

City of West University Place, Texas



**Graphic Design Services
Request for Proposals (“RFP”)
RFP ADMIN24-12
September 25, 2024**

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I.

City of West University Place, Texas
NOTICE TO BIDDERS

Request for Proposals ADMIN24-12

The City of West University Place will be accepting sealed Graphic Design Services bids/proposals for specified citywide projects for a three-year contract term. Sealed proposals must be received by **November 11, 2024, at 2 p.m.** Proposals received after this deadline will not be opened and will be considered void and unacceptable.

Proposals will be publicly opened and read aloud on **November 11, 2024, at 2:05 p.m. in the Bill Watson Conference Room located at 3800 University Blvd., West University Place, TX 77005.**

The RFP packet may be obtained from the City's website at:

<https://www.westutx.gov/Bids.aspx>.

Proposals must be addressed and delivered to:

**City of West University Place
Attn: City Secretary – ADMIN24-12
3800 University Blvd.
West University Place, Texas 77005**

All inquiries about this RFP including scope of work must be submitted in writing to the Communications Manager, Bianca Cuccerre via email at bcuccerre@westutx.gov.

II. Introduction

In accordance with Texas Local Government Code Chapter 105, the City of West University Place (City) requests proposals from interested and qualified firms to provide **Graphic Design Services for Citywide Projects**.

A. Background

West University Place is a home-rule, incorporated city with a 2023 population of approximately 15,000 residents. The City encompasses approximately 2 square miles and is in the Houston metropolitan area. West University Place is a few miles west of The Texas Medical Center and downtown Houston amenities. West University Place residents enjoy great parks and recreational facilities, excellent public safety, and easy access to big-city entertainment. The City is governed by a Council/Manager form of government and municipal services are provided by 135 full-time staff.

B. Purpose

1. The purpose of this RFP is to provide minimum requirements, solicit proposals, and gain adequate information from which the City may evaluate the proposer's products and services as they compare to other providers and as they pertain to the needs of the City organization as defined in this document.

C. Clarification and Interpretation of RFP

1. The words "must" or "will" or "shall" in this RFP indicate mandatory requirements. Taking exception to any mandatory requirement will be grounds for rejection of the proposal.

D. Confidential or Proprietary Information

1. Throughout the process of evaluating proposals and negotiating a contract, all information contained in proposals shall be kept confidential. Upon Council award of contract or rejection of all proposals, contracting information, as defined by Texas Government Code 552 and in this document, shall be open for public inspection. This includes successful and unsuccessful proposals. Exceptions may be made if releasing the information would harm City interests by providing an advantage to a competitor or bidder in a future competitive situation, or if information requested contains trade secrets, or proprietary information.

Any information that the potential vendor or Proposer believes may be considered proprietary, confidential or a trade secret should be stamped with the term CONFIDENTIAL on that part of the proposal. All proposals and parts of proposals which are not marked as confidential will be automatically considered public information after the contract is awarded. If the vendor, contractor, potential vendor, or potential Proposer wishes to claim that information is proprietary, they must demonstrate based on specific factual evidence that disclosing the

information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or discounts, pricing methodology, cost data or other pricing information that will be used in future solicitation or bid documents; or give advantage to a competitor.

In the event that information contained in those sections marked confidential are included in an Open Records Request, the City will decline to release the information for the purpose of requesting an attorney general decision. The City will make a good faith effort to contact the vendor, so they may submit in writing to the attorney general the reasons why the information should be withheld or released. If the vendor cannot be contacted, the information may be released without further review. The process to be followed upon receipt of the request for information that potentially contains trade secrets, or proprietary or confidential information will be as follows:

1. City will make a good faith effort to notify the vendor in writing that the information has been requested within a reasonable time, but no more than ten (10) business days after receiving the request. This will include a copy of the written request for information, and a statement that the vendor is entitled to submit to the attorney general with ten (10) business days the reason(s) with the information should be withheld and a letter, memorandum, or brief in support of that reason.
2. The vendor who submits a letter, memorandum, or brief to the attorney general shall send a copy to the person who requested the information from the governmental body. If the letter, memorandum or brief contacts the substance of the information requested, the copy sent may be a redacted copy.
3. The attorney general shall promptly render a decision when requested, consistent with the standards of due process, determining whether the requested information requested contains trade secrets, or confidential or propriety information as defined in Texas Government code 552. The decision shall be rendered no later than the 45th business day after the date the attorney general received the request for a decision.

