

## **SECTION 1300**

### **CONTRACT**

THIS CONTRACT, by and between the CITY OF CATHEDRAL CITY, a municipal corporation, herein referred to as "**City**", and Contera Construction Corporation herein referred to as, "**Contractor**".

### **WITNESSETH:**

In consideration of their mutual covenants, the parties hereto agree as follows:

1. Contractor shall furnish all necessary labor, material, equipment, transportation, and services for **TROPICAL STORM HILARY – SOIL REMOVAL FOR OFELIA BRINGAS MEMORIAL BRIDGE GRADE CONTROL STRUCTURE AND DATE PALM BRIDGE CHANNEL LINING, CITY PROJECT NO. M00023, BID NO. B24-57E** (the "Work") in the City of Cathedral City, California. The Work shall be done in strict conformity with this Contract, approved Change Orders, the Invitation to Bid dated May 01, 2024, Instructions to Bidders, permits issued by the City or other agencies, the General and Specific Project Requirements, Standard Specifications, Plans, Referenced Specifications, the General Conditions, Supplementary Conditions, Certification for Contracts, Grants, Loans, and Cooperative Agreements, the Contractor's Bid dated May 22, 2024, and any addenda thereto (the "Contract Documents") all of which shall be considered a part hereof as though fully set herein.
2. Contractor will comply with all Federal, State, County, and City of Cathedral City laws, regulations, and policies, which are, as amended from time to time, incorporated herein by reference.
3. All work shall be done in a workman-like manner and to the satisfaction of the City Engineer.
4. Time is of the essence in the Contractor's performance of the Work for this Contract. The contractor agrees to diligently pursue the performance and completion of the Work in every detail to the satisfaction of the City. The contractor shall commence work after the issuance of a written Notice to Proceed and agrees to have all work completed within **100 Calendar Days** from the date of Notification to Proceed.
5. In consideration of said Work, City agrees to pay Contractor such sums as shall be approved by the City Engineer at lump sums and/or unit prices stated in the Contractor's Bid. The total compensation to Contractor for all Work shall not exceed **Two Million Six Hundred Ninety Thousand Five Hundred Twenty-One Dollars and Zero Cents (\$2,690,521.00)**. All payments shall be subject to approval by the City Engineer and shall be in accordance with the terms, conditions, and procedures provided in the Contract Documents.
6. The Contractor shall not knowingly pay less than the higher of the Federal minimum wage rate or the general prevailing rate for per diem wages, as determined by the State of California Department of Industrial Relations and referred to in the Invitation to Bid, to any workman employed for the work to be performed under this contract; and

the Contractor shall forfeit as a penalty to the City the sum of Twenty-Five Dollars (\$25.00) for each calendar day, or fraction thereof, for such workman paid by him or by any subcontractor under him in violation of this provision (Sections 1770-1777, Labor Code of California).

7. Concurrently with the execution of this Contract, Contractor shall furnish bonds of a surety satisfactory to City, as provided in the Contract Documents, the cost of which shall be paid by Contractor.

8. Contractor agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent, or groundless), to the maximum extent permitted by law, the City, its City Council and each member thereof, and its officers, employees, commission members, and representatives, from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part are claimed to result from or to arise out of the usage or operation, including the malfunctioning of, or, any injury caused by, any product purchased herein; or any acts, errors or omissions (including, without limitation, professional negligence) of Contractor, its employees, representatives, subcontractors, or agents in connection with the performance of this Contract. This agreement to indemnify includes, but is not limited to, personal injury (including death at any time) and damage to property (including, but without limitation, contract or tort or patent, copyright, trade secret, or trademark infringement) sustained by any person or persons (including, but not limited to, companies, or corporations, Contractor and its employees or agents, and members of the general public.

9. Except as otherwise required, Contractor shall concurrently with the execution of this Contract, furnish the City satisfactory evidence of insurance of the kinds and in the amounts provided in the Contract Documents. This insurance shall be kept in full force and effect by Contractor during this entire contract and all premiums thereon shall be promptly paid by it. Each policy shall further state that it cannot be canceled without 30 days unconditional written notice to the City and shall name the City as an additional insured. The contractor shall furnish evidence of having in effect and shall maintain Workers Compensation Insurance coverage of not less than the statutory amount or otherwise show a certificate of self-insurance, in accordance with the Workers Compensation laws of the State of California. Failure to maintain the required amounts and types of coverage throughout the duration of this Contract shall constitute a material breach of this Contract.

