

REQUEST FOR PROPOSAL
POLICE PENSION FUND ATTORNEY
CITY OF READING, PENNSYLVANIA

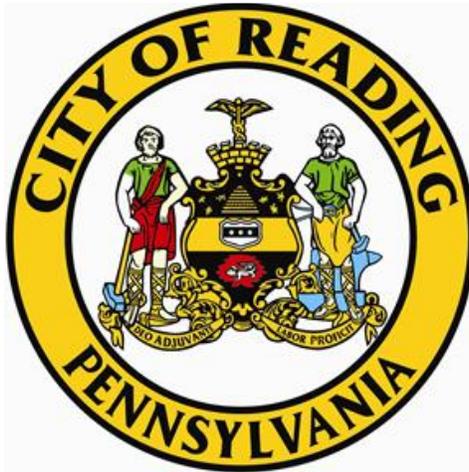


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PROFESSIONAL SERVICES

The City of Reading will receive sealed proposals from qualified attorneys and/or law firms to provide legal services to the Fund and the Fund Board of Directors in the Office of the City Purchasing Coordinator, Rm. 2-45, City Hall, 815 Washington Street, Reading, PA., until 3:00 p.m., prevailing time on Tuesday, October 22, 2013, as per specifications on file in the Office of the Purchasing Coordinator.

Specifications and Proposal Forms for the above work can be obtained at the Office of the Purchasing Coordinator, City Hall.

The City of Reading reserves the right to accept or reject any and all bids, and to accept or reject any part of a bid, as may be in the public interest.

PROPOSAL SUBMISSION

The original proposal and six (6) copies shall be submitted in a sealed envelope that shall plainly indicate on it the title of the proposal and the date for receiving. This shall be delivered to the City Purchasing Manager, Rm. 2-45, City Hall, 815 Washington Street, Reading, PA, until 3:00 P.M., prevailing time on Tuesday, October 22, 2013. The envelope shall be clearly labeled as POLICE PENSION ATTORNEY.

Proposals received at the Office of the Purchasing Manager after the hour specified will not be considered. Proposers are invited to be present at the RFP opening.

PRE-PROPOSAL CONFERENCE

To facilitate the clarification of requirements, proposers are required to submit questions in writing, by 2:00 P. M. on Friday, October 4, 2013. Any interpretation made to prospective proposers will be expressed in the form of an addendum which, if issued, will be conveyed in writing to all prospective proposers no later than 2:00 P. M. on Friday, October 11, 2013.

PROPOSER'S CLARIFICATION

By submitting a proposal, the proposer certifies that the RFP has been fully read and that the proposer understands the proposal method and has full knowledge of the scope, nature and quality of work to be performed.

INSURANCE

The Successful Proposer, at the time of execution of the contact, shall also furnish the City with insurance certificates of adequate limits, as later indicated, to protect the City of Reading, its agents, and employees, from any litigation involving Worker's Compensation, Public Liability and Property Damage, involved in the work. All subcontractors must also furnish copies of their liability insurance and Worker's Compensation Insurance certificates to the City. No subcontractor will be allowed to perform any work under this contract by the City unless such certificates are submitted to and approved by the City beforehand.

WORKERS' COMPENSATION AND PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The status of the Proposer in the work to be performed is that of any independent Proposer and as such, he shall properly safeguard against any and all injury or damage to the public, to public and private property, materials and things, and as such he alone shall be responsible for any and all damage, loss or injury to persons or property that may arise, or be incurred, in or during the conduct or progress of said work without regard to whether or not the Proposer, sub-contractors, agents, or employees have been

negligent, and the Proposer shall keep the City free and discharged of and from any and all responsibility and liability therefore of any sort or kind. The Proposer shall assume all responsibility for risks or casualties of every description, for any or all damage, loss or injury to persons or property arising out of the nature of the work from the action of the elements, or from any unforeseen or unusual difficulty, including all legal defense costs incurred by the City. The Proposer shall assume and be liable for all blame and loss of whatsoever nature by reason of neglect or violation of any Federal, State, County or Local laws, regulations, or ordinances; the Proposer shall indemnify and save harmless the City from all suits or actions at law of any kind whatsoever in connection with this work and shall if required by the City, produce evidence of settlement of any such action before final payment shall be made by the City. Proposer's Liability Insurance Certificate shall include the save harmless clause and shall be filed with the City.

