RECOMMENDED ACTION:**

City staff recommends City Council to approve a Resolution declaring equipment surplus to City's needs and authorizing the sale of these at auction or disposal as scrap.

**INTRODUCTION/BACKGROUND:**

Staff have determined that certain vehicles and equipment are either no longer useable or are surplus to the needs of any City department. All City departments have had the opportunity to add any of the items on the attached list to their asset list through interdepartmental trade.

**FINDINGS/CONCLUSIONS:**

Certain pieces of equipment or vehicles are no longer useable or are surplus to the needs of the City and should be declared surplus.

**RECOMMENDATION:**

Staff requests that Council approve this Resolution authorizing the surplus of City vehicles and equipment to be sold at auction or disposed of as scrap.

**ATTACHED:**

Proposed resolution & 2020 Surplus equipment and vehicle list

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF MOUNT VERNON, WASHINGTON TO PERMIT SALE OF SURPLUS VEHICLES AND EQUIPMENT.**

**WHEREAS**, the City of Mount Vernon has vehicles and equipment that is surplus to the needs of the City, and

**WHEREAS**, the City Council desires to approve sale of such vehicles and equipment by public auction or sealed bid process,

**NOW THEREFORE;**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON**, that the proper officers of the City of Mount Vernon are hereby authorized to sell as surplus the following vehicles and equipment as is, with all faults:

<u>DEPARTMENT</u>	<u>VEHICLE #</u>	<u>MAKE</u>	<u>MODEL</u>	<u>YEAR</u>	<u>COMMENTS</u>
Police	62	Ford	Crown Victoria	2001	
	48	Kawasaki	Patrol Bike	1999	
	74	Chevy	Impala	2003	
	98	Chevy	Impala	2000	
	76	Ford	Crown Victoria	2008	
	86	Radar Trailer		2007	
	65	Ford	Crown Victoria	2011	
	59	Chevy	Impala	2001	
	43	Ford	E-350	1995	Bad Engine
	53	Radar Trailer		1997	
	63	Ford	Crown Victoria	2001	
	77	Chevy	Impala	2004	
	Task force	Ford	Explorer	2003	1FMPU15L24LA72863
	47	Ford	Crown Victoria	2005	Old K-9
Fiber Optic	531	Ford	Taurus	1995	
	719	Chevy	Astro Van	1990	
Wastewater	720	Ford	Ranger	1992	
	461	Ford	Crown Victoria	2009	
	427	Ford	Tractor with Loader		
	402	Chevy	S10 Pickup Truck	1994	
Fire	23	Pierce	Rescue Unit AU1	1993	

<u>DEPARTMENT</u>	<u>VEHICLE #</u>	<u>MAKE</u>	<u>MODEL</u>	<u>YEAR</u>	<u>COMMENTS</u>
Street	218	Vermeer	Chipper	1993	
	233	GMC	10 Yd Dump Truck	1989	
Information Services	512	Chevy	Lumia	1998	
ER Division	715	Chevy	¾ Ton Pickup Truck	1985	
Surface Water	416	Elgin	Sweeper	2012	
Parks	604	Ford	F-350	1989	
	630	Chevy	¾ Ton Pickup Truck	1995	
	617	Ford	F-350	1992	Old Rehab Bus
	645	Home Made	Flat Bed Trailer	1992	
	657	Home Made	Flat Bed Trailer	1996	

**ADOPTED** by the City Council of the City of Mount Vernon at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Jill Boudreau, Mayor

Attest:

\_\_\_\_\_  
Doug Volesky, Finance Director

Approved as to form:

\_\_\_\_\_  
Kevin Rogerson, City Attorney



DATE: June 24th, 2020

TO: Mayor Boudreau and City Council

FROM: Kim Kleppe, IS Director

SUBJECT: INTERLOCAL COOPERATIVE AGREEMENT BETWEEN  
SKAGIT COUNTY, CITY OF MOUNT VERNON, AND CITY OF ANACORTES

**RECOMMENDED ACTION:**

Staff recommends that Council authorize the Mayor to execute a three way Agreement with the City of Anacortes and Skagit County.