III. Instructions to Proposers

This section outlines specific instructions for proposal submissions. Proposers not adhering to these instructions may be disqualified.

The City of West University Place requires comprehensive responses to every section within this RFP. Conciseness and clarity of content are emphasized and encouraged. Vague and general proposals will be considered non-responsive and will result in disqualifications. To facilitate the review of the responses, Firms shall follow the described proposal format. The proposal format requirements intend to expedite review and evaluation. It is not the intent to constrain Vendors with regard to content, but to assure that the specific requirements set forth in this RFP are addressed in a uniform manner amenable to review and evaluation. Failure to arrange the proposal as requested may result in the disqualification of the proposal. It is requested that proposals be limited to no more than 25 pages excluding cover page, resumes, and sample documents.

A. Proposal Submission

Proposals must be submitted with one (1) original proposal and one (1) thumb drive copy enclosed in a sealed envelope and plainly marked on the outside clearly identifying the proposal as "Bid ADMIN24-12." Emailed proposals will not be accepted.

B. Proposal Timeline

The vendor/proposer selection process will follow the timeline shown below.

Request for Proposals Publish Notice:	September 25, 2024
Deadline for Submitting Questions:	October 28, 2024
Proposal Submission Deadline:	November 11, 2024
Contract Begins:	January 1, 2025

IV. Scope of Work

The City of West University Place is seeking qualified proposers to provide graphic design services for various city projects. The proposer shall utilize branding and graphic design best practices to maintain the City's professional image through city materials including the creation of publicity material such as newsletters, flyers, banners, postcards, logo design, and other informational handouts and digital documents.

Historically, the city has outsourced these projects and is now seeking to update the look and feel of these offerings. We invite proposers to submit bids that not only continue the delivery of these services but also reimagine the design to reflect a more contemporary approach.

The projects in the request for proposals are based on previous usage. These projects are for acquainting the proposer with probable projects to be expected during the contract term. These estimates are not intended to set forth minimum or maximum quantities on this contract and shall not be constructed as such.

The City is requesting to have an account management structure that includes an account manager or customer service representative to serve as a direct point of contact to the City, including but not limited to, in-person meetings, conference calls, and electronic communications to carry out the work of the contract.

The proposer shall furnish all necessary labor, resources, equipment, and materials for the provision of graphic design services.

A. Delivery of Data

The proposer will submit electronic files of draft and completed work in any of the following formats: Microsoft Word, Excel, Powerpoint, Publisher, Adobe Photoshop, Illustrator, and Acrobat.

For projects that require professional printing, the proposer will submit electronic files directly to the City's third-party vendor in "print ready" format.

B. Citywide Projects

The City is requesting one (1) year pricing, with set rates or an escalation percentage for the subsequent two (2) years of the contract terms, for the projects listed below.

City Currents Newsletter

- **Quantity: 4x per year – seasonal**
- Description: 12 page self -cover

- Stock: 100# text, silk
- Flat Size: 11x17
- Final Size: 8.5x11
- Inks: 4/4 with bleed + Satin Aqueous
- Bindery: Print, trim, fold and saddle stitch
- Mail Services are required: Qty – 5,385 mailed with City of West U's permit

Light Pole Banners Design

- **Quantity: Expected redesign in 2027**
- 23"X 48"
- Single ply, with webbing for strength at seams top and bottom
- Double-sided images
- 13 OZ Vinyl
- Pole pocket top
- Hem and grommet bottom

Various Postcards

- **Quantity: 4x per year**
- Size: 5x7 double sided
- Stock: 80# gloss cover
- Inks: 4/4 with bleed
- Mail Services are required: Qty – 5,385 mailed with City of West U's permit

New Resident Guide

- **Quantity: Odd years only**
- Size: 4x9 folded
- Flat size: 9x16
- Ink: 4/4 with bleed
- Stock: 100# Gloss, Text