The Proposer shall maintain such insurance as will protect the proposer from claims under worker's compensation acts and from claims for damages because of bodily injury, including death, and property damage, which may arise from and during operations under this Contract, whether such operations be by himself, by any subcontractor or anyone directly or indirectly employed by either of them. Proposer's liability insurance shall be in the names of the Proposer and the City as their respective interests may appear. Each policy and Certificate of Insurance shall contain an endorsement naming the City of Reading as additionally insured. Certificates of such insurance shall be filed with the City.

The minimum amount of liability insurance to be maintained by the Contractor during the life of the contract shall be as follows:

- Professional Liability – in minimum amounts of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- Umbrella/Excess Liability – with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate following from underlying liability coverage.
- Worker's Compensation – Statutory limits in each state in which Service Provider is required to provide Worker's Compensation coverage including "All States" and "Voluntary Compensation" endorsement, and a Waiver of Subrogation endorsement in favor of the City.
- Comprehensive General Liability – for bodily injury and property damage – including any liability normally covered by a general liability policy with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate.
- Business Automobile Liability – For owned, non-owned, leased and hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage.
- Employer's Liability – with limits of not less than \$100,000 Accident – Each Accident, \$100,000 Disease – Each Employee; and \$500,000 Disease – Policy Limit.

All subcontractors performing work under this contract must furnish to the City a copy of their Certificate of Insurance for Workers' Compensation and liability for bodily injury and property damage.

EQUAL EMPLOYMENT OPPORTUNITY

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

The Proposer will not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Proposer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment,

upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices which may be provided by the City setting forth the provisions of this nondiscrimination clause.

The Proposer will, in all solicitations or advertisements for employees placed by or on behalf of the Proposer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

In the event of the Proposer's noncompliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole, or in part and the Proposer may be declared ineligible for further City contracts.

The Proposer will include the provisions of these paragraphs in every subcontract or purchase order unless exempted.

EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

No person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Contract.

ALTERATIONS OR MODIFICATIONS

This contract will be under the direct supervision of the City or its authorized representatives. Any alterations or modifications of the work performed under this contract shall be made only by written agreement between the Proposer and the City authorized representatives and shall be made prior to commencement of the altered or modified work. No claims for extra work or materials shall be allowed unless covered by written agreement.

SUBCONTRACTS

The Proposer will not be allowed to subcontract work under this contract unless written approval is granted by the City. The Subproposer, as approved, shall be bound by the conditions of the contract between the City and the Proposer. The authorization of a Subproposer is to perform in accordance with all terms of the contract and Specifications. All required notices, work orders, directives, and requests for emergency services will be directed to the Proposer. All directions given to the Subproposer in the field shall bind the Proposer as if the notice had been given directly to the Proposer.

RIGHT TO AUDIT RECORDS

The City shall be entitled to audit the books and records of a proposer or any sub-proposer to the extent that such books and records relate to the performance of such contract or sub-contract. Such books and records shall be maintained by the proposer for a period of three (3) years from the date of final payment under the prime contract and by the sub-proposer for a period of three (3) years from the date of final payment under the sub-contract unless a shorter period is otherwise authorized in writing.

DISSEMINATION OF INFORMATION

During the term of the resulting contract, the successful proposer may not release any information related to the services or performance of services under the contract, nor publish any report or documents relating to the City, the account or performance of services under the agreement without prior written consent of the City; and shall indemnify and hold harmless the City, its officers, agents, and employees from all liability which may be incurred by reason of dissemination, publication and distribution, or circulation, in any manner whatsoever, of any information, data, documents, or material pertaining to the

City, the account or the contract by the proposer or its agents or employees.

BUSINESS PRIVILEGE TAX

The City of Reading imposes a Business Privilege License at \$55.00 per calendar year. In addition, a Business Privilege Tax is imposed at the service rate of 2 1/4 mills upon the gross receipts attributable to business conducted within the City of Reading.

PERMITS/LICENSES

The Proposer shall, at its expense, pay all fees and procure all necessary licenses and permits needed to conduct the work required under the terms of this contract. The Proposer shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the work of this contract.

OBSERVANCE OF LAWS, ORDINANCES AND REGULATIONS

The Proposer at all times during the term of this contract shall observe and abide by all Federal, State, and Local laws which in any way affect the conduct of the work and shall comply with all decrees and orders of courts of competent jurisdiction. The Proposer shall comply fully and completely with any and all applicable State and Federal statutes, rules and regulations as they relate to hiring, wages, and any other applicable conditions of employment.