**INTRODUCTION/BACKGROUND:**

- This agreement will connect the City of Mount Vernon's Fiber infrastructure to the City of Anacortes's Fiber infrastructure.
- Anacortes has extended their fiber from the City of Anacortes to their Water Treatment Plant on Riverbend.
- This agreement will allow multiple positive things to happen, first one in partnering with Skagit County and Anacortes in a three way cost sharing model will be able to extend Public Safety networking across the County to Anacortes.
- Other benefits will include Healthcare networks, Commercial networks, connecting the City of Burlington to Anacortes, Internet provider access for Anacortes.
- The City has the expertise to install the fiber.

**RECOMMENDATION:**

Staff recommends approval.

# INTERLOCAL COOPERATIVE AGREEMENT

## BETWEEN

### SKAGIT COUNTY, THE CITY OF MOUNT VERNON, AND CITY OF ANACORTES

THIS AGREEMENT (“Agreement”) is made and entered into by the City of Mount Vernon ("Mount Vernon"), a Washington municipal corporation, the City of Anacortes (“Anacortes”) a Washington municipal corporation, and Skagit County (“County”), a political subdivision of the State of Washington ("County"), pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT. Mount Vernon, Anacortes, and the County may be individually referred to herein as a “Party”, and may be collectively referred to herein as the “Parties.”

1. **PURPOSE:** The purpose of this Agreement is to allow Anacortes, Mount Vernon, and the County to work cooperatively to connect the separate fiber optic networks owned by Mount Vernon and Anacortes, which interconnection may support governmental networking services, to be utilized by the County, Anacortes, and Mount Vernon. Mount Vernon, will manage the installation and connection of fiber optic cable along public right-of-way and on the premises of the Anacortes Water Treatment Plant (“Plant”) in accordance with the terms and conditions of the Telecommunications Franchise Agreement (the “Franchise Agreement”) by and between the County and Anacortes, dated October 19, 2019 (Skagit County Contract # C20190480; Auditor’s File No.: 201911040103), pursuant to this Agreement. The Project is more particularly described and depicted in Exhibit “A”, which is hereby attached to this Agreement and incorporated by reference. This Agreement is only for the design, engineering, permitting, and installation of the fiber optic cable work as described herein (the “Project”). Separate agreement(s) will be required for fiber connection services, and the County shall be provided such connection at the services upon request at mutually agreeable terms.

2. **RESPONSIBILITIES:**

2.1 Pursuant to the terms of this Agreement, Mount Vernon shall:

- A. Provide administrative and technical support for the Project, including, but not limited to, Project permitting for those parts of the Project requiring permits within Mount Vernon city limits.
- B. Perform Project work necessary to effect the interconnection as described above and in Exhibit “A.”
- C. Provide all material necessary for the Project other than conduit required per Section 2.3.C below. Material may be provided as new purchases or from existing Mount Vernon inventory.
- D. Invoice the County and Anacortes for their share of the Project Cost as provided in Section 4 (below).
- E. Pay or contribute toward one third of the total Project cost, in a total documented amount of at least six thousand six hundred and sixty-six dollars and sixty seven hundredths (\$6,666.67).
- F. Provide data sheets to Anacortes and County for the cables and optical fibers used in the Project.
- G. Request any necessary access to Anacortes’s Water Treatment Plant no less than twenty-four (24) hours prior to such access.

Comply with the terms of any permits related to Mount Vernon’s work on the Project .

2.2 Pursuant to the terms of this Agreement, the County shall:

- A. Pay one third of the total Project cost, in a total amount not to exceed six thousand six hundred and sixty-six dollars and sixty seven hundredths (\$6,666,67). Such payment shall be made by the County to Mount Vernon upon completion of all Project work, and then within thirty (30) days after receipt of an invoice from Mount Vernon.
- B. Prior to the commencement of the Project, process any utility permit application(s), and other Project permitting applications timely submitted by Anacortes for all Project work within the County road right-of-way in accordance with the terms of the Franchise Agreement and applicable law. The County shall not be responsible or liable for the design, construction, maintenance, operation, and/or use of the Project in any way other than for the County's payment obligation for the Project pursuant to this Agreement.
- C. Unless specifically stated to the contrary in this Agreement, the County is not otherwise obligated to provide any funds, or perform or provide any other services, duties, or responsibilities pursuant to the terms of this Agreement.

