

SPECIAL TERMS AND CONDITIONS FOR FEDERAL FUNDS

1. DEFAULT.

1.1. A party will be in default of the Agreement if that party:

- i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
- ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
- iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
- iv. Fails to carry out any term, promise, or condition of the Agreement.

1.2. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and Solicitations in accordance with Article 6 of the City's Procurement Rules.

1.3. Notice and Opportunity to Cure. In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety, or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.

Anticipatory Repudiation. Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event, demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.

Agreed ☐ NA ☐ Exception:

2. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:

2.1. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.

2.2. The City may purchase the services or materials required under the Agreement from the open market, complete the required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.

2.3. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.

2.4. Neither party will be liable for incidental, special, or consequential damages.

Agreed ☐ NA ☐ Exception:

3. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

Agreed ☐ NA ☐ Exception:

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4. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement, in part or in whole, for its sole convenience upon thirty (30) calendar days written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 22 (Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.

Agreed ☐ NA ☐ Exception:

5. **NONDISCRIMINATION.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and any other applicable non-discrimination laws and rules.

Agreed ☐ NA ☐ Exception:

6. **DAVIS-BACON ACT.** For all prime construction contracts in excess of \$2,000, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

Agreed ☐ NA ☐ Exception:

7. **COPELAND "ANTI-KICKBACK" ACT.**

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

Agreed ☐ NA ☐ Exception:

8. **CONTRACT WORK AND SAFETY STANDARDS ACT.** Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts in excess of \$100,000 that involve the employment of mechanics or laborers each contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

- 8.1. 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.
- 8.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation 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

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violation of the clause set forth in this section, in the sum of \$26 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 this section.

- 8.3. 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 this section.
- 8.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this section.

Agreed ☐ NA ☐ Exception:

9. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If this Contract is for the performance of experimental, developmental, or research work, including any assignment, substitution of parties, or subcontracts, the City and the Contractor shall comply with the requirements of 37 CFR Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements) and any implementing regulations issued.

Agreed ☐ NA ☐ Exception:

10. **CLEAN AIR ACT.** The contractor agrees to:

- 10.1. 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.
- 10.2. 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 required Federal Agencies.
- 10.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

Agreed ☐ NA ☐ Exception:

11. **FEDERAL WATER POLLUTION CONTROL ACT.**

- 11.1. 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.
- 11.2. The contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the required Federal Agencies.
- 11.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

Agreed ☐ NA ☐ Exception:

12. **DEBARMENT.** If the Respondent has been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government or agency, or if any such preclusion from participation from any public procurement activity is currently pending, the Respondent shall include a letter with its Response identifying the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances must be provided by the Respondent, including the details enumerated above. A Response from a Respondent who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may be rejected. Failure of a Respondent to disclose a debarment or suspension in accordance with this Section may result in the Response being disqualified for an award of the Solicitation. Debarment status will be verified using the federal System for Award Management (SAM).

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Agreed ☐ NA ☐ Exception:

13. **ACCESS TO RECORDS.** Offeror agrees that the City or any of their duly authorized representatives shall have access to any documents, papers, or other records of offeror that are pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview and discussion relating to such documents.

Agreed ☐ NA ☐ Exception:

14. **RECORDS RETENTION.** When federal funds are expended by the City for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain these records as required for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Agreed ☐ NA ☐ Exception:

15. **ENERGY POLICY AND CONSERVATION ACT.** Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).

Agreed ☐ NA ☐ Exception:

16. **BUY AMERICA.** The Buy America requirements apply to construction contracts and acquisitions for goods or rolling stock valued at more than \$100,000. The Contractor agrees to comply with 49 U.S.C. §5323(j) and its implementing regulations at 49 CFR Part 661, any amendments thereto and any implementing guidance issued by the FTA.

Agreed ☐ NA ☐ Exception:

17. **APPLICABILITY TO SUBCONTRACTORS.** Offeror agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Agreed ☐ NA ☐ Exception:

18. **SOLID WASTE DISPOSAL ACT.** The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Agreed ☐ NA ☐ Exception:

19. **BYRD ANTI-LOBBYING AMENDMENT.** Contractors that apply or bid for an award exceeding \$100,000 must 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.

- 19.1. No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

- 19.2. 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 grant or cooperative

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agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

- 19.3. This certification shall be included in 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.

Please check the appropriate box:

- ☐ No funds have been used or are planned to be used for lobbying in connection with this contract, or
☐ Attached is Standard Form LLL, "Disclosure of Lobbying Activities," which describes the use (past or planned) of funds for lobbying in connection with this contract.

Agreed ☐ NA ☐ Exception:

Offeror agrees to comply with the requirements in these Terms and Conditions as well as all federal, state, and local laws, rules, regulations, and ordinances, as applicable.

Company Name: _____

Phone Number: _____ email address: _____

Printed Name and Title of Authorized Representative: _____

Signature of Authorized Representative: _____ Date: _____