

## CITY OF ALBUQUERQUE TERMS AND CONDITIONS

### IMPORTANT NOTICE: BY COMMENCING SERVICES OR PROVIDING GOODS UNDER THIS CONTRACT OR PURCHASE ORDERS, SUPPLIER ACCEPTS ALL TERMS AND CONDITIONS HEREIN

1. **Contract:** The Contractor accepts these Terms and Conditions and agrees that, to the extent Contractor's terms conflict, these Terms and Conditions shall govern. These Terms and Conditions, the specifications for goods or services (if applicable), and any non-conflicting Contractor terms and conditions shall constitute and be referred to as "this Contract."
  - (a) If the City and Contractor have executed an agreement (two-party agreement) that includes terms and conditions related to the goods or services, the provisions of that two-party agreement shall govern and control in the event of a conflict between these Terms and Conditions and that two-party agreement.
  - (b) If the City issues a procurement contract, these Terms and Conditions shall control. Any different or additional terms that are found in any quotes, estimates, purchase order acknowledgements, on a web site, or otherwise are superseded by these Terms and Conditions and will be of no force or effect unless agreed to in writing by both the City and the Contractor.
  - (c) If this Contract results from a Request for Bids (RFB) or Request for Quotes (RFQ), these Terms and Conditions and the RFB or RFQ shall govern. If there is a conflict between these Terms and Conditions and the RFB or RFQ, the RFB or RFQ shall control. In the event of inconsistencies or contradictions between language contained in the RFB or RFQ, and the bid or quote submitted in response, the RFB or RFQ will prevail, followed by these Terms and Conditions.
2. **Invoices and Payments:**
  - (a) The Contractor shall include the Department name and complete purchase order number on all invoices, packing slips, shipping notices, freight bills, and correspondence concerning the order. Invoices shall be sent to one of the following: Trancepta: [abq.invoices@submit.transcepta.com](mailto:abq.invoices@submit.transcepta.com); Accounting email: [Accounts.payable@cabq.gov](mailto:Accounts.payable@cabq.gov); or, regular mail: PO Box 1985, Albuquerque, NM 87103. Visit the Accounting website for more information about getting invoices paid: <https://www.cabq.gov/dfa/accounting/how-do-i-get-paid>
  - (b) Unless otherwise stated, the Contractor shall not receive any compensation until all services have been completed or goods received, final inspection has been made, the goods or services have been accepted by an authorized representative of the City, and complete and correct invoices have been received by the City following the invoicing process detailed herein.
3. **Taxes:** The Contractor is responsible for determining whether taxes are applicable to the order, and for payment of the tax. Applicable taxes shall be included in each invoice and may not be billed more than sixty (60) days after providing the goods or services to which the taxes apply.
4. **Payment:** The City's payment terms are net thirty (30) days unless otherwise stated. The City shall not pay late fees, finance fees, or collection fees. Any Contractor that accepts payments by credit card on behalf of the City must be Payment Card Industry Data Security Standard compliant.
5. **Title:** Title to all goods and services provided pursuant to this Contract shall pass to the City at the time of payment free and clear of all liens, claims, security, interest and encumbrances.
6. **No Cost Plus:** Pursuant to Section 5-5-9(B) of the Purchasing Ordinance, the City shall not enter into any contract which is a cost-plus-percentage of cost contract.