2.3 Pursuant to the terms of this Agreement, Anacortes shall:

- A. Pay one third of the Project cost in a total amount not to exceed six thousand six hundred and sixty-six dollars and sixty seven hundredths (\$6,666,67). Payments shall be made within thirty (30) days after receipt of an invoice from Mount Vernon per Section 4., below.
- B. Design, engineer, obtain permits, provide materials, and install above ground and/or underground fiber conduit to contain and protect the fiber optic cable in accordance with the Project specifications from a Puget Sound Energy utility pole on or near Plant premises to the connection with the Anacortes fiber optic network (in accordance with the terms of the Franchise Agreement).
- C. Provide reasonable access to Anacortes property to Mount Vernon's staff, contractors, engineers, or other companies or individuals to perform work needed to engineer, design, run, splice, and test the fiber optic cable, provided reasonable notice has been provided per Section 2.1., above, and in compliance with all security requirements for Anacortes property.
- D. Comply with the Franchise Agreement for the placement of fiber lines and related Project equipment within County road rights of way located outside the City of Mount Vernon, and ensure compliance with the terms of the Franchise Agreement by Mount Vernon. In accordance with the terms of the Franchise Agreement, obtain and execute any necessary utility pole agreements that will locate overhead fiber lines on poles outside Mount Vernon city limits.

3. **TERM OF AGREEMENT:** The term of this Agreement shall commence upon mutual execution by all parties and continue through December 31, 2021, unless sooner terminated pursuant to the terms herein.

4. **MANNER OF FINANCING:**

4.1 Project cost in a total documented amount of at least six thousand six hundred and sixty-six dollars and sixty seven hundredths (\$6,666,67) may be comprised of the following costs incurred by Mount Vernon:

- A. Labor necessary to design and engineer the Project.

- B. Labor necessary to apply for permits required to construct the Project, including pole attachment applications for portions of the Project located within City limits, for which Mount Vernon is responsible or assumes.
- C. Labor necessary to install Project infrastructure.
- D. Cost of Project material including but not limited to fiber optic cables and pole attachment hardware.
- E. Labor necessary to perform OTDR tests per Exhibit A.
- F. Labor necessary to perform any corrective measures required by Exhibit A.
- G. Any other documented costs incurred by Mount Vernon directly related to the Project, including but not limited to necessary permitting fees, make ready costs (costs charged by PSE to prepare poles for attachment of cable for portions of the Project located within City limits), etc.

4.2 Total combined Project costs shall not exceed twenty thousand dollars (\$20,000.00) without all Parties' duly executed subsequent written agreement. Anacortes shall otherwise be responsible for funding all other costs for the Project in excess of twenty thousand dollars (\$20,000.00).

4.3. Upon completion of the Project work to be performed (as provided herein), the County shall reimburse the Mount Vernon for all labor, time, materials and permitting fees for the Project (including but not limited to design and engineering required to create bid specifications) in a total amount not to exceed six thousand six hundred and sixty-six dollars and sixty seven hundredths (\$6,666,67). Upon completion of the Project work to be performed (as provided herein), Anacortes shall reimburse Mount Vernon in the amount not to exceed six thousand six hundred and sixty-six dollars and sixty seven hundredths (\$6,666,67).

4.4 No Party shall be obligated to pay, provide, or expend any funds, provide, and/or perform any other services or other duties, unless otherwise specified herein including future repair or maintenance to any fiber lines, conduit, or related equipment owned by another Party. Upon request, Mount Vernon shall provide adequate supporting documentation for any and all amounts billed to the County and Anacortes by Mount Vernon pursuant to the terms of this Agreement. Mount Vernon's contribution of one third of the total costs may be provided through the provision of documented in kind services including the provisions of Mount Vernon staff time and labor costs.

5. ADMINISTRATION: The following individuals are designated as representatives of the respective Parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the Party making the change shall notify the other Parties in writing.

5.1 The County's representative shall be the Manager, Information Services Department.

5.2 Mount Vernon's representative shall be the Director, Information Services.

5.3 Anacortes's representative shall be Anacortes's Broadband Manager.

6. TREATMENT OF ASSETS AND PROPERTY:

6.1 No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, or used. All fiber optic lines, conduit or related Project equipment installed within the city limits of the Mount Vernon shall be owned by the Mount Vernon. All fiber optic lines, conduit, or related equipment installed outside Mount Vernon city limits shall be owned by of Anacortes, subject to the terms of the Franchise Agreement. Upon annexation by the Mount Vernon (if applicable), ownership of any fiber optic lines, conduit or related Project equipment installed as a result of the Project that would be located within the Mount Vernon city limits as a result of annexation shall be transferred to Mount Vernon, subject to the terms of the Franchise Agreement.