10. Contractor shall forfeit as a penalty to City \$25.00 for each laborer, workman, or mechanic employed in the execution of this Contract by said Contractor, or any subcontractor under it, upon any of the work herein mentioned, for each calendar day during which such laborer, workman, or mechanic is required or permitted to work at other than a rate of pay provided by law for more than 8 hours in any one calendar day and 40 hours in any one calendar week, in violation of the provisions of Sections 1810-1815 of the Labor Code of the State of California.

11. In accepting this Contract, Contractor certifies that in the conduct of its business it does not deny the right of any individual to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex,

gender, gender identity, gender expression, age, sexual orientation, or military and veteran status as provided in the California Fair Employment Practice Act (Government Code Sections 12900, et seq.) Contractor agrees that a finding by the State Fair Employment Practices Commission that Contractor has engaged during the term of this Contract in any unlawful employment practice shall be deemed a breach of this Contract and Contractor shall pay to City \$500.00 liquidated damages for each such breach committed under this Contract.

12. Contractor also agrees that for contracts in excess of \$30,000 that apprentices will be employed without discrimination in an approved program in a ratio established in the apprenticeship standards of the craft involved (Sections 1777.5 and 1777.6, Labor Code of California). Contractors who willfully fail to comply will be denied the right to bid on public projects for a period of six months in addition to other penalties provided by law.

13. Contractor shall maintain and keep books and records on a current basis, recording all transactions pertaining to this agreement in a form in accordance with generally acceptable accounting principles. Said books and records shall be made available to the County, the State of California, the Federal government, and to any authorized representative thereof for the purposes of audit at all reasonable times and places. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of retention, all books, records, and supporting detail shall be retained for a period of at least four (4) years after the expiration of the term of this Agreement.

14. This Contract shall not be assignable by Contractor without the written consent of City.

15. Contractor shall notify the City Engineer (in writing) forthwith when the Contract is deemed completed.

16. In accepting this Contract, the Contractor certifies that no member or officer of the firm or corporation is an officer or employee of the City except to the extent permitted by law.

17. Contractor certifies that it is the holder of any necessary California State Contractor's License and authorized to undertake the Work. The contractor must, at the Contractor's sole expense, obtain all necessary permits and licenses required for the Work, give all necessary notices and pay all fees and taxes required by law, including, without limitation, any business license tax imposed by City. The contractor represents and declares to Agency that it has all licenses, permits, qualifications, and approvals of whatever nature which are legally required to practice its profession.

18. The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Contractor records to the extent the City deems necessary to ensure it is receiving all money to which it is entitled under the contract and/or is paying only the amounts to which Contractor is properly entitled under the Contract or for other purposes relating to the Contract.

19. The Contractor shall maintain and preserve all such records for a period of at least three years after termination of the Contract.

21. The Contractor shall maintain all such records in the City of Cathedral City. If not, the Contractor shall, upon request, promptly deliver the records to the City or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than at City offices including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

22. In entering into this Contract or a contract with a subcontractor to supply goods, services, or materials pursuant to this Contract, Contractor and any or subcontractor are deemed to have offered and agreed to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials for the Contract. This assignment will be deemed made and will become effective at the time City tenders final payment to Contractor, without further acknowledgment by the Parties.

23. The Parties agree that, in accordance with the City's Electronic Signature Use Policy, adopted on August 10, 2023, and as amended thereafter, the Parties may use electronic signatures to execute this document. Any use of electronic signatures to execute this document shall comply with the City's Electronic Signature Use Policy, and such signatures shall have the same force and effect as if this Agreement were executed by hand. Signer acknowledges that it has had an opportunity to request and review the City's Electronic Signature Use Policy, and Signer agrees to comply with the Electronic Signature Use Policy. Signer agrees to indemnify, defend, and hold the City harmless from any claim, damage, or liability associated with transmitting an electronic signature or an electronically signed record by electronic transmission.

**IN WITNESS WHEREOF, the parties have executed this Contract as of the dates stated below.**

**"CITY"**

**CITY OF CATHEDRAL CITY,  
a California municipal corporation**

**By:** \_\_\_\_\_  
Charles P. McClendon, City Manager

**Dated:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Tracey R. Hermosillo, CMC, City Clerk

**Dated:** \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Eric Vail, City Attorney

**Dated:** \_\_\_\_\_

**"CONTRACTOR"**

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

[CONTRACTOR SIGNATURES MUST BE NOTARIZED. IF CONTRACTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, TWO SIGNATURES MUST BE PROVIDED.]