7. **Responsibility to Monitor Contract:** The Contractor shall ensure that it does not bill for goods or services in an amount that exceeds the total contract amount. If at any time the Contractor determines that payment for goods or services may or will exceed the total amount provided in this Contract, the Contractor shall notify the City in writing, as soon as possible after making that determination. If the Contractor's billing exceeds the amount of this Contract, the City may stop or delay payment.
8. **Price Escalation:** A request for escalation of Contract pricing may be made under the following conditions:
- (a) Offered prices must be firm for a least ninety (90) consecutive calendar days after written notification of a Contract.
  - (b) The Contractor shall provide written notice to the City of any requested price increases.
  - (c) All requests for price increases shall be accompanied by:
    - 1) a letter from the Contractor's supplier certifying the price increase to the Contractor; or
    - 2) evidence of verifiable market conditions resulting in increased costs such as mandated labor rate increases and significant fuel or energy cost increases.
  - (d) All revisions to Contract pricing shall become effective after they are approved by the City.
  - (e) All supplier invoices shall be subject to auditing by the City and furnished without delay upon request.
  - (f) The City reserves the right to cancel a Contract and solicit a new contract if a requested price escalation is unacceptable to the City. Cancellation of this Contract shall not affect any outstanding orders.
  - (g) All approved price changes resulting from this escalation clause shall be firm for a period of ninety (90) consecutive calendar days after approval by the City.
  - (h) The Contractor shall notify the City within five (5) working days of subsequent price de-escalations from its supplier or cost reductions in areas where pricing increases were previously implemented. The Contractor will reduce its pricing to the City immediately to pass on such de-escalations and reductions unless otherwise agreed by the parties.
  - (i) All approvals required by this subsection must be in writing by the City Chief Procurement Officer or designee.
9. **Termination for Cause:** If, for any reason, the Contractor fails to fulfill its obligations under this Contract in a timely and proper manner, or if the Contractor violates any provision of this Contract, the City has the right to terminate this Contract by giving written notice of the termination to the Contractor and specifying a termination effective date at least thirty (30) days after notice is provided. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs, and reports prepared by the Contractor under this Contract shall, at the option of the City, become the City's property, and the Contractor shall be entitled to receive just and equitable compensation for any services satisfactorily completed or goods received under this Contract. Notwithstanding any other provision of this section, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by the Contractor,

and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

10. **Termination for the Convenience of the City:** The City may terminate this Contract at any time by giving at least fifteen (15) consecutive calendar days' notice in writing of such termination to the Contractor. In such event, the Contractor shall be paid under the terms of this Contract for all goods or services provided to and accepted by the City, if ordered or accepted by the City prior to the effective date of termination.
11. **Termination for Lack of Appropriations:** Notwithstanding any other provision in this Contract, the terms of this Contract are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Contract. If sufficient appropriations and authorizations are not made by the City Council, or if the City Council un-appropriates or deauthorizes funds during a fiscal year, this Contract may be terminated upon thirty (30) days' written notice given by the City to all other parties to this Contract. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Contract will cease upon the date of termination. The City's determination as to whether sufficient appropriations are available or have been made shall be accepted by all parties and shall be final.
12. **FOB Destination and Inspection:** The risk of loss, injury and destruction, and legal title to the goods remains with the Contractor until the goods reach the location of the City. All goods delivered are subject to inspection upon receipt by City. The City's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing slip. All rejected goods shall remain the property of the Contractor and will be returned at the Contractor's expense.
13. **Responsibility for Damage:** The Contractor shall be responsible for any damage caused during removal or installation services or at any time during the performance of this Contract. Damage shall be reported immediately to the designated City representative.
14. **Removal of Debris and Cleaning the Area:** The Contractor shall, during the progress of any services, remove and dispose of all debris and keep the work premises clean and safe. When the services are complete, the Contractor shall remove all construction equipment and surplus materials (except materials that are to remain the property of the City) and leave the premises in a clean condition satisfactory to the City.
15. **Risks:** All risks of deterioration, destruction, and loss of materials and equipment stored at the site of the services shall be borne by the Contractor.
16. **Working Conditions:** The City is not responsible for obstacles, unfavorable conditions, or hazards, which may be encountered by the Contractor, both above and below ground. These conditions are part of the risk and responsibility of the Contractor.
17. **Inspections:**
  - (a) The City reserves the right to inspect materials provided by the Contractor to determine their quality, fitness and suitability. Inspection of these materials may be conducted whenever the City considers it necessary.
  - (b) All goods or services found inferior to the quality specified, deficient, or incorrect in weight, measurement, workmanship, handicraft or otherwise, may be rejected as a whole or in part and then shall be removed by the Contractor at the Contractor's own risk and expense promptly after notice of rejection. The Contractor shall assume responsibility for taking the necessary action to correct or replace the rejected items, within the time frame specified in the notice of rejection.

18. **Warranties:** All materials furnished by the Contractor shall be free from defects and imperfections. Workmanship shall be in accord with the best industry standards and practices. Both materials and workmanship shall be subject to the approval of the City.
- (a) Materials furnished by the Contractor shall be accompanied by the manufacturer's written warranty against defects in quality, craftsmanship, and materials. The Contractor shall provide any such warranties prior to award of this Contract.
- (b) The Contractor agrees that the goods or services furnished under this Contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such items. Further, the Contractor agrees that the rights and remedies provided in such warranties extend to the City and are in addition to and do not limit any rights afforded to the City. The Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability. Warranties shall become effective at the time of acceptance of the goods or services
- (c) The Contractor guarantees that the materials supplied are capable of the performance required and agrees to make such changes, adjustments or replacements as are immediately necessary in order for the materials to meet the requirements at no cost to the City. If defects or specification failures are discovered, the City shall have the right, notwithstanding acceptance and payment, to require the unit or item to be properly furnished in accordance with the Specifications and applicable drawings at the cost and expense of the Contractor or the Contractor's surety.
19. **New Material:** All materials, supplies, equipment, and vehicles provided shall be new, the latest in production and manufactured within the last twelve (12) months (computed from the date and time of bid opening) unless otherwise indicated. This does not apply to materials, supplies, equipment or vehicles used by the Contractor to provide the required items of tangible personal property, services or construction.
20. **Delivery, Acceptance and Guarantee:**
- (a) **No Delivery before Purchase Order is Issued:** Contractor shall not deliver goods or commence services prior to the issuance of a Purchase Order or other notice to proceed issued by the City.
- (b) **Cancellation for Non-Delivery:** The City reserves the right to cancel any order not delivered by a guaranteed date stipulated in this Contract without liability on the City's part.
- (c) **Acceptance of Delivery:** Acceptance by the City of any delivery shall not relieve the Contractor of any guarantee or warranty, expressed or implied. Such acceptance of delivery shall not be considered an acceptance of services or goods not in accordance with the Specifications. Such acceptance of delivery shall not waive the City's right to require replacement of defective material or inadequate service.
21. **Debarment, Suspension, Ineligibility and Exclusion Compliance.** The Contractor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor during the term of this Contract, the Contractor will notify the City immediately.
22. **Conflict of Interest:** No officer, agent or employee of the City will participate in any decision relating to this Contract which affects that person's financial interest, the financial interest of his or her spouse

or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

23. **Interest of Contractor:** The Contractor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Contract. The Contractor will not employ any person who has any such conflict of interest to assist the Contractor in performing the Services.
24. **No Collusion:** The Contractor represents that this Contract is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud, and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be, offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City for the purpose or with the intention of securing: this Contract; a subsequent Agreement; more favorable treatment with respect to this Contract; or more favorable treatment with respect to making any determinations regarding performance under this Contract.
25. **Discrimination Prohibited, Civil Rights Compliance:** The parties hereto shall not discriminate against any person on the basis of race, color, religion, sex, gender, gender identity, sexual orientation, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, national origin, ancestry, age, physical or mental handicap or serious medical condition, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended. The Contractor agrees to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Titles VI and VII of the U.S. Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, and all federal, New Mexico and City laws and rules related to the enforcement of civil rights. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City's Office of Civil Rights.
26. **Americans with Disabilities Act Compliance:** The Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the "ADA") that are imposed directly on the Contractor or that would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify, and hold harmless the City, its officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against any of those parties as a result of any act or omission of the Contractor or its agents in violation of the ADA.
27. **Goods Produced Under Decent Working Conditions:** It is the policy of the City not to purchase, lease, or rent goods for use, or for resale at City-owned enterprises, that were produced under sweatshop conditions. The Contractor certifies that any goods offered to the City were produced under decent working conditions. The City defines "under decent working conditions" as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than 48 hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in which employees can speak freely about working conditions and can participate in and form unions. [Council Bill No. M-8, Enactment No. 9-1998].
28. **Graffiti Free:** The Contractor will be required to furnish graffiti free equipment, facilities or other items as may be required to complete the services. Failure of the Contractor to comply with this requirement may result in a cancellation of this Contract.
29. **Independent Contractor:** Neither the Contractor nor its employees are considered to be employees of the City for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in performing its obligations under this Contract. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers'

Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

30. **Reports and Information:** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Contract. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Contract until the final product is submitted to the City.
31. **Establishment and Maintenance of Records:** Records shall be maintained by the Contractor in accordance with applicable laws and requirements prescribed by the City with respect to all matters covered by this Contract. Except as otherwise authorized by the City, such records shall be maintained for a period of four (4) years after receipt of final payment under this Contract.
32. **Ownership, Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Contract.
33. **Public Records:** The parties acknowledge that the City is a government entity subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding any other provision of this Contract, the City shall not be responsible to the Contractor for any disclosure of Confidential Information pursuant to that Act or pursuant to the City's public records act laws, rules, regulations, instructions or any other legal requirement.
34. **Force Majeure:** The City shall not be liable for failure to perform its obligations under this Contract, for any loss or damage of any kind, or for any consequences resulting from delay or inability to perform, due to causes beyond the reasonable control and without the fault or negligence of the City. Such causes ("Force Majeure Events") include, but are not restricted to: acts of God or the public enemy; acts of State, Federal or local governments; shortage or inability to obtain materials; breakdowns or delays of carriers, manufacturers, or suppliers; freight embargoes; theft; fire; flood; epidemics or pandemics; quarantine restrictions; strikes; lockouts; unusually severe weather; and defaults of subcontractors due to any of the above. If a Force Majeure Event causes any failure to perform, the City shall promptly inform the Contractor in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested. The parties shall consult with each other in good faith with respect to modification of this Contract to reflect such suspension or other changes (if any) desired by the City as a result thereof. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Contract.
35. **Indemnity:** The Contractor agrees to defend, indemnify, and hold harmless the City and its officials, agents, and employees from and against any and all claims, suits, demands, actions, or proceedings of any kind brought against any of those persons because of any injury or damage received or sustained by any person, persons, or property, which injury is arising out of or resulting from the Contractor's provision of goods or services under this Contract, or by reason of any asserted act or omission, neglect, or misconduct of the Contractor or Contractor's agents, employees or subcontractors, or the agents or employees of any subcontractor of Contractor, whether direct or indirect. The defense and indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Contract.
36. **Patent Indemnity:** If any item furnished pursuant to this Contract shall be covered by any patent, copyright, or application for patent or copyright, the Contractor shall defend, indemnify and save harmless the City from any and all loss, cost or expense or any all claims suits, or judgments as a

result of the use of such item in violation of rights under such patent, copyright, or application for patent or copyright.

37. **Insurance.** Unless this requirement has been waived by the City's Risk Manager, the Contractor shall procure and maintain at its expense until final payment by the City insurance in the kinds and amounts listed below with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Contract, whether performed by it or its agents. Before commencing services, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days written notice be given to:

Risk Manager, Department of Finance and Administrative Services City of Albuquerque  
P.O. Box 470  
Albuquerque, New Mexico 87103

before a policy is cancelled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. The kinds and amounts of insurance required are set out below and additional insurance may be required as set out in the Specifications or Solicitation Instructions.

- (a) **Commercial General Liability Insurance:** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$2,000,000	Per Occurrence
\$2,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this Contract.

- (b) **Automobile Liability Insurance:** An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

(c) **Workers' Compensation Insurance:** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico (the "Act"). If the Contractor employs fewer than three employees and has determined that he is not subject to the Act, the Contractor will certify, in a signed statement, that the Contractor is not subject to the Act. The Contractor will notify the City and comply with the Act if he becomes subject to the Act during the term of this Contract.

(d) **Increased Limits.** If, during the term of this Contract, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

38. **Audits and Inspections:** At any time during normal business hours and as often as the City may deem necessary, the Contractor shall make all of the Contractor's records with respect to all matters

covered by this Contract available to the City for examination. The Contractor shall allow the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data related to all matters covered by this Contract. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and to appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 9 of the Albuquerque City Charter.

39. **Assignment, Transfer and Subcontracting:** The Contractor shall not assign, transfer or subcontract any portion of this Contract without the express written consent of the City. Any goods or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.
40. **Construction and Severability:** If any part of this Contract is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Contract so long as the remainder of this Contract is reasonably capable of completion.
41. **Enforcement:** The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Contract.
42. **Compliance with Laws:** The Contractor shall, in performance of this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations.
43. **Governing Law/Venue:** This Contract is governed by and construed and enforced in accordance with the laws of the State of New Mexico and the City of Albuquerque. The venue for actions arising in connection with this Contract is Bernalillo County, New Mexico.
44. **Use by Other Public Governmental Agencies:** With the agreement of the Contractor, other public governmental agencies may purchase from this Contract, unless otherwise stated, subject to the following:
  - (a) Extension of the use of this Contract shall in no way impede on the Contractor's ability to fulfill the pricing, terms and conditions of this Contract with the City; and
  - (b) The City shall have no responsibility to verify whether the other public governmental agency is a legitimate entity to which it may extend this option or whether the entity is authorized under its applicable laws, rules and regulations to use this Contract.
45. **Federal Contract Requirements:** All Contractors with contracts or purchase orders funded in whole or in part with federal funds are required to comply with 2 CFR Part 200, Appendix II. By commencing services or providing goods under this Contract, the Contractor certifies compliance with the following, as applicable.
  - (a) **Equal Employment Opportunity.** This provision shall apply to all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3.
    - (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) 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 advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

(9) Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(10) The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under this Contract.