6.2. MAINTENANCE AND OPERATION. Upon Project completion, Mount Vernon shall be operationally and financially responsible to maintain those portions of the Project that it owns within the city limits of Mount Vernon. Upon Project completion, Anacortes shall be operationally and financially responsible to maintain those portions of the Project that it owns within property owned by Anacortes and as located within County road right-of-way (subject to the terms of the Franchise Agreement). At no time shall the County be operationally and financially responsible to maintain any portions of the Project.

7. NO AGREEMENT FOR FIBER NETWORK SERVICES: This Agreement shall not be interpreted nor construed as providing any license, lease, access or other rights to any Party's fiber optic network.. The provision of any services (e.g. dark fiber access, lit fiber services, connectivity through any Party's fiber optic network) shall require separate agreement(s).

8. INDEMNIFICATION: Except as provided to the contrary herein, each Party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other Parties harmless from any such liability. It is further provided that no liability shall attach to any Party by reason of entering into this Agreement except as expressly provided herein. All claims for damages Anacortes and/or Skagit County may have against Mount Vernon arising from this Agreement (except for any third party claims) including, but not limited to, with respect to the construction and installation of the Project, claims against Mount Vernon for violation of the Franchise Agreement or failure to obtain permits (which are contractual duties of Anacortes) set forth in this Agreement shall be limited to and shall not exceed Six Thousand Six Hundred Sixty Six Dollars and Sixty Seven Cents (\$6,666.67) per party.

10. TERMINATION: Any Party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the Party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

11. CHANGES, MODIFICATIONS, AMENDMENTS, AND WAIVERS: The Agreement may be changed, modified, amended or waived only by duly executed subsequent written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

12. SEVERABILITY: In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

13. NO THIRD PARTY BENEFICIARIES: This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, the general public, property owners and residents at or in the vicinity of the Project work to be performed, or any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any party.

14. NO PARTNERSHIP OR JOINT VENTURE: No partnership and/or joint venture exists between the Parties, and no partnership and/or joint venture is created by and between the parties by virtue of this Agreement. No agent, employee, contractor, subcontractor, consultant, volunteer, and/or other representative of the Parties shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other Party.

15. **USE OF DOCUMENTS AND MATERIALS PRODUCED:** Unless privileged, or otherwise exempt from public disclosure pursuant to applicable law, all Parties shall have the right to use and distribute any and all documents, writings, programs, data, public records or other materials prepared by any Party (and/or any Party's contractors, consultants, and/or subcontractors), in connection with performance of this Agreement. The Parties recognize and agree that any documents and/or materials arising from and/or related to this Agreement may be subject to public disclosure pursuant to applicable law (including RCW 42.56).

16. **COMPLIANCE WITH LAWS:** The Parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement. As necessary and as provided herein, Anacortes shall ensure compliance with the Franchise Agreement, and shall obtain and comply with all necessary permit(s) and approval(s) from all applicable jurisdictions prior to commencing any Project work arising from or related to this Agreement. Anacortes and/or Mount Vernon shall be solely and separately responsible and liable for compliance with all terms and conditions of any permit(s) and/or grant(s) obtained or procured in such Party's name.

17. **VENUE AND CHOICE OF LAW:** In the event that any litigation should arise concerning this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

18. **SURVIVAL:** The terms of Sections 6, 8., and 16., shall survive the termination or expiration of this Agreement.

19. **STATUS OF AGREEMENT:** This Agreement is in addition to, and is not intended to replace, substitute, modify, or otherwise amend any other agreements by and between the parties. Any other agreements by and between the parties shall continue in full force and effect.

20. **ENTIRE AGREEMENT:** This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto

**CITY OF MOUNT VERNON:**

By: \_\_\_\_\_  
Jill Boudreau, Mayor

Dated: \_\_\_\_\_, 2020

Attest: \_\_\_\_\_  
Doug Volesky, Finance Director

Approved as to form and legality:

\_\_\_\_\_  
Kevin Rogerson, Mount Vernon Attorney

**CITY OF ANACORTES:**

By: \_\_\_\_\_  
Laurie Gere, Mayor

Dated: \_\_\_\_\_, 2020

Attest: \_\_\_\_\_  
Stephen Hoglund, Finance Director

Approved as to form and legality:

\_\_\_\_\_  
Darcy Swetnam, Anacortes Attorney

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

**BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**

\_\_\_\_\_  
Ron Wesen, Chair

\_\_\_\_\_  
Kenneth A. Dahlstedt, Commissioner

Attest:

\_\_\_\_\_  
Lisa Janicki, Commissioner

\_\_\_\_\_  
Clerk of the Board

For contracts under \$5,000:  
Authorization per Resolution R20030146

Recommended:

\_\_\_\_\_  
County Administrator

\_\_\_\_\_  
Department Head

Approved as to form:

\_\_\_\_\_  
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

\_\_\_\_\_  
Risk Manager

Approved as to budget:

\_\_\_\_\_  
Budget & Finance Director

Exhibit "A"  
Project Information  
Page 1 of 2

Fiber optic lines will be installed and located between the following splice connection points: a) the Mount Vernon fiber optic network line located at or near the 800 block of Freeway Drive (Point A) and b) the Plant premises located at 14549 River Bend Road (Point B). Fiber optic cable will run along a power poles pursuant to pole permits and agreements obtained by Anacortes to the pole owned by Puget Sound Energy at the south corner of the Plant's premises and then through the Plant's premises in conduit installed by Anacortes to a splice connection point into the Anacortes fiber optic network. The drawing included in this Exhibit A depicts the approximate location of the conduit and the Anacortes splice connection point.

Mount Vernon shall design, engineer, and install fiber optic lines and splice connections beginning at Point A to the Anacortes splice connection point ending at Point B. Should a contractor be required for this work, Mount Vernon shall prepare and manage bid documents and the resultant contract.

Anacortes shall be responsible for obtaining all needed permits and shall be named as the lessee, fiber optic cable owner or fiber optic cable attachment provider for utility pole agreements needed run the cable on power poles along the County right of way and for obtaining any necessary right of way permits and for complying with the terms of the Franchise Agreements.

If needed, Mount Vernon shall be responsible for obtaining and shall be named as the lessee, fiber optic cable owner or fiber optic cable attachment provider for any required utility pole agreements to run the cable on power poles within Mount Vernon city limits.

Mount Vernon will provide twenty-four [24] strands of fiber for Anacortes's use.

The Project is not a County project. The County shall not be responsible or liable for the design, construction, maintenance, operation, and/or use of the Project in any way. For purposes of any Project work performed within the County's road right-of-way, it is recognized and agreed by the Parties that such work performed shall be in compliance with and subject to the terms of the Franchise Agreement.

Once the fiber optic cable is installed and connected between Point A and Point B, Mount Vernon will conduct bi-directional Optical Time Domain Reflectometer (OTDR) tests at 1310 nm and 1550 nm on each strand terminated and spliced. One endpoint of the OTDR testing will be either unterminated optical fiber ends or a fiber optic patch panel, both of which are at Anacortes' Water Treatment Plant. The other endpoint of the OTDR testing will be at the Mount Vernon 800-block splice point. These tests will verify that no point loss at any splice or other point along the optical path of any Project fiber exceeds 0.25 dB. These tests will also document end-to-end optical loss measured in dBs, reflectance at each splice point and end-to-end optical length of each optical fiber.

If the OTDR test indicates a point loss of greater than 0.25 dB along any Project fiber, Mount Vernon and Anacortes shall jointly agree whether or not to pursue any corrective measure; provided however, Mount Vernon shall not be under any obligation to incur greater expenses to pursue any corrective measures absent such further agreement

Exhibit "A"  
Project Information  
Page 2 of 2





**DATE:** June 24, 2020  
**TO:** Mayor Boudreau and City Council  
**FROM:** Peter Donovan, Project Development Manager  
**SUBJECT:** CDBG SUBRECIPIENT AGREEMENT WITH EDASC

**RECOMMENDED ACTION:**

Motion

**INTRODUCTION/BACKGROUND:**

THE FEDERAL CARES ACT PROVIDED FUNDING THROUGH HUD'S CDBG PROGRAM FOR COMMUNITIES TO ADDRESS THE EFFECTS OF THE COVID-19 PANDEMIC.

**FINDINGS/CONCLUSIONS:**

IN THIS PROPOSED AGREEMENT, THE CITY OF MOUNT VERNON WILL PROVIDE THE ECONOMIC DEVELOPMENT ALLIANCE OF SKAGIT COUNTY (EDASC) WITH \$110,000 IN HUD CDBG FUNDING FOR EMERGENCY RELIEF THAT PROVIDES ASSISTANCE IN THE FORM OF GRANTS OF UP TO \$10,000 EACH, TO COVID-19 IMPACTED BUSINESS OWNERS IN MOUNT VERNON.

