STATE OF TEXAS §
§
COUNTY OF TARRANT §

CONTRACTOR AGREEMENT
CITY OF MANSFIELD, TEXAS

This Contractor Agreement ("Agreement") is made and entered into by and between the CITY OF MANSFIELD, a Texas municipal corporation (hereinafter referred to as "CITY"), and Nema 3 Electric, Inc. (hereinafter referred to as "CONTRACTOR").

ARTICLE I
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CONTRACTOR shall provide the services as described in Attachment "A," attached hereto and incorporated herein by reference for all legal purposes.

ARTICLE II
DESCRIPTION OF SERVICES

CONTRACTOR's services hereunder shall include, but shall not be limited to, the following:

A. Performing all work necessary to provide services attached hereto as Attachment "A."

B. CONTRACTOR shall work under the direction of the Facilities and Construction Manager or designee (hereinafter referred to as "DIRECTOR"). CONTRACTOR shall work closely with the DIRECTOR and appropriate CITY officials and perform any and all related tasks required in order to fulfill the purposes of this Agreement.

C. CONTRACTOR shall deliver all applicable data, reports, and documents that result from its services to the DIRECTOR in such form as is satisfactory to the DIRECTOR.

D. The services will be conducted as in the proposal or on a step-by-step basis as authorized by the DIRECTOR. The services to be rendered by the CONTRACTOR may be limited or modified by the DIRECTOR. The DIRECTOR may authorize a phase to be completed and then terminate the Agreement by not authorizing any of the remaining phases.

E. The DIRECTOR or his designee shall be invited to all development and progress meetings involving the CONTRACTOR, and shall be provided an agenda of the items to be discussed at the time of such invitation.

F. Modifications:

1. Any modifications resulting in an increase in the project scope or cost, equal to or greater than five percent (5%) or ten thousand dollars ($10,000.00), whichever is less, shall be directed to the DIRECTOR.

2. Any accumulation of modifications resulting in an increase in the project scope or cost, equal to or greater than five percent (5%) or ten thousand dollars ($10,000.00), whichever is less, shall be directed to the DIRECTOR.

3. Any modifications resulting in an increase in the project scope or cost less than five percent (5%) or ten thousand dollars ($10,000.00), whichever is less, may be directed to the DIRECTOR.

ARTICLE III
PERFORMANCE OF SERVICES

CONTRACTOR and its employees or associates jointly shall perform all the services under this Agreement in a manner consistent with the degree of skill and care and the orderly progress of the work ordinarily exercised by members of the same profession currently practicing under similar circumstances. CONTRACTOR represents that all its employees who perform services under this Agreement shall be qualified and competent to perform the services described in Attachment "A."

Approval by the CITY of drawings, designs, specifications, reports, and incidental work shall not in any way relieve the CONTRACTOR of responsibility for the technical accuracy, quality, and timely completion, of the work. The CITY's review, approval, acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

ARTICLE IV
TERM

The term of this Agreement shall begin on the last date of execution of the Agreement. CONTRACTOR understands and agrees that time is of the essence. All services, written reports, and other data are to be completed and delivered to CITY as shown on Attachment "A."

ARTICLE V
PAYMENT FOR SERVICES

In consideration of the services to be performed by CONTRACTOR under the terms of this Agreement, CITY shall pay CONTRACTOR for services actually performed a fee, not to exceed One Hundred Eleven Thousand Six Hundred Thirty-Four no/100 dollars ($111,634.00), as stated in Attachment "A," unless other conditions necessitate additional services. CONTRACTOR shall perform additional services when presented with a written work order signed by the DIRECTOR. Payment for additional services shall be as agreed to by the parties in the work order.