**SECTION 1310**  
**FAITHFUL PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

THAT the City of Cathedral City, a municipal corporation, hereinafter designated the City, has, on June 26, 2024, awarded to Contera Construction Corporation, hereinafter designated as the Principal, a Contract for **TROPICAL STORM HILARY – SOIL REMOVAL FOR OFELIA BRINGAS MEMORIAL BRIDGE GRADE CONTROL STRUCTURE AND DATE PALM BRIDGE CHANNEL LINING, CITY PROJECT NO. M00023, BID NO. B24-57E** and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said Contract:

NOW, THEREFORE, we, the Principal, and Harco National Insurance Company, as Surety, are held and firmly bound unto the City in the just and full amount of **Two Million Six Hundred Ninety Thousand Five Hundred Twenty-One Dollars and Zero Cents (\$2,690,521.00)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the said contract and any alterations made as therein provided, on his or their part to be kept and performed, at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless, the City, its officers, and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

It is acknowledged that the Contract provides for one-year guarantee period, during which time this bond remains in full force and effort.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond, and it does hereby waive notice of any such change, an extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

**THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument under their seals this \_\_\_\_ day of \_\_\_\_\_, 2024, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

(Seal)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Signature for Principal

\_\_\_\_\_  
Title of Signatory

(Seal)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Signature for Surety

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Address of Surety

\_\_\_\_\_  
Phone # of Surety

\_\_\_\_\_  
Contact Person For Surety

**SECTION 1320**  
**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS:

THAT the City of Cathedral City, a municipal corporation, hereinafter designated the City, has, on June 26, 2024, awarded to Contera Construction Corporaion, hereinafter designated as the Principal, a Contract for **TROPICAL STORM HILARY – SOIL REMOVAL FOR OFELIA BRINGAS MEMORIAL BRIDGE GRADE CONTROL STRUCTURE AND DATE PALM BRIDGE CHANNEL LINING, CITY PROJECT NO. M00023, BID NO. B24-57E** and

WHEREAS, said Principal is required to furnish a bond in connection and with said Contract, providing that if said Principal, or any of it or its subcontractors shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth:

NOW, THEREFORE, we, the Principal, and Harco National Insurance Company, as Surety, are held and firmly bound unto the City in the just and full amount of **Two Million Six Hundred Ninety Thousand Five Hundred Twenty-One Dollars and Zero Cents (\$2,690,521.00)**, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, it or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind or for amount due under the Unemployment Insurance Act with respect to such work or labor, or any amounts due, or to be withheld pursuant to Sections 18806 of the Revenue and Taxation Code of the State of California with respect to such work or labor, then said surety will pay the same in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney's fees to the City as shall be fixed by the court.

This bond shall insure to the benefit of any and all persons, companies, and corporations named in Section 3181 of the Civil Code of the State of California to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition of the terms of the Contractor to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations of this bond, and it does hereby waive notice of any change, an extension of time, alteration, or addition to the terms of the contract or the work or the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**



IN WITNESS WHEREOF, the Principal and Surety have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 2024, the name and corporate seal of each corporate party being hereto affixed, and these present duly signed by its undersigned representative, pursuant to the authority of its governing body.

(Seal)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Signature for Principal

\_\_\_\_\_  
Title of Signatory

(Seal)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Signature for Surety

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Address of Surety

\_\_\_\_\_  
Phone # of Surety

\_\_\_\_\_  
Contact Person For Surety

**SECTION 1330**  
**WORKERS' COMPENSATION INSURANCE CERTIFICATE**

In accordance with California Labor Code Section 1861, prior to commencement of work on the Contract, the Contractor shall sign and file with the City the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SECTION 1340**  
**LIABILITY AND INSURANCE REQUIREMENTS**

**1.0 INDEMNIFICATION**

Contractor shall defend, indemnify and hold harmless the City, City Council and each member thereof, and every officer, employee, and agent of City, from any claim, demand, damage, liability, loss, cost, or expense (including, without limitation, attorney's fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of the Contractor, or any of the Contractor's employees, or any of its subcontractors arising out of work under this Contract.

The City does not, and shall not, waive any rights that it may have against Contractor, any of the Contractor's employees, or any of its subcontractors under this Section because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate, required pursuant to this Contract. The hold harmless, indemnification, and duty to defend provisions of this Section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein. The City will not be liable for any accident, loss, or damage to the work prior to its completion and acceptance.

**2.0 INSURANCE REQUIREMENTS**

**2.1 General**

After award of contract, the Contractor shall promptly obtain, at its own expense, all the insurance required by Paragraph 1340-2.0, INSURANCE REQUIREMENTS, and shall submit coverage verification for review and approval by the City upon execution of the Contract.

The Notice to Proceed with the Work under this Contract will not be issued, and the Contractor shall not commence work until such insurance has been approved by the City. The Contractor shall not allow any subcontractors to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and verified by the Contractor. Such insurance shall remain in full force and effect at all times during the prosecution of the Work and until the final completion and acceptance thereof.

The Notice to Proceed does not relieve the Contractor of the duty to obtain such insurance as required by Paragraph 1340-2.0 INSURANCE REQUIREMENTS.

## 2.2 **Commercial General Liability Policy**

The Contractor shall take out and maintain during the life of the Contract, a Commercial General Liability Policy, on an occurrence basis, with a minimum limit of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage for any one occurrence and a Two Million Dollar (\$2,000,000) annual project aggregate, for all of the following:

- a. Premises Operations, including Explosion, Collapse, and Underground (X, C, and U) Coverage.
- b. Completed Operations/Products, including X, C, and U Coverage.
- c. Independent Contractors.
- d. Blanket Contractual.
- e. Deductible shall not exceed One Thousand Dollars (\$1,000).

## 2.3 **Commercial Business Auto Policy**

The Contractor shall take out and maintain during the life of this Contract a Commercial Business Auto Policy, on an occurrence basis, with a minimum amount of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage, providing at least all of the following coverage:

- a. Coverage shall be applicable to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Contract.
- b. Any and all mobile equipment, including cranes, which is not covered under said Commercial Business Auto Policy shall have said coverage provided for under the Commercial General Liability Policy.
- c. Deductible shall not exceed One Thousand Dollars (\$1,000).

## 2.4 **Workers' Compensation Insurance**

The Contractor shall take out and maintain during the life of the Contract, Worker's Compensation and Employers' Liability insurance providing coverage for any and all employees of Contractor:

- a. The required policy shall provide coverage for Workers' Compensation (Coverage A).
- b. This policy shall provide coverage for One Million Dollars (\$1,000,000) Employers' Liability (Coverage B).

## 2.5 **Endorsements**

All of the following endorsements are required to be made a part of the policies described in this Section hereof:

- a. "The City, City employees and officers, the City Engineer, its consultants, elected officials, agents, and sub-consultants are hereby added as additional insured insofar as Work done under this Contract is concerned."
- b. "This policy shall be considered primary insurance as respects any other valid and collectible insurance, including self-insured retention, the City may possess, and any other insurance the City does possess shall be considered excess insurance only."
- c. "This insurance shall act for each insured, and additional insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
- d. "Thirty (30) days prior written notice of cancellation shall be given to the City. Such notice shall be sent to:

Kevin Biersack, Financial Services Director  
City of Cathedral City  
68-700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

## 2.6 **Change in Terms**

The Contractor shall provide immediate written notice to the City of any change in terms and conditions and/or reduction in the coverage of any nature to the insurance policies. The notice shall be sent to the location identified in Paragraph 1340-2.6.d, Endorsements. The Contractor shall be obligated to pay any extra premium for maintaining the insurance requirements specified herein.

## 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
**Signature of Contractor’s Authorized Official**

\_\_\_\_\_  
**Name and Title of Contractor’s Authorized Official**

\_\_\_\_\_  
**Date**

## 1. Equal Employment Opportunity

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

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

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

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

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

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the City 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 City 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 City 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 City agrees that it will assist and cooperate actively with 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 City 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.

## 2. Compliance with Contract Work Hours and Safety Standards Act

(1) *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.

(2) *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 (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 (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 (1) of this section.

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

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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.

## 3. 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 City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the 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.

#### 4. Federal Water Pollution Control Act

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 City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the 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.

#### 5. 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's 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 City. 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 City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor 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 Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 6. Procurement of Recovered Materials

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- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

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

#### 7. Access to Records

The Contractor agrees to provide City, 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.

In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

#### 8. 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.

#### 9. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

#### 10. No Obligation by 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.

#### 11. Program Fraud and False or Fraudulent Statements or Related Acts

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.