**RECOMMENDATION:**

Staff recommends that Council authorize the Mayor to enter into this agreement with EDASC for the provision of HUD-funded grants to Mount Vernon small business owners.

**ATTACHED:**

Draft Agreement

CITY OF MOUNT VERNON  
COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT  
WITH ECONOMIC DEVELOPMENT ALLIANCE OF SKAGIT COUNTY

THIS AGREEMENT made and entered into by and between the City of Mount Vernon, a municipal corporation under the laws of the state of Washington (hereinafter referred to as the City) and the Economic Development Alliance of Skagit County, a Washington nonprofit corporation (hereafter referred to as Subrecipient).

WITNESSES THAT:

WHEREAS, in the City of Mount Vernon, the COVID-19 pandemic has had adverse impacts on citizens with low- to moderate-income who own a small business that meets the federal definition of a microenterprise; that is, a commercial enterprise with five or fewer employees, one or more of whom owns the enterprise, and

WHEREAS, the Subrecipient is a nonprofit corporation that works in collaboration with private and public sector partners to foster a supportive, sustainable and healthy environment for all Skagit businesses and workers, and

WHEREAS, the United States Department of Housing and Urban Development (HUD) has offered the City a grant of Community Development Block Grant (CDBG) funding from the recently approved CARES Act to address the adverse impacts of the COVID-19 pandemic, and

WHEREAS, the Subrecipient has agreed to administer and implement a CDBG microenterprise assistance project that provides CDBG-eligible, COVID-19 impacted microenterprises and their owners with financial assistance and technical assistance as allowed in the Housing and Community Development Act of 1974, as amended, in compliance with applicable local, state and federal laws, regulations and policies for the use of CDBG funds, and

WHEREAS, the City has agreed to provide the Subrecipient with one-hundred and ten thousand dollars (\$110,000) to support the Subrecipient's implementation of a CDBG-funded microenterprise assistance (MEA) project that provides assistance to COVID-19 impacted microenterprises, and

WHEREAS, the City and the Subrecipient are desirous of entering into a contract to formalize their relationship.

1. Services to be Provided by the Parties:

- a. The Subrecipient shall complete in a satisfactory and proper manner as determined by the City the work activities described in the Scope of Work.

- b. The City will provide such assistance and guidance as may be required to support the objectives set forth in the Scope of Work and will provide funding for the services and activities as set forth below.

2. Scope of Work:

a. Activities

The Subrecipient will undertake and carry out a CDBG MEA project in a manner satisfactory to the City and consistent with any standards required as a condition of the City providing these CDBG funds. The MEA project will include the activities described in Exhibit A, attached hereto and incorporated herein and made a part hereof.

The major goal of the Subrecipient's MEA project under this Agreement will be the provision of financial assistance and technical assistance to CDBG-eligible microenterprises and their owners. Changes to the project's scope of work or budget, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and City.

b. National Objectives

The Subrecipient certifies that the activities carried out under this agreement will meet the CDBG National Objectives, as outlined below:

The activities meet the CDBG National Objective to principally benefit persons with low- to moderate-income (LMI). The activity meets the limited clientele criteria by principally serving persons with LMI who request MEA.

The Subrecipient will verify that the limited clientele criteria is met, with the Subrecipient collecting documentation of data showing the size and annual income of the household of the microenterprise owners receiving a benefit, confirming that the beneficiary is LMI at the time the applicant is determined to be eligible for CDBG MEA, in compliance with CDBG regulations and guidance.

Note that once a microenterprise and an owner are confirmed to be eligible for CDBG MEA, the microenterprise remains eligible for CDBG-funded MEA for three years, whether or not the owner's income rises to exceed 80 percent of AMI.

c. Activity Budgets and Potential Program Income

Activity budget is outlined in Exhibit B "Proposed Project Budget" attached hereto and incorporated herein and made a part hereof.

CDBG funds will be used for direct financial assistance to CDBG-eligible microenterprises and for the reimbursement of the Subrecipient's direct costs of

implementing the project.