CONTRACTOR's charges for its services shall also not exceed similar charges of CONTRACTOR for comparable services to other customers. The amount shown on Attachment "A" shall include fees and all expenses to be incurred by CONTRACTOR, including travel. Additional charges for fees or expenses shall not be made unless specifically indicated on Attachment "A." Payments to CONTRACTOR shall be in the amount shown by the billings and other documentation submitted and shall be subject to the DIRECTOR's approval. If applicable, the billings shall be based on the proposal or the hourly rate of key employees and itemized expenses actually incurred but not to exceed the maximum fee set forth in Attachment "A." All services shall be performed to the reasonable satisfaction of the DIRECTOR, and CITY shall not be liable for any payment for services that the DIRECTOR finds are not in compliance with the agreement.

ARTICLE VI
WARRANTY

Neither the final payment nor any provision in this Agreement shall relieve CONTRACTOR of responsibility for faulty materials or workmanship, and CONTRACTOR shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of two (2) years from the date of substantial completion. The CITY shall give notice of observed defects with reasonable promptness.

ARTICLE VII
INDEMNITY

CONTRACTOR agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought and suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR's breach of any of the terms or provisions of this Agreement, or by any other negligent act or omission of CONTRACTOR, its officers, agents, associates, employees or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this Paragraph shall not apply to any liability resulting from the sole negligence of CITY, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the CONTRACTOR and CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defense of the parties under Texas law. The provisions of this Paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE VIII
INSURANCE

(a) The CONTRACTOR at its own expense shall provide and maintain certain insurance in full force and effect at all times during the terms of this Agreement and any extensions thereto. Such insurance, at a minimum, must include the following coverages and limits of liability:

(i) Worker's Compensation Insurance, as required by law; Employers Liability Insurance of not less than $100,000 for each accident, $100,000 disease-each employee, $500,000 disease-policy limit.

(ii) Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this Contract, fully insuring PROFESSIONAL'S liability for injury to or death of employees of CITY and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of $1,000,000 per occurrence.

(iii) Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of $1,000,000 per occurrence; or separate limits of $500,000 for bodily injury (per person), $500,000 for bodily injury (per accident), and $500,000 for property

damage. This clause does not apply to personal owned vehicles.

(b) All insurance provided for in subsection (a) shall be effective under policies issued by solvent insurance carriers qualified to do business in the State of Texas and having a rating reasonably satisfactory to the CITY. Each issuer must be responsible and reputable and must have financial capacity consistent with the risks covered. Each issuer shall be subject to approval by the Risk Manager to conform with these requirements.

The payment of any deductible on such policies shall be the responsibility of the CONTRACTOR and at the sole cost of the CONTRACTOR. The CONTRACTOR waives any claim it may ever have for the same against the CITY, its officers, agents or employees.

If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to the CONTRACTOR for any further premium payment and has no right to recover any premiums from the CITY. In addition, each policy must expressly state that it may not be canceled unless thirty (30) days advance notice of cancellation is given in writing to the Risk Manager.

(c) Name CITY as an additional insured as to all applicable coverage(s) except Worker's Compensation and Employer's Liability Insurance.

(d) Certificates of all policies referred to herein, certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by the CONTRACTOR with the Risk Manager prior to the beginning of the term of this Agreement. Failure on the part of the CONTRACTOR to furnish a certificate before the expiration date fixed for the cancellation of an existing policy, so that the insurance referred to shall be continuously in effect, will constitute a default on the part of the CONTRACTOR entitling the CITY, at its option, to terminate its duties and the CONTRACTOR's rights under this Agreement upon at least three days' notice in writing to the CONTRACTOR**. All certificates shall provide thirty (30) days' written notice to CITY prior to cancellation by the insurer.**

(e) The CONTRACTOR will, **only upon request**, furnish to the CITY adequate evidence of provisions for Worker's Compensation Insurance, Social Security and Unemployment Compensation, to the extent such provisions are applicable to CONTRACTOR's operations hereunder. The CONTRACTOR shall also maintain such additional insurance as may be required in its judgment and experience to adequately protect itself and the CITY in connection with the activities to be performed pursuant to this Agreement.