Solid Waste Recycling Door Hanger

- **Quantity: As needed**
- Size: 4.25" x 14"
- Ink: 1/1 with bleed
- Stock: 65# Cover – Golden Rod
- Finishing: 1 Horizontal Perf

Blue Operations Door Hangers

- **Quantity: As needed**

- Size: 4.25" x 14"
- Ink: 1/1 with bleed
- Stock: 65# Cover – Blue
- Finishing: 1 Horizontal Perf

Public Works Welcome Guide

- **Quantity: As needed**
- Flat Size: 9" x 12"
- Ink: 4/4 with bleed
- Stock: 100# Gloss, Text
- Finishing: Tri-fold to Size: 4" x 9"

What to Do With It Brochure

- **Quantity: As needed**
- Flat Size: 9" x 12"
- Ink: 4/4 with bleed
- Stock: 100# Gloss, Text
- Finishing: Tri-fold to Size: 4" x 9"

Vegetation Responsibility Brochure

- **Quantity: As needed**
- Flat Size: 9" x 12"
- Ink: 4/4 with bleed
- Stock: 100# Gloss, Text
- Finishing: Tri-fold to Size: 4" x 9"

Composting Postcard

- **Quantity: As needed**
- Size: 5x7 double sided
- Stock: 80# gloss cover
- Inks: 4/4 with bleed
- Mail Services are required: Qty – 5,385 mailed with City of West U's permit

West U at Your Leisure – Magazine Style Publication with details of youth, adult, and senior classes and programs and special events

- **Quantity: 3x per year**
- Description: 24 page self cover
- Stock: 80# glass text
- Flat Size: 11x17
- Final Size: 8.5x11
- Inks: 4/4

- Bindery: Print, trim, fold and saddle stitch
- Mail Services are required: Qty – 5,385 mailed with City of West U’s permit

Summer Camp Digital Guide

- **Quantity: Annual**
- Description: 4 pages
- Final Size: 8.5x11

Parks and Rec Post Cards

- **Quantity: 2x per year**
- Size: 5x7 double sided
- Stock: 80# Cover, Gloss
- Mail Services are required: Qty – 5,385 mailed with City of West U’s permit

Direct Link Post Cards – Campaigns

- **Quantity: 2x per year**
- Size: 4” x 6”
- Stock: 18 pt premium cover
- Full color on both sides with bleeds
- Mail Services are required: Qty – 5,385 mailed with City of West U’s permit

Direct Link – Who to Call Postcards

- **Quantity: Annual**
- Size: 4” x 6”
- Stock: 18 pt premium cover
- Full color on both sides with bleeds
- Mail Services are required: Qty – 1,800 mailed with City of West U’s permit

Vacation House Watch Cards

- **Quantity: As needed**
- Size: 4” x 6”
- Stock: 14 pt premium cover
- Two color on both sides with bleeds

Police Door Hangers

- **Quantity: As needed**
- Door hangers
- Size: 4.25” x 11”

- Stock: 14 pt
- Full color on both sides with bleeds

Direct Link Welcome Flyer

- **Quantity: As needed**
- Stock: 80# gloss text
- Final Size: 8.5x11
- Full color on both sides with bleeds

V. Proposal and Evaluation Format

Proposer's submission package shall consist of the following:

1. Completed Proposal Cover Sheet
2. Qualifications and Experience
3. Quality
4. Reference Check
5. Project Methodology and Implementation
6. Pricing and Fees
7. Samples

A. Proposal Format

By submission of a response to this RFP, the proposer acknowledges full compliance with the required specifications and all terms and conditions detailed in the RFP.

1. Completed Proposal Cover Sheet

2. Qualifications and Experience

a. Qualifications

- i. Provide a brief description and history of the company including current size and how many persons in the company are directly engaged in the proposed services.
- ii. Please include the names, qualifications, years of experience and other detailed background information of the local management team directly responsible for local operations.

b. Experience

- i. Discuss the company's prior service experience in providing the proposed service to other organizations of comparable size.
- ii. Proposer to provide at least three (3) references for governmental agencies for which you have provided this type of service. Include the

name of the agency, contact name, telephone numbers, email address, date/length of contract, and a brief summary of work.

3. Quality

- a. Design components meet professional graphic design standards.
- b. Design components are innovative and cohesive.

4. References

- a. Provide at least 3 references and include examples of the type of work completed for each reference.

5. Project Methodology and Implementation

a. Project Methodology

- i. Include a comprehensive transition plan and timeline.
- ii. Provide a communication plan between the proposer's personnel directly involved and West University Place staff.

b. Project Implementation

- i. Describe the turn-around time from the date of content being received by the proposer to the day the project will be completed.

6. Pricing and Fees

- a. Please include the employee's title and hourly and overtime rates.
- b. All rates and fees must be listed in the proposal. The City will not be responsible for paying any fees not specifically listed. The fees and charges presented shall remain firm for the original term of the agreement.
- c. Describe how and when the fees apply.

7. Samples

- a. Provide a minimum of two (2)/maximum of four (4) samples from production jobs that were previously produced from clients with a long-term relationship that are similar to the printing requirements of **City Currents, West U at Your Leisure, and Public Works Welcome Guide.**

B. Proposal Evaluation

All proposals will be evaluated by an evaluation committee. The committee shall screen and rate all responses that are submitted. Evaluation ratings will be on a 100-point scale.

The City's process is as follows:

1. City staff shall recommend an evaluation committee which will be used to evaluate all proposals. During the evaluation process, proposers may be asked for additional

information or clarification of the proposal as needed. The City will evaluate all proposals based on the following criteria:

Criteria	Points
Qualifications and Experience	20
Quality	15
Reference Check	20
Project Methodology Project Implementation	15
Pricing and Fees	30

2. Pricing and fees will be evaluated based on the total cost. Prices should reflect the city as tax exempt.
3. Once proposals are scored, the evaluation will select the finalist.
4. Should negotiations be unsuccessful, the City shall enter negotiations with the next, highest ranked vendor. The process shall continue until an agreement is reached with a qualified vendor.
5. The City reserves the right to negotiate the final fee prior to recommending any Vendor for a contract.

VI. Terms and Conditions

POTENTIAL CONFLICTS OF INTEREST

Unless expressly approved in advance of bidding by the City Council, an outside consultant or contractor is prohibited from submitting a bid for services on a CITY project of which the consultant or contractor was a designer or other previous contributor, or was an affiliate, subsidiary, joint venture or was in any other manner associated by ownership to any party that was a designer or other previous contributor. If such a consultant or contractor submits a prohibited bid, that bid shall be disqualified on the basis of conflict of interest, no matter when the conflict is discovered by the CITY.

Bidders must make every effort to comply with Chapter 176 of the Texas Local Government Code. Chapter 176 mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the City, including affiliations and business and financial relationships such persons may have with the City's officers.

By doing business or seeking to do business with The City, including submitting a response to this Bid, Bidder acknowledges that Bidder has been notified of the requirements of Chapter 176 of the Texas Local Government Code and represents that Bidder and Bidder's officers and employees are in compliance with Chapter 176.

HOLD HARMLESS AGREEMENT

THE SUCCESSFUL BIDDER SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM ALL CLAIMS FOR PERSONAL INJURY, DEATH AND/OR PROPERTY DAMAGE RESULTING DIRECTLY OR INDIRECTLY FROM CONTRACTOR'S PERFORMANCE. BIDDER SHALL PROCURE AND MAINTAIN, WITH RESPECT TO THE SUBJECT MATTER OF THIS BID, APPROPRIATE INSURANCE COVERAGE INCLUDING, AS A MINIMUM, PUBLIC LIABILITY AND PROPERTY DAMAGE WITH ADEQUATE LIMITS TO COVER CONTRACTOR'S LIABILITY AS MAY ARISE DIRECTLY OR INDIRECTLY FROM WORK PERFORMED UNDER THE TERMS OF THIS BID. CERTIFICATION OF SUCH COVERAGE MUST BE PROVIDED TO THE CITY UPON REQUEST.