The project is not expected to produce any program income.

d. Levels of Accomplishment – Goals and Performance Measures

Activity goals and performance measures are outlined in Exhibit A. The number of microenterprises to be assisted is expected to be up to ten.

e. Staffing

Staff assigned to listed activities will be competent to perform assigned duties.

f. Performance Monitoring

The City will monitor the performance of the Subrecipient against activities and performance measures as stated above, on an annual basis if not more frequently.

The Subrecipient shall submit a CDBG Beneficiary and Outcomes Report to the City on a semi-annual basis. Payments will be withheld if reports are missing or incomplete.

Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, Agreement suspension or termination procedures will be initiated.

g. Compliance with Federal Regulations

Administration of program and activities are subject to federal HUD regulations as described in Exhibit C, attached hereto and incorporated herein and made a part hereof.

3. Time of Performance:

All activities described under the Scope of Work shall be conducted over the course of the current Year, beginning with a written notice to proceed from the City to the Subrecipient and ending on or before December 31, 2020. A written six-month extension to this ending date may be obtained from the City.

4. Consideration:

The City shall contribute one hundred ten thousand dollars (\$110,000.00) to accomplish the scope of work as detailed in Exhibit A.

As allowed by CDBG regulations and guidance, the CDBG funds may be used to:

- a) Provide direct financial assistance to CDBG-eligible microenterprises, not to exceed a total of one-hundred thousand dollars (\$100,000).
- b) Provide reimbursement to the Subrecipient for the direct costs of implementing the project, not to exceed ten thousand dollars (\$10,000)

5. Administration

The Subrecipient shall appoint a liaison who shall be responsible for the Subrecipient's overall administration of the CDBG-funded activities and the overall coordination with the City. The Subrecipient shall also designate one or more representatives who shall be authorized to sign invoices. The names of the liaison and representatives shall be specified by letter to the City.

6. Payments with CDBG Funds

- a) The City shall use CDBG funds only for the activities specified in attached Exhibit A, and only after adequate documentation provided to the City by the Subrecipient.
- b) Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.
- c) The City will make a timely payment to the Subrecipient after said payment request is received and approved by City personnel.
- d) The Subrecipient shall submit a CDBG Beneficiary and Outcomes Report to the City on a semi-annual basis. Payments will be withheld if reports are missing or incomplete.

7. Relationship:

The City and Subrecipient intend that an independent contractual relationship be created by this contract. Subrecipient is not considered to be an employee of the City for any purpose, and neither the Subrecipient nor any employee of the Subrecipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Subrecipient specifically represents and stipulates that the Subrecipient is engaged in the business of providing the services set forth in this contract, and that Subrecipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

8. Suspension, Termination, and Close Out:

If the Subrecipient fails to comply with the terms and conditions of this contract, the City may pursue such remedies as are legally available, including, but not limited to, the suspension or termination of this contract.

9. Changes, Amendments, Modifications:

The City may, from time to time, require changes or modifications in the Scope of Work to be performed hereunder. Such changes, including any decrease or increase in the amount of compensation therefore, which are mutually agreed upon by the City and the Subrecipient shall be incorporated in written amendments to this contract.

10. Assignability:

The Subrecipient shall not assign any interest on this contract, and shall not transfer any interest on the contract (whether by assignment or novation), without prior written consent of the City.

11. Reports and Information:

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

12. Insurance:

Prior to commencing work, Subrecipient shall procure and maintain at Subrecipient's own cost and expense for the duration of the Agreement the following insurance placed with insurers against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Subrecipient, its agents, representatives, employees or subcontractors. Subrecipient shall maintain limits no less than:

Commercial General Liability: One million dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, and two million dollars (\$2,000,000) aggregate. Coverage shall be on an "occurrence" basis. The City of Mount Vernon shall be named, by endorsement, as an additional insured on the Subrecipient's insurance policy as respects this contract. Such insurance as carried by the Subrecipient is primary over insurance carried by the City.

Comprehensive Automobile Liability Insurance: One million dollars (\$1,000,000) combined single limit per accident for bodily injury/property damage.

Evidence of Subrecipient's Insurance shall be presented to the City prior to the execution of the agreement. In the event of non-renewal, cancellation, or material change in coverage, thirty (30) days written notice will be furnished to the City prior to the date of cancellation, non-renewal or change.

13. Compliance with Local Laws:

The Subrecipient shall comply with all applicable laws, ordinances, and codes of the state and local government and the Subrecipient shall hold and save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

14. Audits and Inspections:

The City or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the contract by whatever legal and reasonable means are deemed expedient by the City.

15. Hold Harmless:

The Subrecipient agrees to indemnify and hold harmless the City, its appointed and elective officers and employees, from and against all loss and expense, including attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and appointed officers and employees from damages sustained by any person or persons, arising out of or in consequence of the Subrecipient's and its agents' negligent performance of work associated with this agreement.

This agreement contains all terms and conditions agreed to by the City and the Subrecipient.

IN WITNESS WHEREOF, the City and the Subrecipient have executed this agreement as of the date and year last written below:

CITY OF MOUNT VERNON

ECONOMIC DEVELOPMENT  
ALLIANCE OF SKAGIT COUNTY

\_\_\_\_\_  
Jill Boudreau, Mayor

\_\_\_\_\_  
John Sternlicht, CEO

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

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

Attest:

\_\_\_\_\_  
Doug Volesky, Finance Director

Approved as to form:

\_\_\_\_\_  
Kevin Rogerson, City Attorney

## Scope of Work

To accomplish the goal of providing MEA, the major tasks that the Subrecipient will perform include, but are not necessarily limited to, the following:

Activity #1: Determining the CDBG-eligibility of microenterprise owners, based on (a) the size of the microenterprise's payroll prior to the COVID-19 pandemic (five or fewer employees, based on full-time equivalents of full-time, seasonal or part-time employees), (b) one or more of the employees being an owner of the enterprise, (c) one of the owners of the enterprise having an annual household income that does not exceed 80 percent of the area median income (AMI), adjusted for household size by HUD, and (d) adverse impacts to the microenterprise as a result of the COVID-19 pandemic. Documentation will be collected and retained from each microenterprise that is considered eligible for CDBG MEA.

Activity #2: Determining which CDBG-eligible microenterprises will be offered CDBG-funded financial assistance and/or technical assistance based on criteria that the City and the Subrecipient agree will serve the public interest.

Activity #3 For each microenterprises to be assisted, determining with the participating microenterprise how the CDBG-funded financial assistance will be used and confirming that there will be no "duplication of benefits;" that is, no assistance is being received from another source for the same purpose and the amount of assistance provided does not exceed the total identified need.

Activity #4 For each microenterprises to be assisted and based on how the financial assistance will be used, documenting in an environmental review record (ERR) that considers whether the CDBG use will have any adverse environmental impacts. (If the CDBG use does not entail construction or ground disturbing activities, the ERR will usually confirm the use is categorically excluded and exempt from further environmental review.)

Activity #5 Providing adequate documentation to the City along with a request for an amount of funding that will be used for financial assistance payments to microenterprises and for the reimbursement of the Subrecipient's direct costs of the project's implementation.

Activity #6 For each microenterprise to be assisted, providing financial assistance in a lump sum payment to the microenterprise and documenting the delivery and receipt of those funds.

Exhibit B  
Proposed Project Budget

Direct financial assistance to microenterprises	\$100,000.00
Subrecipient direct expenses for implementation	\$ 10,000.00
Total budget and compensation not to exceed	\$110,000.00

Exhibit C  
CDBG General Conditions

**I GENERAL CONDITIONS**

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

**II. ADMINISTRATIVE REQUIREMENTS**

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-2 1, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.2 1–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee’s annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and

resolution of all issues, or the expiration of the four-year period, whichever occurs later.

### 3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

### 4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited under applicable public disclosure laws and 24 CFR 85.42(f), unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

Notwithstanding 24 CFR 85.42(f), recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of privacy.

### 5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

### 6 Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit

conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

C Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report quarterly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

D Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.

The Subrecipient shall comply with 24 CFR Part 5 as it applies to debarment and suspension.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under

this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

### **III. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

### **IV. PERSONNEL & PARTICIPANT CONDITIONS**

#### **A. Civil Rights**

##### **1. Compliance**

The Subrecipient agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

##### **2. Nondiscrimination**

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

##### **3. Land Covenants**

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance

provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian- Americans, and American Indians. The Subrecipient may rely on written

representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal and State officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all

other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S .C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph

3. “Section 3” Clause

a Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban

Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker’s representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless

the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

#### 4 Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

#### 5 Lobbying

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative

agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:
- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### 6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

#### 7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

### V. ENVIRONMENTAL CONDITIONS

#### A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.