(f) Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the CITY, its officers, agents or employees regardless of the cause or origin of that claim or right including negligence of the CITY, its agents, officers, CONTRACTOR's or employees, and that the issuer covenants that no insurer shall hold any right of subrogation against the CITY.

ARTICLE IX
RIGHT OF REVIEW AND AUDIT

CITY may review any and all of the services performed by CONTRACTOR under this Agreement. CITY is hereby granted the right to audit, at CITY's election, all of CONTRACTOR's records and billings relating to the performance of this Agreement. CONTRACTOR agrees to retain such records for a minimum of three (3) years following completion of this Agreement.

ARTICLE X
COMPLIANCE WITH FEDERAL RULES AND REGULATIONS

Funding for the services and work to be provided for under this Agreement is made available through the Energy Efficient and Conservation Block Grant Program. CONTRACTOR agrees to comply with all of the applicable federal laws, regulations, guidelines and policies including, but not limited to the uniform administrative regulations related to the application, acceptance and use of federal funds contained in 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as described in Attachment "B". The CONTRACTOR is encouraged to obtain the necessary information and become familiar with the necessary and required federal laws, regulations, guidelines and provisions, but failure to do so does not relieve it from compliance with the applicable regulations. Contractor shall be responsible for compliance and conformance with applicable federal and state laws, rules, regulations and codes.

ARTICLE XI
ASSIGNMENT

CONTRACTOR shall not assign this Agreement, in whole or in part, without the prior written consent of the DIRECTOR. The issue on whether or not to grant consent to an assignment is in the sole discretion of the CITY.

ARTICLE XII
NOTICES

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for CITY, to:

City of Mansfield
Attn: Andy Hale
1200 E. Broad St.
Mansfield, TX 76063
Phone: (817) 728-3626

If intended for CONTRACTOR, to:

Nema 3 Electric, Inc.
4181 Old Hwy 67
Midlothian, TX 76065
Phone: (972) 723-1180

ARTICLE XIII
INDEPENDENT CONTRACTOR

In performing services under this Agreement, the relationship between the CITY and the CONTRACTOR is that of an independent contractor, and the CITY and the CONTRACTOR by the execution of this Agreement do not change the independent status of the CONTRACTOR. No term or provision of this Agreement or act of the CONTRACTOR in the performance of this Agreement shall be construed as making the CONTRACTOR, its employees or contractors, the

agent, servant, or employee of the CITY. This project is not a joint enterprise and no action by either party to this Agreement shall cause this project to be considered a joint enterprise.

ARTICLE XIV
VENUE

The obligations of the parties to this Agreement are performable in Tarrant County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Tarrant County, Texas.

ARTICLE XV
APPLICABLE LAWS

This Agreement is made subject to the provisions of the Charter and ordinances of CITY, as amended, and all applicable State and federal laws.

ARTICLE XVI
GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

ARTICLE XVII
LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. This Agreement constitutes the only Agreement of the parties hereto and supersedes any prior understanding or oral or written agreements between the parties regarding the subject of this Agreement

ARTICLE XVIII
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

ARTICLE XIX
CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

ARTICLE XX
PRIVATE LAND ENTRY

No entry onto any property of others by the CONTRACTOR, if applicable, on behalf of the CITY for any reasons related to the performance of services within this Agreement shall be made until the CONTRACTOR has secured the landowners' permission to enter and perform such activities, and the CONTRACTOR shall hold the CITY harmless from any and all damages arising from activities of the CONTRACTOR on land owned by others.

ARTICLE XXIII
REPRESENTATION

CONTRACTOR represents that no CITY officer, employee, or agent has been compensated in any way with respect to this Agreement and its consideration by the CITY. In no event will CONTRACTOR pay a fee to or in any other manner compensate any CITY officers, employees, or agents in connection with the approval of this Agreement. A breach under this Article shall result in automatic termination under this Agreement by CONTRACTOR without cause.