WITHDRAWAL OF PROPOSALS

Proposers will be given permission to withdraw any proposals after they have been received by the City's Purchasing Manager at his/her office, provided said request is in writing and properly signed or by telegram and is received at least two (2) hours prior to the time and date set for the opening. Request by telegram must be confirmed in writing, properly signed, which must be delivered within twenty-four (24) hours of the time and date set for the opening. No proposals may be withdrawn for a period of ninety (90) days following the formal opening and receipt of proposals by the City of Reading.

PROPOSAL REJECTION

The City of Reading reserves the right to reject any or all proposals and to accept or reject any part of any proposal. It also reserves the right to waive any technical defects or minor irregularities, which in its discretion, is in the best interest of the City.

EXECUTION OF CONTRACT

The successful Proposer shall, within ten (10) calendar days after mailing of contract documents by the City to the Principal, enter into contract with the City.

The contract, when executed, shall be deemed to include the entire agreement between the parties; the Proposer shall not base any claim for modification of the contract upon any prior representation or promise made by the representatives or the City, or other persons. All attachments are considered as part of this document.

CONTRACT TERMINATION

The City shall have the right to terminate a contract or a part thereof before the work is completed in the event:

- A. Previous unknown circumstances arise making it desirable in the public interest to void the contract.
- B. The proposer is not adequately complying with the specifications.

- C. The proposer refuses, neglects, or fails to supply properly trained or skilled supervisory personal and/or workers or proper equipment.
- D. The proposer in the judgment of the City is unnecessarily or willfully delaying the performance and completion of the work.
- E. The proposer refuses to proceed with work when and as directed by the City.
- F. The proposer abandons the work.

Introduction and Background

The City of Reading Police Pension Fund, henceforth the “Fund”, is soliciting proposals from qualified attorneys and/or law firms to provide legal services to the Fund and the Fund Board of Directors. The provisions of the Police Pension Plan and Fund are governed by Pennsylvania Act 600 of 1956, as amended. In addition, the Fund is subject to the provisions of Pennsylvania Act 205 of 1984. The Fund provides retirement, death, and disability benefits to the City’s uniformed police officers. As of June 30, 2013, the City of Reading Police Pension Fund had assets under management totaling \$73.2 million.

Qualifications and Professional Staff

1. Please provide a brief summary and history of your firm, including the year founded, location(s) of your office(s), number of attorneys, total size of firm, and significant developments affecting the firm in the last five (5) years, such as changes in ownership, restructuring, personnel reorganization, or philosophy.
2. Note any changes in ownership or management of your firm planned or anticipated during the next two years.
3. Provide the name, title, home office location, and biography of each key individual who would be directly responsible for providing services to the City of Reading Police Pension Fund. Include the year each individual joined the firm, years of experience with municipal pension plans and/or qualified retirement plans, current position and responsibilities with respect to municipal pension plans and/or qualified retirement plans, areas of expertise, education, training, professional designations, and memberships. Detail their roles and the scope of their involvement with the City of Reading Police Pension Fund.
4. Identify the attorney who will serve as the principal/lead attorney to the City of Reading Police Pension Fund.
5. What are the firm’s key strengths and competitive advantages? What do you believe sets your firm’s services apart from the competition, and what unique value-added services could your firm provide?
6. Describe the level of coverage for malpractice insurance the firm carries.
7. Within the last five years has your firm or any attorney at your firm been accused of malpractice? If so, provide an explanation and indicate the current status.
8. Are there any legal matters affecting your firm that the City of Reading Police Pension Fund should be aware of? If so, please describe.

Scope of Services

The successful attorney/law firm will be required to perform the following legal services for the City of Reading Police Pension Fund:

1. Review, and as necessary, revise Pension ordinances;
2. Revise and update Plan Documentation;
3. Update the City of Reading Police Pension Fund Board on relevant changes in law;

4. Provide general legal advice regarding the administration of the City of Reading Police Pension Fund and Plan;
5. The principal attorney will be required to attend monthly meetings of the City of Reading Police Pension Fund Board;
6. Other legal services as may be required from time to time by the City of Reading Police Pension Fund.

References

Please provide references for three (3) Pennsylvania municipal clients for whom the attorney/firm has provided legal services within the past year. Please also indicate if pension-related services were provided to the referenced municipality. For each reference listed, include the name of the municipality, the contact person at the municipality, telephone number, and email address.