GOVERNING LAW

This bid solicitation is governed by Texas Local Government Code Chapter 252, et seq., as amended. BIDDERS shall comply with all applicable federal, state and local laws and regulations. BIDDER is further advised that these requirements shall be fully governed by the laws of the State of Texas.

INVOICES AND PAYMENTS

Payments accrue only to the extent that (i) specific tasks called for by the Scope of Work are completed by the BIDDER, and (ii) any related work products are delivered to the CITY, all in a form satisfying the CITY's needs and intended uses, and all in accordance with these General Conditions, the BIDDER's proposal, and the Agreement. To receive payments, the BIDDER must submit itemized invoices showing the specific tasks and work products for which payment has accrued and including proofs of completion and the agreed to prices. Any invoice, which cannot be verified by the contract price and/or is otherwise incorrect, will be returned to the BIDDER for correction. Within approximately 30 days following review and approval of an invoice (which may require action by the governing body), payments invoiced which have accrued shall be mailed to the BIDDER. When multiple deliveries and/or services are required, the BIDDER may invoice following each delivery and the CITY will pay on invoice in accordance with the terms herein. Payments may be billed and will be paid on a monthly basis only. Prior to any and all payments made for goods and/or services provided under this Agreement, the BIDDER should provide its Taxpayer Identification Number or social security number as applicable. This information must be on file with the CITY's office. Failure to provide this information may result in a delay in payment and/or back-up withholding as required by the Internal Revenue Service.

TAXES

The CITY is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The CITY claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended.

TERMINATION

The CITY reserves the right to terminate the Agreement for default if BIDDER breaches any of the terms therein, including warranties of BIDDER or if the BIDDER becomes insolvent or files for bankruptcy protection. Such right of termination is in addition to and not in lieu of any other remedies which the CITY may have in law or equity. In submitting this bid, BIDDER agrees that the CITY shall not be liable to prosecution for damages in the event that the CITY declares the BIDDER in default. Default may be construed as, but not limited to; failure to deliver the proper goods and/or services within the proper amount of time, failure to properly perform any and all services required to the CITY's satisfaction and/or does not meet obligations and requirements. The CITY may terminate the Agreement without cause upon thirty (30) days written notice or "at-will" effective immediately after notification is received from CITY.

TEXAS ETHICS COMMISSION'S REQUIREMENTS

Section 2252.908 of the Texas Government Code requires that any Bidder awarded a contract by an action or vote of the City Council of the City and/or that has a value of one (1) million or more dollars, must meet the following requirements prior to receiving payments under the contract:

- (1) The BIDDER must file form 1295 – Certificate of Interested Parties electronically via the Texas Ethics Commission website (<https://www.ethics.state.tx.us/File/>).
- (2) Once the form is submitted electronically to the State, the BIDDER must print, sign and have the form notarized and submit it to the CITY.

WAGE RATES

In conformance with applicable statutes, the general prevailing wage rates determined by the United States Department of Labor in accordance with the Davis-Bacon Act, in the locality in which the work is to be performed have been asserted and such rates shall be the minimum paid for labor employed on this project (if applicable to the contemplated work), if applicable. If, however, Federal funds are used, specified wage decisions will be provided at time of emergency event declaration.

WARRANTIES

BIDDER shall furnish all data pertinent to warranties or guarantees which may apply to items in the bid and shall not limit or exclude any implied warranties. BIDDER warrants that product sold to the CITY shall conform to the standards established by

the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, the CITY may return the product for correction or replacement at the BIDDER's expense. If BIDDER fails to make the appropriate correction within a reasonable time, the CITY may correct at the BIDDER's expense.

SUBCONTRACTS

The prime contractor, if subcontracts are to be let, they are required to take the affirmative steps listed below:

- place qualified small and minority businesses and women's business enterprises on solicitation lists;
- assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

OTHER STATE REQUIREMENTS

The Contractor hereby certifies that it and its parent company, wholly-owned or majority-owned subsidiaries, and other affiliates comply with and agree to abide by the requirements of Texas Government Code Chapter 2252 (foreign terrorist organizations prohibited), Chapter 2264 (undocumented workers), Chapter 2271 (boycott-Israel), and Chapter 2274, Texas Government Code (boycotts-energy company; discrimination – firearms entity or trade association).

CONTRACT NOT EXCLUSIVE

THE CITY RESERVES THE RIGHT TO CONTRACT WITH OTHERS TO PROVIDE THE SAME OR SIMILAR SERVICES TO BE PROVIDED BY CONTRACTOR PURSUANT THIS PROPOSAL.

VENDORS OWING TAXES OR OTHER DEBTS

The CITY may refuse to award a contract to or enter into a transaction with a BIDDER if that BIDDER is indebted to the CITY. This shall include an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, Limited Liability Company, and any other entity that proposes or otherwise seeks to

enter into a contract or other transaction with the CITY requiring approval by the City Council.

RELEASE

CONTRACTOR RELEASES THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH PERFORMANCE UNDER THIS AGREEMENT, INCLUDING INJURY, DEATH, OR DAMAGE CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE.

INDEMNIFICATION

CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FOR ALL THIRD PARTY CLAIMS, LIABILITIES, FINES, AND EXPENSES (INCLUDING ALL DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, OR DAMAGE TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING THOSE CAUSED BY:

- (1) CONTRACTOR'S ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR'S STRICT OR STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY DURING THE TERM OF THIS AGREEMENT AND FOR FOUR (4) YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

INDEMNIFICATION PROCEDURES

- (1) Notice of Claims.

If the CITY or CONTRACTOR receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

The notice does not stop or prevent the CITY from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the CITY does not provide this notice within the 10 day period, it

does not waive any right to indemnification except to the extent that CONTRACTOR is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense: CONTRACTOR may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the CITY. CONTRACTOR shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, CONTRACTOR must advise the CITY as to whether or not it will defend the claim. If CONTRACTOR does not assume the defense, the CITY shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation: If CONTRACTOR elects to defend the claim, the CITY may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. CONTRACTOR may settle the claim without the consent or agreement of the CITY, unless it

(i) would result in injunctive relief or other equitable remedies or otherwise require the CITY to comply with restrictions or limitations that adversely affect the CITY,

(ii) would require the CITY to pay amounts that CONTRACTOR does not fund in full,

(iii) would not result in the CITY's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement

Federal Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. §200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.

- Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.

- Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, C.

- Key Definitions.

- Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

- Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

- Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

- The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the contractor agrees as follows:

- 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.

- 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.
- 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.
- 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.
- 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.
- 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.

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

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

The applicant 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 the contract.

The applicant 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.

The applicant 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.”

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- **Applicability of Davis-Bacon Act.** The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. Unless otherwise stated in a program’s authorizing statute, it does not apply to other FEMA grant and cooperative agreement programs, including the PA Program.
- All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- In accordance with the statute, contractors must be required to 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. In addition, contractors must be required to pay wages not less than once a week.
- The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors

and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

- The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.” However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

- Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA 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 or lower tier subcontractor with all of these contract clauses.
- Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics, laborers and construction work must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is

compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

- The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act: “Compliance with the Contract Work Hours and Safety Standards Act.
- Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 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.
- Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- Withholding for unpaid wages and liquidated damages. The (insert name of grant recipient or subrecipient) 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 this section.

- Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section 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 this section.”

6. Rights to Inventions Made Under a Contract or Agreement

- Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

- If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity must comply with the requirements of 37 C.F.R. 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 FEMA. See 2 C.F.R. Part 200, Appendix II, F.

- The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

- The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

“Federal Water Pollution Control Act”

- (i) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (ii) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian-tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (iii) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- **Applicability:** This requirement applies to all FEMA grant and cooperative agreement programs.
- Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter PDAT Supplement]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; PDAT Supplement, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
 - Specifically, a covered transaction includes the following contracts for goods or services:
 - The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
 - The contract requires the approval of FEMA, regardless of amount.
 - The contract is for federally-required audit services.
 - A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

- The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; PDAT Supplement, Chapter IV, 6.c; Appendix C, ¶ 4.
- Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with

obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

- The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any 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 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

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. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

10. Procurement of Recovered Materials.

- **Applicability:** This requirement applies to all FEMA grant and cooperative agreement programs.
- A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; PDAT Supplement, Chapter V, ¶ 7.

- The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:
 - 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—
 - (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (2) Meeting contract performance requirements; or
 - (3) At a reasonable price.
 - Information about this requirement, along with the list of EPA- designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

11. Prohibition on Contracting for Covered Telecommunication Equipment or Services

- **Applicability:** For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients, and their contractors and subcontractors, are required to include this contract provision in all FEMA-funded contracts and subcontracts, including any purchase orders.⁶¹ FEMA strongly encourages the use of this contract clause for any contracts where FEMA funding will be used regardless of whether the funding is from FEMA declarations or awards issued on or after November 12, 2020.
- The following provides a Prohibition on Contracting for Covered Telecommunications Equipment or Services contract clause:

“Prohibition on Contracting for Covered Telecommunications Equipment or Services

Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on

Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

Prohibitions.

- Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

- Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (1) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (2) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (3) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (4) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service 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.

Exceptions.

1. This clause does not prohibit contractors from providing—
 - (a) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

g. Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

h. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

12. Domestic Preferences for Procurements

- Applicability: For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements
- The following provides a Domestic Preference for Procurements contract clause: “Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

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.

Manufactured products mean 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.”

13. Additional FEMA Requirements.

- The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

- Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

- The following provides a contract clause regarding access to records:

“Access to Records.

The following access to records requirements apply to this contract:

- The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

14. DHS Seal, Logo, and Flags.

- All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.”

15. Compliance with Federal Law, Regulations, and Executive Orders.

- All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

16. No Obligation by Federal Government.

- The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

17. Program Fraud and False or Fraudulent Statements or Related Acts.

- The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts contract clause: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

18. Affirmative Socioeconomic Steps.

- The non-Federal entity must include a provision in its contract requiring prime contractors, if subcontracts are to be let, to take the required affirmative socioeconomic steps.
- The following provides a contract clause regarding Affirmative Socioeconomic Steps: “If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.”

19. Copyright and Data Rights.

- The non-Federal entity is required by 2 C.F.R. § 200.315 to provide certain licenses with respect to copyright and data to the federal awarding agency. 2 C.F.R. § 200.315(b) provides to the federal awarding agency “a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use [any work that is subject to copyright] for federal purposes, and to authorize others to do so.” 2 C.F.R. § 200.315(d) provides to the federal government the rights to “obtain, reproduce, publish, or otherwise use” data produced under a federal award and to authorize others to do the same.
- The following provides a contract clause regarding Copyright and Data Rights: “The Contractor grants to the (insert name of the non-federal entity), a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the (insert name of the non-federal entity) or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the

(insert name of the non-federal entity) data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the (insert name of the non-federal entity).”

ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

The following access to records requirements apply to this Contract:

Where the Purchaser is not a State but a local government and is the Federal Recipient or a subgrantee of the Federal Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the Federal grantor agency, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the Federal grantor agency or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the Federal grant recipient or a subgrantee of the Federal grant recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Federal grantor agency and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

FEDERAL CHANGES

49 CFR Part 18

Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the Federal grantor agency, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federal assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the

penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

CIVIL RIGHTS

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements the Federal grantor agency may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

- Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332,

the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

- Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

COMPLIANCE WITH FEDERALLY REQUIRED CLAUSES AND REQUIREMENTS

Contractor (bidder) is responsible for ensuring its compliance with all applicable Federal requirements. Additionally, Contractor is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable Federal requirements. Upon request of the City of West University Place or the Federal government, Contractor shall provide evidence of the steps it has taken to ensure its compliance with the Federal requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

AMERICANS WITH DISABILITIES ACT (ADA)

Americans with Disabilities Act (ADA). The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements the Federal Government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

PRIVACY ACT

5 U.S.C. 552

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance.

CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

The Recipient agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

- Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally- Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FEMA determines otherwise in writing, the Recipient also agrees to comply with any applicable implementing Federal directives that may be issued.
- Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO)

provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. Except to the extent FEMA determines otherwise in writing, the Recipient also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees as follows:

- The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, 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.
- If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal assistance for transportation Projects.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each third party contractor at any tier or subrecipient at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

(3) Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by DBEs in the Project and assures that each third-party contractor at any tier of the Project and each subrecipient at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

- Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.
- Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
- Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Recipient agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:
 1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 6. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

7. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
9. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
10. FEMA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
11. Federal civil rights and nondiscrimination directives implementing the foregoing regulations.
 - Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.
 - Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FEMA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.
 - Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
 - Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable, except to the extent the Federal Government determines otherwise in writing.

LOBBYING

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

CLEAN AIR

- The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.
- The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

CLEAN WATER

I. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the

Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.

II. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of West University Place. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City of West University Place. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City of West University Place shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by City of West University Place, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of West University Place and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which City of West University Place is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of West University Place, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

CONTRACTOR ASSURANCE

The Contractor, by submitting a proposal, shall adhere to all the applicable Federal provisions listed above. Failure to comply with Federal provisions shall be considered a breach of contract.

CONTRACT WORK HOURS AND SAFETY STANDARDS

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 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.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and 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 (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

C. Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) 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 (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section 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 (1) through (4) of this section.

DEBARMENT AND SUSPENSION

The Contractor, by submitting a proposal, certifies that to the best of its knowledge that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department agency; have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining attempting to obtain, or performing a public transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property; are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with council of any of the offenses enumerated in the above statements of this section; have not within a three-year period preceding this application/proposal had one or more public transactions terminated for default.

DRUG-FREE WORKPLACE

The Contractor, by submitting a proposal, shall adhere Federal Drug Free Workplace requirements as outlined in 2 C.F.R. 182.

Contractor shall make good faith efforts to maintain a drug-free workplace, publish workplace statement and establish drug-free awareness programs for employees. Contractor should take action concerning who are convicted of violating drug statutes in the workplace. Contractor shall contact the City of West University Place, if Contractor cannot adhere to the requirements of the Federal Regulations noted above. Failure to comply provisions shall be considered a breach of contract.

Insurance Specifications

INSURANCE: The successful bidder shall provide and maintain the minimum insurance coverage's set forth below during the term of its agreement with the City.

- Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage must be written on an occurrence form. Contractual Liability must be maintained covering the Contractor's obligations contained in the contract. The general aggregate limit must be at least two (2) times the each-occurrence limit.
- Workers Compensation insurance at statutory limits, including Employer's Liability coverage at minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate.

- Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned and hired car coverage.

Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of West University accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit, and coverage must include a broad form Comprehensive General Liability Endorsement, products/completed operations, XCU hazards and contractual liability.

With reference to the foregoing insurance requirement, Contractor shall specifically endorse applicable insurance policies as follows:

- The City of West University Place shall be named as an additional insured with respect to General Liability and Automobile Liability.
- All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- A waiver of subrogation in favor of The City of West University Place shall be contained in the Workers Compensation and all liability policies.
- All insurance policies shall be endorsed to require the insurer to immediately notify The City of West University Place of any material change in the insurance coverage.
- All insurance policies shall be endorsed to the effect that The City of West University Place will receive at least thirty- (30) days notice prior to cancellation or non-renewal of the insurance.

- All insurance policies, which name The City of West University Place as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- Contractor may maintain reasonable and customary deductibles, subject to approval by The City of West University Place.
- Insurance must be purchased from insurers that are financially acceptable to the City of West University Place.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

- Sets forth all endorsements and insurance coverage's according to requirements and instructions contained herein.
- Shall specifically set forth the notice-of-cancellation or termination provisions to The City of West University Place.

Upon request, Contractor shall furnish The City of West University Place with certified copies of all insurance policies.

A valid certificate of insurance verifying each of the coverage's required above shall be submitted upon award. The certificate of insurance shall be sent to:

City of West University Place
City Secretary's Office
3800 University Blvd
West University Place, TX 77005

Reduction or Waiver of Insurance Requirements

The City may at any time reduce or waive all or part of the insurance requirements established by this document for any contractor that has entered into an agreement with the City to provide the services for which this insurance applies, if the City determines that the reduction or waiver will not unreasonably expose the City to a risk of liability or loss. An authorized City representative must authorize any reduction or waiver of these insurance requirements in writing before the reduction or waiver is effective.