(11) The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

(12) The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(b) Davis Bacon Act. This provision shall be applicable to all prime construction contracts in excess of \$2,000.

(1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 CFR Part 5, as may be applicable.

(2) The Contractor shall: comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable; pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor; pay wages not less than once a week; and report all suspected or reported violations of these laws to the City, which will report the same to the Federal awarding agency.

(c) Copeland "Anti-Kickback" Act. This provision shall be applicable to all prime construction contracts in excess of \$2,000.

(1) Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145, and the requirements of 29 CFR Part 3, as may be applicable, which are incorporated by reference into this contract.

(2) The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as the applicable federal agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor with all of these contract clauses.

(3) A breach of this Contract clauses above may be grounds for termination of this contract, and for debarment as a contractor or subcontractor as provided in 29 CFR §5.12.

(d) Contract Work Hours and Safety Standards Act. These provisions shall apply to all contracts over \$100,000 that involve mechanics or laborers.

(1) The Contractor shall comply with 40 U.S.C. §§ 3702 and 3704, and the requirements of 29 CFR Part 5.

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

(3) Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (b)(1) of 29 CFR §5.5, the Contractor or any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of 29 CFR §5.5.

(4) Withholding for unpaid wages and liquidated damages: The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of 29 CFR §5.5.

(5) Subcontracts: The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (4) of 29 CFR §5.5, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of 29 CFR §5.5.

(e) Rights to Inventions Made under a Contract or Agreement. These provisions shall apply to all funding agreements under 37 CFR § 401.2(a). If the federal award meets the definition of "funding agreement" under 37 CFR §401.2(a) and the City wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the City and Contractor must comply with the requirements of 37 CFR Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the awarding agency.

(f) Clean Air Act and Federal Water Pollution Control Act. These provisions shall apply to all contracts and subgrants over \$150,000. The Contractor shall:

- (1) Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401 et seq. as amended, and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251-1387);
- (2) Report each violation of those laws to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the applicable federal agency, and the appropriate Environmental Protection Agency Regional Office; and
- (3) Include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the applicable federal agency.

(g) Debarment and Suspension. These provisions shall apply to all contracts. This contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 CFR §180.995) or its affiliates (defined at 2 CFR §180.905) are excluded (defined at 2 CFR §180.940) or disqualified (defined at 2 CFR §180.935).

- (1) The Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this contract been convicted or had a civil judgment against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
  - (d) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or Local) terminated for cause or default.
- (2) Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall notify the City in writing.
- (3) The Contractor must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction Contractor enters into.
- (4) This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to the City, the federal government may pursue available remedies, including but not limited to, suspension and/or debarment.

(5) With respect to competitive solicitations, the Contractor agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. This bidder or proposer further agrees to include a provision requiring such compliance in the bidder's or proposer's lower tier covered transactions.

(6) The Contractor certifies the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

(h) Byrd Anti-Lobbying Amendment. These provisions apply to all contracts. The Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee or Member of Congress in connection with the awarding of any Federal Agreement, 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 Agreement, grant, loan or cooperative agreement.

(2) If any funds other the 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 Agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and agreements under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

(4) For purposes of this Certification, this Contract shall be considered a federal agreement. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. 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.

(5) The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

(i) Procurement of Recovered Materials (2 CFR § 323). These provisions shall apply if the purchase price of an item exceeds \$10,000 (including value of item acquired over the year).

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired:

- (a) Competitively within a time frame providing for compliance with the contract performance schedule;
- (b) Meeting contract performance requirements; or
- (c) At a reasonable price.

(2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(j) Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR § 216). These provisions shall apply to all contracts.

(1) Recipients and sub recipients are prohibited from obligating or expending loan or grant funds to:

- (a) Procure or obtain;
- (b) Extend or renew a contract to procure or obtain; or
- (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (d) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (e) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (f) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(3) See Public Law 115-232, section 889 for additional information.

(4) See also § 200.471.

(k) Domestic preferences for procurements (2 CFR § 200.322). These provisions apply to all contracts.

(1) As appropriate and to the extent consistent with law, the non-federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(2) For purposes of this section:

(a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.