Fees

Please provide the following information regarding fees:

1. Describe your firm's billing rates for each professional who would be working on City of Reading Police Pension Fund matters and any alternative fee arrangements that you provide.
2. Describe any additional fees you charge, such as for travel, copying, etc.
3. Describe your approach to using associates, paralegals, etc. to complete work and the oversight of those professionals.

Sample Engagement Letter

1. Please provide a sample engagement letter.

Evaluation Criteria

The evaluation will take place in two phases. Phase One will involve review of written proposals. Phase Two will involve interviews with the City and/or Pension Plan officials who will make the final selection.

ASSIGNMENT OF KEY STAFF

The key member(s) of the contract identified must be assigned to the contract and must remain assigned to the contract for its duration, unless the City agrees in writing to modify the assignment. If a key member leaves during the course of the contract, the City must be notified immediately, and the contractor must submit the replacements name and credentials for approval by the City prior to that person starting work on the contract.

SELECTION COMMITTEE AND PROCEDURE FOR REVIEW OF PROPOSALS

A Selection Committee will be established to review and evaluate all proposals submitted in response to this Request for Proposals (RFP). The Committee shall conduct a preliminary evaluation of all proposals based on the information provided. The Committee will first review each proposal for compliance with the minimum qualifications and mandatory requirements of the RFP. Failure to comply with any mandatory requirements may disqualify a proposal.

The City reserves the right to reject any and all proposals and to waive minor irregularities. The City further reserves the right to seek new proposals when such a procedure is reasonably in the best interest of the City to do so.

QUESTIONS REGARDING SPECIFICATIONS OR PROPOSAL PROCESS:

RFP – Police Pension Attorney
City of Reading, PA
2013

To ensure fair consideration for all proposers, the City prohibits communication to or with any department director, division manager or employee during the submission process with the exception of those questions relative to interpretation of specifications or the proposal process. No interpretations of the meaning of the RFP documents will be made to any bidder orally. Every request for such interpretation shall be in writing to the City of Reading Purchasing Office, and to be given consideration must be received in writing prior to 2:00 P. M. on Friday, October 4, 2013. Direct inquiries to:

Tammi Reinhart
Purchasing Coordinator
City Hall, Rm. 2-45
815 Washington Street
Reading, PA 19601
FAX - (610) 655-6427
E-MAIL: Tammi.Reinhart@readingpa.org

Any and all such interpretation will be in the form of an Addendum to the Contract Documents and will be faxed to all prospective proposers at the number furnished by them no later than 2:00 P. M. on Friday, October 11, 2013.

Additionally, the city prohibits communications initiated by a proposer to any City Official or employee evaluating or considering the proposals prior to the time an award decision has been made. Any communication between proposer and the City will be initiated by the appropriate City Official or employee in order to obtain information or clarification needed to develop a proper, accurate evaluation of the proposal. Such communications initiated by a proposer may be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.

NON-COLLUSION AFFIDAVIT

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

This Non-Collusion Affidavit is material to any contract pursuant to this bid. According to the Pennsylvania Antirigging Act, 73 P.S. 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with proposals.

This Non-Collusion affidavit must be executed by the member, officer, or employee of the proposer who is authorized to legally bind the proposer.

Bid/Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of proposals are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the proposer with responsibilities for the preparation, approval, or submission of the bid.

In the case of a proposal submitted by a joint venture, each party to the venture must be identified in the proposal documents, and an Affidavit must be submitted separately on behalf of each party.

The term "complementary bid/proposal" as used in the Affidavit has the meaning commonly associated with that term in the RFP process, and includes the knowing submission of proposals higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any form of proposal submitted for the purpose of giving a false appearance of competition.

Failure to file an Affidavit in compliance with these instructions will result in disqualification of the proposal.

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

He/She is _____ of the Proposer that has
(Owner, Partner, Officer, Representative or Agent)
submitted the attached Proposal;

He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

Such Proposal is genuine and is not a collusive or sham Proposal;

Neither the said Proposer nor any of its officers; partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal is submitted or to refrain from submitting in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication of conference with any other Proposer, firm or person to fix the price or prices in the attached Proposal or of any other Proposer, or to fix any overhead, profit or cost element of the Proposal price or the Proposal price of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Reading or any person interested in the proposed Contract;

The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit; and,

Neither the said Proposer nor any of its officers, partners, owners, agents or parties in interest, have any interest, present or prospective, that can be reasonably construed to result in a conflict of interest between them and the City of Reading, which the Proposer will be required to perform.