ARTICLE XXI
ENTIRE AGREEMENT

This Agreement, with Attachments "A", "B" and "C", embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters in this Agreement, and except as otherwise provided herein, cannot be modified without written agreement of the parties. **In the event of conflicting provisions between this Agreement and the attachments, this Agreement shall be controlling.**

ARTICLE XXII
VERIFICATIONS AND CERTIFICATIONS REQUIRED BY LAW

CONTRACTOR agrees to execute, simultaneously with this Contract, CITY's Verification and Certifications Required by Law form.

EXECUTED by CITY, signing by and through its City Manager or designee, duly authorized to execute same and by CONTRACTOR, acting through its duly authorized officials.

[Signature Page Follows]

"CITY"
CITY OF MANSFIELD

By:_____
Matt Jones
Assistant City Manager

ATTEST:

_____
Susana Marin, City Secretary

APPROVED AS TO FORM:

_____
Vanessa Ramirez, Assistant City Manager

"CONTRACTOR"
Nema 3 Electric, Inc.

By:_____
Names:_____
Title: _____

(CITY)

STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 20___, by Matt Jones, Assistant City Manager of the City of Mansfield.

_____
Notary Public in and for the State of Texas

(CONTRACTOR)

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2023, by _____, _____ of Nema 3 Electric, Inc.

_____
Notary Public in and for the State of Texas

Attachment A

NEMA 3 Electric, Inc.

4181 Old Hwy 67, Midlothian, TX 76065 • 972-723-1180 • Fax 972-723-1181 Contractors

PROPOSAL

October 25, 2023, 23-580R
City of Mansfield
Attn: Andy Hale RE: LED Retrofit
Email: andy.hale@mansfield-tx.gov

Quote $111,634.00 to change out old light fixtures to LED at the following locations and quantities.

- **City Hall Parking- (9) tall poles, (12) short poles**
- **City Hall Lobby- (82) 6" can lights.**
- **Public Safety Parking- (12) short poles.**
- **Public Safety Lobby- (27) 6" can lights.**
- **M.A.C Parking- (13) tall poles, (4) short poles**
- **M.A.C Wall Packs- (11)**
- **Library Parking- (9) tall Poles, (2) short poles.**
- **City Hall & M.A.C- (27) Bollards**

Includes:

- Demo/Disposal of old fixtures
- New LED fixtures
- Lift
- Labor
- Misc. Material

Excludes:

- Ø Any other work not stated above.
- Ø Weekend/Afterhours work
- Ø Sales tax, bonding
- Ø Permit fees

Regards,
Buddy Norris
Nema3 Electric, Inc.

Upon payment we will transfer manufacturers' warranties to the Owner. EXCEPT FOR TRANSFERABLE MANUFACTURER'S WARRANTIES WE ARE NOT RESPONSIBLE FOR INJURIES OR LOSSES DUE TO DESIGN, MANUFACTURING OR OTHER DEFECTS IN THE MATERIALS DESIGNATED OR SPECIFIED BY CONTRACTOR, OWNER OR THEIR AGENTS. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents, or delays beyond our control. Owner is to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.
Note: We may withdraw this proposal if not accepted within seven days.

***We cannot start work until a signed proposal with a Customer Purchase Order Number is received.**

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted, you are authorized to do the work as specified, payment will be made as outlined above.

***Customer Purchase Order Number:_____**

Date of Acceptance: _____ Total Amount Accepted: _____

1. Termination for Cause and for Convenience

Pursuant to 2 C.F.R. part 200, when federal funds are expended by the City, the City reserves the right to immediately terminate any agreement in excess of $10,000 in the event of a breach or default of the agreement by contractor, in the event contractor fails to comply with the provisions of the contract. The City also reserves the right to terminate the contract immediately, with written notice to contractor, for convenience, if the City believes, in its sole discretion that it is in the best interest of the City to do so. The Contractor will be compensated for work performed and accepted and goods accepted by the City as of the termination date if the contract is terminated for convenience of the City.

2. Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR 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 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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.

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

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) 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.

3. <u>Labor Standards – Davis Bacon and Related Acts</u>

(a) **Minimum wages**

(i) ***Wage rates and fringe benefits.*** All laborers and mechanics employed or working upon the site of the work in construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. The appropriate wage determinations are effective by operation of law even if they have not been attached to this contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. §5.5(a)(1)(v); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage

rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 C.F.R. §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under 29 C.F.R. §5.5(a)(1)(iii) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) ***Frequently recurring classifications.***

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 C.F.R. part 1, a wage determination may contain, pursuant to 29 C.F.R. §1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 C.F.R. §5.5(a)(1)(iii), provided that:

(1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with 29 C.F.R. §5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) ***Conformance.***

(A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

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

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

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

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the City, or designee, agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the City, or designee, by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the City, or designee, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the City, or designee, will, by email to *DBAconformance@dol.gov,* refer the questions, including the views of all interested parties and the recommendation of the City, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the City or will notify the City within the 30-day period that additional time is necessary.

(E) The City must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 C.F.R. §5.5(a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 C.F.R. §5.5(a)(1)(iii)(C) and (D) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(v) ***Unfunded plans.*** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 C.F.R. §5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) ***Interest.*** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(b) **Withholding**

(i) ***Withholding requirements.*** The City may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 C.F.R. §5.5(a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 C.F.R. §5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 C.F.R. §5.5(a)(3)(iv), the City may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) ***Priority to withheld funds.*** The Department has priority to funds withheld or to be withheld in accordance with 29 C.F.R. §5.5(a)(2)(i) or 29 C.F.R. §5.5(b)(3)(i), or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(c) **Records and certified payrolls**

(i) ***Basic record requirements*** —

(A) ***Length of record retention.*** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) ***Information required.*** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) ***Additional records relating to fringe benefits.*** Whenever the Secretary of Labor has found under 29 C.F.R. §5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) ***Additional records relating to apprenticeship.*** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) ***Certified payroll requirements*** —

(A) ***Frequency and method of submission.*** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the City. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) ***Information required.*** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 C.F.R. §5.5(a)(3)(i)(B), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) ***Statement of Compliance.*** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under 29 C.F.R. §5.5(a)(3)(ii), the appropriate information and basic records are being maintained under 29 C.F.R. §5.5(a)(3)(i), and such information and records are correct and complete;

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

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

(D) ***Use of Optional Form WH-347.*** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by 29 C.F.R. §5.5(a)(3)(ii)(C).

(E) ***Signature.*** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) ***Falsification.*** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) ***Length of certified payroll retention.*** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) ***Contracts, subcontracts, and related documents.*** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) ***Required disclosures and access*** —

(A) ***Required record disclosures and access to workers.*** The contractor or subcontractor must make the records required under 29 C.F.R. §5.5(a)(3)(i) through 29 C.F.R. §5.5(a)(3)(iii), and any other documents that the City or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 C.F.R. §5.1, available for inspection, copying, or transcription by authorized representatives of the City or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) ***Sanctions for non-compliance with records and worker access requirements.*** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 C.F.R. §5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 C.F.R. part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) ***Required information disclosures.*** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the Federal Agency if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor,

subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the City, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(d) ***Apprentices and equal employment opportunity*** —

(i) ***Apprentices*** —

(A) ***Rate of pay.*** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) ***Fringe benefits.*** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) ***Apprenticeship ratio.*** The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 C.F.R. §5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 C.F.R. §5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) ***Reciprocity of ratios and wage rates.*** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there

is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) ***Equal employment opportunity.*** The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

(e) ***Compliance with Copeland Act requirements.*** The contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in this contract.