NON DISCRIMINATION STATEMENT

The undersigned hereby certifies that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, familial status, or national origin. The undersigned shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, familial status, or national origin.

BIDDER

TITLE

CDBG COMPLIANCE PROVISIONS
FOR
PROFESSIONAL SERVICES CONTRACTS

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1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)
(applicable to contracts and subcontracts above \$10,000)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved

in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. CERTIFICATION OF NONSEGREGATED FACILITIES
(applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

3. CIVIL RIGHTS

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 -
COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS
OPPORTUNITIES

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section

3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
 - C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
 - D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
 - E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
 - F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
 - G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
(applicable to contracts and subcontracts over \$10,000)
- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental

handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

8. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS
(applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c 8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

10. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93 234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The City, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the City's final closeout of the grant.

12. INSPECTION

The authorized representative and agents of the City and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

14. CONFLICT OF INTEREST

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- B. No member of or delegate to Congress, or Resident, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED

(applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

16. PATENTS

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

17. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

18. TERMINATION FOR CAUSE

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

19. TERMINATION FOR CONVENIENCE

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

20. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

21. SUBCONTRACTS

- A. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of Pennsylvania.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

22. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

23. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

25. CHANGES

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

26. PERSONNEL

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

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

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

27. ANTI-KICKBACK RULES

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

28. ASSIGNABILITY

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

29. INTEREST OF CONTRACTOR

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

30. POLITICAL ACTIVITY

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

32. DISCRIMINATION DUE TO BELIEFS

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

33. CONFIDENTIAL FINDINGS

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

34. LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal 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.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

APPENDIX A

The City of Reading CDBG, ESG, and HOME Environmental Review Record Procedures

The following is a list of the key regulations which must be complied with in the creation of the environmental review record.

- 24 CFR Part 58; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities
- 24 CFR Part 51; Environmental Criteria and Standards
- 24 CFR Part 55; Floodplain Management
- 35 CFR Part 800; Protection of Historic Properties
- 40 CFR Parts 1500-1508; Council on Environmental Quality Implementation of NEPA Procedural Provisions

The environmental review addresses the physical, social, and economic impacts of the entire proposed activity. The environmental review process must consider the ultimate effect of a proposed project, including the potential effects of the CDBG, ESG, HOME and related project activities.

The City's first objective in the environmental review process is to determine a "level of clearance" finding.

Exempt from NEPA

NEPA requirements and related Federal laws and authorities under 58.5 are not applicable to the project. However, requirements under 58.6 are applicable as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities considered Exempt include the following:

- Environmental and planning studies.
- General administrative costs.
- Payment of costs for eligible public services that will not have a physical impact or result in any physical changes, including but not limited to services addressing employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- Inspections and testing of properties for hazards and defects.
- Preliminary and final engineering and design costs incurred for an eligible CDBG program activity;
- Technical assistance and training.
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

Activities that are Categorically Excluded and subject to 58.5, but have converted to Exempt.

ENVIRONMENTAL PROCEDURES

Document the reasons for the finding and prepare a "Finding of Exemption".

Categorically excluded from NEPA and not subject to 58.5 (58.35(b))

NEPA requirements and related Federal authorities under 58.5 are not applicable to these projects. Again, requirements under 58.6 are applicable as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities, which fall under this category, include the following:

- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating costs and similar costs not associated with construction or expansion of existing operations.
- Payment of CDBG eligible operating costs.
- Payment of CDBG eligible supportive service costs, including but not limited to, health care, housing services, permanent housing placement, day care, and nutritional services.
- Activities to assist homebuyers to purchase existing dwelling units, or dwelling units under construction where the foundation is already in place at the time the buyer applies for assistance, including closing costs and down payment assistance, interest buydowns, and similar activities that result only in the transfer of title.
- Affordable housing predevelopment costs.
- Payment of assessments for households, such as the upgrading of a water quality or a sewage treatment facility, where the project is not dependent on CDBG funding. In other words, the project would move forward with or without CDBG funding.

If any additional activities are taking place, such as rehabilitation or new construction, or if the project is associated with the expansion of existing operations, the project does have to meet a higher environmental clearance level, even if CDBG funds are not paying for the additional activities.

ENVIRONMENTAL PROCEDURES

An activity determined to be categorically excluded and not subject to 58.5 must be documented as such and does not convert to exempt, but remains excluded.

File the completed Environmental Finding Form indicating “Categorically Excluded, not subject to 58.5”.

Categorically Excluded from NEPA, but subject to 58.5 (58.35 (a))

NEPA requirements are not applicable, however the requirements of 24 CFR Part 58.5 are applicable to projects in this category.

Requirements under 24 CFR Part 58.6 are also applicable as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities, which fall under this category, include the following:

- Payment of assessments for households, for example the upgrading of a water quality or a sewage treatment facility, when the project is dependent on CDBG funding, and with a less than 20% increase in system capacity,

- The acquisition, reconstruction, rehabilitation, or installation of eligible public works and improvements when the facilities and improvements are in place and will be retained in the same use with less than a 20% change in size or capacity (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- Special projects directed to the removal of material and architectural barriers that restrict mobility of and accessibility to elderly and handicapped persons.
- The rehabilitation of buildings and improvements when the following conditions are met:
- For a residential building with one to four units:
 - The density is not increased beyond four units,
 - The land use is not changed,
 - The footprint of the building is not increased in a floodplain or in a wetland.
- For multifamily residential buildings:
 - Unit density is not changed more than 20 percent;
 - There are no changes in land use from residential to non-residential; and
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

For non-residential structures:

- The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
- The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
- An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between. (This does not apply to the rehabilitation of a building for residential use (with one to four units.)
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
- Acquisition of an existing structure provided that the structure acquired will be retained for the same use.
- Combinations of the above activities.

ENVIRONMENTAL PROCEDURES

Document compliance with 58.5 by completing a "Statutory Worksheet".

If the City is administering a rehabilitation program, the City Historic Preservation Specialist (HPS) must write to the State Historic Preservation Officer (SHPO) describing the program and how the HPS will evaluate each unit for historic or archaeological status. A Programmatic Agreement (PA) may be negotiated, between the HPS and the SHPO.

If there are no secondary findings, the project converts to exempt status pursuant to 24 CFR 58.34 (a)(12):

For the files:

1. A description of the project

2. A completed Form 58.6
3. A completed and documented Statutory Worksheet with primary findings only.
4. Supporting documentation, including the Programmatic Agreement and HPS correspondence where applicable.
5. A completed Environmental Finding Form, indicating Categorical Exclusion, per section 58.35(a) and conversion to Exempt.

If there are secondary findings on The Statutory Worksheet:

For the files:

1. A description of the project
2. A completed Form 58.6
3. A completed and documented Statutory Worksheet identifying secondary findings.
4. A copy of supporting documentation, including the Programmatic Agreement and HPS correspondence where applicable.
5. An Environmental Finding Form indicating a "Finding of Categorical Exclusion"
6. Documentation of publication of the NOI/RROF notice in a local newspaper of general circulation. If the notice is not published, then it must be prominently displayed in the local post office and in other public buildings as established by the citizen participation process. Provide for 7 calendar days after the date of publication of the notice for public comment or 10 calendar days if the notice was not published, but mailed and posted instead.
7. Comments received during the 7-day comment period for newspaper publications or 10-day period for mailed/posted notifications and responses.
8. A completed "Request for Release of Funds and Certification" Form

Submit a copy of the above forms to HUD for review and approval. HUD will require an additional 15 days to receive any objections prior to releasing an environmental clearance letter after receiving the Release of Funds and Certification Form. File all documents including the environmental clearance letter in the file.

Environmental Assessment (58.36)

If the activity is not found to be exempt or categorically excluded from NEPA, an Environmental Assessment (EA) will be required. This document is used to evaluate the environmental ramifications of proposed CDBG, ESG, HOME funded and related program activities. Depending upon the magnitude and complexity of the proposed project, the Environmental Assessment can lead to two types of clearances or findings. These include a Finding of No Significant Impact (FONSI) or a Notice of Intent to Prepare an Environmental Impact Statement (EIS).

Activities, which fall under this category include but are not limited to the following:

- The construction of a community facility such as a Child Care facility, a Homeless Shelter, or a Community Center.

- Public Works activities in which the size and capacity of the system or facility will be increased by more than 20 percent.
- Infrastructure activities in support of a new construction project.
- An individual action on a project of 5 or more units when the units are located within 2,000 feet of each other.

ENVIRONMENTAL PROCEDURES

Prepare an EA in accordance with 24 CFR Part 58 Subpart E using the Environmental Assessment to include the City's name and address, a description of the project and location map, a determination of existing conditions, identification of project impacts with data sources and explanation, a discussion of project alternatives, a discussion of any measures that will be implemented to mitigate project impacts, and a discussion of any irreversible project impacts. In addition, the other applicable laws and authorities must also be addressed and documented as part of the Environmental Assessment.

The Environmental Assessment will result in either 1) a Finding of No Significant Impact (FONSI) or 2) a finding of significant impact requiring preparation of an Environmental Impact Statement.

Finding of No Significant Impact (FONSI). Most CDBG, ESG, HOME projects will result in a FONSI as they do not usually constitute major Federal actions or comprise part of a larger project that has already completed an environmental study.

For the files:

1. A full description of the project
2. A completed Form 58.6
3. A completed and documented Environmental Assessment
4. A copy of supporting documentation, including HPS correspondence where applicable
5. An Environmental Finding Form
6. Documentation, as described in Section 58.43, of the dissemination of a combined "Notice of FONSI and Notice of Intent to Request Release of Funds". In addition, copies of the FONSI should be sent to the appropriate State, federal and local agencies, the headquarters and appropriate regional office of the Environmental Protection Agency (EPA) and HUD.
7. A copy of the aforementioned distribution list
8. A copy of the published combined Notice of FONSI/NOIRROF in a local newspaper of general circulation. Provide for 15 calendar days after the date of publication of the notice for public comment or 18 calendar days if the notice was not published, but mailed and posted instead. If the notice is not published, then it must be prominently displayed in the local post office and in other public buildings as established by the citizen participation process.
9. Comments received during the 15-day comment period for newspaper publications or 18-day period for mailed/posted notifications and responses.
10. A completed "Request for Release of Funds and Certification" Form

Submit a copy of each form to HUD for review and approval. After receiving the Request for Release of Funds and Certification form, HUD must allow an additional 15 days to accept any objections to its release of funds and the grantee's certification prior to releasing an environmental clearance letter. The 15-day period

begins on the date that the HUD receives the Request for Release of Funds or the date identified in the combined Notice, whichever is later.

Finding of Significant Impact. If you determine that the CDBG project will have a potentially significant impact on the human environment, then an Environmental Impact Statement must be prepared.

Environmental Impact Statement (58.37)

If the Environmental Assessment results in a finding that an activity will have “potentially significant” impact on the human environment, the City must publish a notice of intent to prepare an Environmental Impact Statement (EIS). “Potentially significant” incorporates significant development, regional impact, long-term effects on the environment, violation of existing laws and authorities or highly controversial development where in each case procedural resolution is not feasible. 24 CFR Part 58.37 describes certain types of projects that require an EIS because of their size or nature.

Consultation with the State Historic Preservation Officer (SHPO)

American history, architecture, archeology, engineering and culture are embodied in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

- that are associated with events that have made a significant contribution to the broad patterns of our history; or
- that are associated with the lives of persons significant in our past; or
- that display the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- that have yielded, or may be likely to yield, information important in prehistory or history

The City Historic Preservation Specialist must consult with SHPO if there are potentially any historical properties (including archaeological and cultural resources) on the project site or if the project could have an effect on historical properties, including possible historic or archaeological properties not yet identified. Public involvement is a primary ingredient in successful Section 106 compliance. It is imperative that all affected parties be invited to comment early in the review process and that all historical information from interested sources be documented to determine the reasonable, good faith effort on the part of the individuals preparing the determination.

For rehabilitation activities, the HPS must evaluate whether the proposed activity will affect a property on or eligible for the National Register of Historic Buildings, and must consult with SHPO.

Please note that, in the absence of a Programmatic Agreement or Letter of Understanding between the City and the SHPO, for any housing rehabilitation project that involves exterior work, even if the structure is less than 50 years old, the HPS shall consult with SHPO in determining if there is an impact and in developing mitigation measures.

The Advisory Council on Historic Preservation has formalized the review period. Requests for comment to the SHPO must receive a response within 30 days of receipt of the request. Requests for comment should be sent certified mail. If the SHPO fails to respond to an “adequately documented finding” within that review period, compliance with Section 106 is complete. An adequately documented finding is one for which the grantee has completed the research necessary to make a determination prior to formally consulting with the SHPO. If the information is inadequately documented, SHPO is allowed an additional 30 days to respond to a resubmittal. The HPS must carefully follow the documentation standards in 36 CFR Part 800.

Descriptions and photographs of structures to be affected by rehabilitation should be submitted to the SHPO for review as part of the environmental review procedures by the HPS. Consultation with the SHPO can be

made during preparation of the Statutory Worksheet however each structure must be evaluated on a case-by-case basis.

When an activity will have an affect on a property on, or eligible for, the National Register and the HPS and the SHPO disagree or require additional counsel, or if an identified consulting party requests the Council's participation, the Advisory Council on Historic Preservation must be given the opportunity to comment. An additional 30-day review and comment period will apply.

Floodplain Management

Executive Order 11988 is referenced in environmental regulation 24 CFR Part 58. It establishes Federal policy to assure that Federal Programs, including HUD, avoid adverse impacts to floodplains, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and to the extent possible, restore the natural beneficial values served by the floodplain. Only when it can be demonstrated that there is no practical alternative does it allow provision of direct or indirect Federal assistance for floodplain development or other actions that would adversely affect floodplain areas.

E.O. 11988 applies to acquisition, new construction, and most rehabilitation activities that are undertaken with any HUD assistance within special flood hazard areas designated as within the 100-year or 500-year floodplain by Federal Emergency Management Agency's Flood Hazard Boundary Maps and Flood Insurance Rate Maps. If the activity is located in a floodplain the City is required to complete an 8-step Floodplain and Wetlands Assessment described in federal floodplain management regulations, 24 CFR Part 55.

Compliance with the Flood Disaster Protection Act of 1973 as amended is also referenced in 24 CFR 58, Section 58.6. Expenditure of Federal funds, including mortgage insurance, is prohibited in special flood hazard areas if a community is not a participant of the National Flood Insurance Program. The Act requires that flood insurance must be purchased and maintained on those structures located within special flood hazard areas that receive Federal assistance for construction, reconstruction, or rehabilitation.

In general, with a few exceptions, HUD assisted actions are approvable in a special flood hazard area only if the 8-Step decision record supports that there is no practicable alternative, the community is a participant in the National Flood Insurance Program and flood insurance is obtained as a condition of approval.

Urgent Need

An activity designed to alleviate an existing condition of particular urgency can perform a modified review. The condition must pose a serious and immediate threat to the health or welfare of the City, must have occurred or become urgent within the last 18 months, and the City must document that it has been unable to finance the activity because the community's other resources have been depleted by the emergency and other Federal programs are not sufficient to cover all the costs.

Records must include: 1) a description of the condition, documenting both the timing and the nature and degree of seriousness of the threat, 2) local certification that the CDBG activity was designed to address the urgent need, i.e. a resolution, 3) evidence that other financial resources are unavailable to alleviate the need.

Certain Categorically Excluded activities may be deemed Exempt in emergency situations under Section 58.34(a)(10). Specifically, this clearance level addresses "Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration". They will follow the recordkeeping requirements for exempt projects as outlined earlier in the chapter and for emergency projects as documented above. For an activity that, under non-emergency circumstances, would typically require noticing, Section 58.33 applies. "If funds are needed on an emergency basis and when adherence to separate comment periods would prevent the giving of assistance, the combined Notice of FONSI and the NOI/RROF may be

disseminated and/or published simultaneously with the submission of the RROF. The combined NOI/RROF shall state that the funds are needed on an immediate emergency basis due to a Presidentially declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to the City to assure that these comments will receive full consideration.” In effect, the combined FONSI notice to the public and the state will require only 15 days total for comment. All other review and recordkeeping requirements remain the same.

Note: All notices, RROF’s, letters, etc. shall be prepared by the consultant. The City will be responsible to place the notice in the Reading Eagle newspaper.

Sample Publication, Public Comment, and Public Objection Schedules

Notice of Intent to Request Release of Funds (NOI/RROF)

Newspaper Publication

Published	July 1
Public Comments (7 calendar days)	July 2 to July 8
Public Objections submitted to HUD (15 calendar days)	July 9 to July 23

OR

Mailed or Posted

Mailed/Posted	July 1
Public Comments (10 calendar days)	July 2 to July 11
Public Objections submitted to HUD (15 calendar days)	July 12 to July 26

Combined Notice of Finding of No Significant Impact (FONSI)/Notice of Intent to Request Release of Funds (NOI/RROF)

Newspaper Publication

Published	July 1
Public Comments (15 calendar days)	July 2 to July 16
Public Objections submitted to HUD (15 calendar days)	July 17 to July 31

OR

Mailed or Posted

Mailed/Posted	July 1
Public Comments (18 calendar days)	July 2 to July 19
Public Objections submitted to HUD (15 calendar days)	July 20 to August 3