(f) ***Subcontracts.*** The contractor or subcontractor must insert in any subcontracts the clauses contained in 29 C.F.R. §5.5(a)(1) through 29 C.F.R. §5.5(a)(11), along with the applicable wage determination(s) and such other clauses or contract modifications as the City, or designee, may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(g) ***Contract termination: debarment.*** A breach of the contract clauses in 29 C.F.R. §5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(h) ***Compliance with Davis-Bacon and Related Act requirements.*** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(j) ***Certification of eligibility.***

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(k) ***Anti-retaliation.*** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 C.F.R. part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 C.F.R. part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 C.F.R. part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 C.F.R. part 1 or 3.

4. <u>Labor Standards – Contract Work Hours and Safety Standards Act</u>

As used in this paragraph, the terms "laborers and mechanics" include watchpersons and guards.

(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 29 C.F.R. §5.5(b)(1) the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of $32 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 29 C.F.R. §5.5(b)(1).

(c) ***Withholding for unpaid wages and liquidated damages*** —

(i) ***Withholding process.*** The City may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in 29 C.F.R. §5.5(b) on this contract, 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 that is held by the same prime contractor (as defined in 29 C.F.R. §5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) ***Priority to withheld funds.*** The Department has priority to funds withheld or to be withheld in accordance with 29 C.F.R. §5.5(a)(2)(i) or 29 C.F.R. §5.5(b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(d) ***Subcontracts.*** The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 C.F.R. §5.5(b)(1) through 29 C.F.R. §5.5(b)(5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(1) through 29 C.F.R. §5.5(b)(5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(e) ***Anti-retaliation.*** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any

person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

5. Clean Air Act and Federal Water Pollution Control Act

Contracts and subawards of amounts in excess of $100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (41 U.S.C. 7401 et seq.) and the Federal Water Pollution control act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to the responsible DOE contracting officer and the Regional Office of the Environmental Protection Agency (EPA).

6. Debarment and Suspension

A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions 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.

Contractor certifies by execution of the Attachment "C" that it complies with this provision.

7. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. 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 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 awarding agency.

8. Inspection by City Representatives

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

9. Examination and Retention of Contractor's Records

(a) The City, the DOE, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the City, DOE, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

10. Contracting with Small, Minority and Women's Businesses

(a) If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services.

(b) Affirmative steps shall consist of:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

(iv) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises;

(v) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies;

(vi) Requiring each party to a subcontract to take the affirmative steps of this section; and

(vii) The Contractor is encouraged to procure goods and services from labor surplus area firms.

11. Energy Efficiency

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201) for the State in which the Work under the Contract is performed.

12. Procurement of Recovered Materials

(a) 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:

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

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

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

13. Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) ***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.

(b) ***Prohibitions.***

(i) 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.

(ii) 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:

(A) 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;

(B) 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;

(C) 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

(D) 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.

(c) ***Exceptions.***

(i) 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.

(ii) By necessary implication and regulation, the prohibitions also do not apply to:

(A) Covered telecommunications equipment or services that:

(1) Are *not used* as a substantial or essential component of any system; *and*

(2) Are *not used* as critical technology of any system.

(B) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) ***Reporting requirement.***

(i) 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.

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

(A) 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.

(B) 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.

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

14. Domestic Preferences 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.

15. Required Provisions Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly

inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

Attachment C

CITY OF MANSFIELD
DEBARMENT AND SUSPENSION CERTIFICATION
(Applicable to all Agreements Funded in Part or Whole with Federal Funds)

The Contractor, under penalty of perjury, certifies that, except as noted below, the Contractor, its principles, and any named and unnamed subcontractor:

(a) Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

(b) Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years;

(c) Does not have a proposed debarment pending; and

(d) Has not been indicted, convicted, or has a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are any exception to this certification, insert the exception in the following space. For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Exceptions will not necessarily result in denial of the award bu will be considered in determining Contractor responsibility.

Certified by: _____

Name of Certifying Officer:

Title:

Organization:

Date: