

**CITY OF SAN BERNARDINO**  
**AGREEMENT FOR DESIGN SERVICES AND FOR PURCHASE AND DELIVERY OF GOODS**

**1. PARTIES AND DATE.**

This Agreement is made and entered into as **December 4, 2024** by and between the City of San Bernardino, a charter city and municipal corporation organized and operating under the laws of the State of California, with its principal place of business at Vanir Tower, 290 North D Street, San Bernardino, California 92401 ("City"), and **Mandeville Modular**, a **California Corporation** with its principal place of business at **39516 30<sup>th</sup> Street East, Palmdale, California 93550** (hereinafter referred to as "Company"). City and Company are sometimes individually referred to herein as "Party" and collectively as "Parties."

**2. RECITALS.**

**2.1 City.** City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

**2.2 Company.** Company desires to perform and assume responsibility for the provision of certain professional design services and manufacturing and delivery of modular buildings required by the City on the terms and conditions set forth in this Agreement. Company warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Company is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Company itself, shall be fully licensed to practice as an architect and/or engineer in the State of California.

**2.3 Project.** City desires to engage Company to render such services for the **San Bernardino Hope Campus** ("Project") as set forth in this Agreement.

**3. TERMS**

**3.1 Employment of Company.**

**3.1.1 Scope of Services.** Company promises and agrees to furnish to City all labor, materials, tools, equipment, goods, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement, including the manufacturing and delivery of modular buildings (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A through G" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Company shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld. Additionally, Company shall comply with all Federal requirements applicable to the Services as set forth in Exhibit A through G.

**3.1.2** Company agrees to sell to City and City agrees to purchase the materials and/or equipment ("Goods") as specified and per the specifications attached hereto and incorporated herein as Exhibit "A through G" Unless specifically stated otherwise, the Goods shall be new and unused and of the current production year.

**3.1.3 Term.** The term of this Agreement shall be from December 4, 2024, to December 31, 2025, unless earlier terminated as provided herein. Company shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### **3.2 Project Company; Key Personnel.**

**3.2.1 Project Designer.** Company shall name a specific individual to act as Project Designer, subject to the approval of City. Company hereby designates **Heith Bibby** (License No. **MF1594154**) to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Company for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that City and Company cannot agree as to the substitution of a new Project Designer, City shall be entitled to terminate this Agreement for cause.

**3.2.2 Key Personnel.** In addition to the Project Designer, Company has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Company may substitute others of at least equal competence. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Company at the request of the City.

### **3.3 Hiring of Consultants and Personnel.**

**3.3.1 Right to Hire or Employ.** Company shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Company may delegate without relieving Company from administrative or other responsibility under this Agreement. Company shall be responsible for the coordination and cooperation of Company's architects, engineers, experts or other consultants.

**3.3.2 Qualification and License.** All architects, engineers, experts and other consultants retained by Company in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

**3.3.3 Standards and Insurance.** All architects, engineers, experts and other consultants hired by Company shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Company's agreements

with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

**3.3.4 Assignments or Staff Changes.** Company shall promptly notify the City of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project.

**3.3.5 Draftsman and Clerical Support.** Draftsmen and clerical personnel shall be retained by Company at Company's sole expense.

### **3.4 Standard of Care.**

**3.4.1 Standard of Care.** Company shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Company shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or manufacturing of the Project. Company represents and maintains that it is skilled in the professional calling necessary to perform the Services. Company warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Company represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Company shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Company's failure to comply with the standard of care provided for herein.

**3.4.2 Performance of Employees.** Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Company and shall not be re-employed to perform any of the Services or to work on the Project.

### **3.5 Laws and Regulations.**

**3.5.1 Knowledge and Compliance.** Company shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Company by law. Company shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Company performs any work knowing it to be contrary to such laws, rules and regulations, Company shall be solely responsible for all costs arising therefrom. Company shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

**3.5.2 Drawings and Specifications.** Company shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibits A through G attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Company. Company shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibits A through G attached hereto. For the preparation of all such drawings and specifications, the Company shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Company and City.

**3.5.3 Americans with Disabilities Act.** Company will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the California Building Code, the Americans with Disabilities Act ("ADA"), and Section 504 of the Rehabilitation Act of 1973. Company shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Company brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Company's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Company, and the Company shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Company request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Company shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

**3.5.4 Permits, Approvals and Authorizations.** Company shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Company shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

**3.5.5 Water Quality Management and Compliance.**

(a) **Compliance with Water Quality Laws, Ordinances and Regulations.** Company shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Company shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

(b) **Standard of Care.** Company warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them

without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Company further warrants that it, its employees and subcontractors will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

(c) Liability for Non-compliance.

(i) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Company agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(ii) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Company's failure to comply with any applicable water quality law, regulation, or policy. Company hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(iii) Damages: City may seek damages from Company for delay in completing the Services caused by Company's failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

3.5.6 Air Quality.

(a) Compliance with Air Quality Laws, Ordinances, and Regulations. Company must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Company shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Company shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Company, its subcontractors, or others for whom Company is responsible under its indemnity obligations provided for in this Agreement.

**3.6 Independent Contractor.**

**3.6.1 Control and Payment of Subordinates.** City retains Company on an independent contractor basis and Company is not an employee of City. Company is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Company shall also not be employees of City, and shall at all times be under Company's exclusive direction and control. Company shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this

Agreement and as required by law. Company shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

### **3.7 Schedule of Services.**

**3.7.1 Company Services.** Company shall fully and adequately complete the Services described in this Agreement and in Exhibits A through G attached hereto and incorporated herein by reference.

**3.7.2 Timely Performance Standard.** Company shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Company shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Company agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

**3.7.3 Performance Schedule.** Company shall prepare an estimated time schedule for the performance of Company's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Company cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Company without the prior written approval of City. If the Company's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Company will be responsible pursuant to the indemnification provision of this Agreement.

**3.7.4 Excusable Delays.** Any delays in Company's work caused by the following shall be added to the time for completion of any obligations of Company: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Company; and (5) Force Majeure Event. Neither the City nor the Company shall be liable for damages, liquidated or otherwise, to the other on account of such delays. Such a non-compensable adjustment shall be Company's sole and exclusive remedy for such delays and the Company will not receive an adjustment to the contract price or any other compensation. A Force Majeure Event shall mean an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Company and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of

replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

**3.7.5 Request for Excusable Delay Credit.** The Company shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Company for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Company make an application for an extension of time, Company shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

**3.7.6 Conformance to Applicable Requirements.** All work prepared by Company shall be subject to the approval of City.

**3.7.7 Acceptance.** The Goods shall be delivered to a location designated by the City and shall be F.O.B. the City's destination. Company shall be responsible for arranging transportation of the Goods and for any damages to the Goods during transport. The Goods shall be received subject to City's inspection and right of rejection. The Goods shall not be considered accepted until inspection, testing and/or use of the Goods is found to be in accordance with the City's specifications. Final inspection of the Goods shall be at the location specified herein, unless otherwise agreed in writing. If the Goods are found at any time to be defective in material or workmanship, or otherwise not in conformance with specifications, City shall have the right, in addition to any other rights which it may have under warranties or otherwise, to reject such Goods in whole or in part. Rejected Goods shall be held at Company's risk for a reasonable time thereafter and shall be returned or disposed of at Company's expense. No rejected Goods shall be replaced by Company without written instruction or authorization from City.

**3.7.8 Coordination of Services.** Company agrees to work closely with City staff in the performance of Services and the delivery of Goods and shall be available to City's staff, consultants, and other staff at all reasonable times.

### **3.8 Additional Company Services.**

**3.8.1 Request for Services.** At City's request, Company may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibits "A through G" attached hereto, and/or not customarily furnished in accordance with generally accepted design practice.

**3.8.2 Definition.** As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Company to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibits "A through G" attached hereto. Company shall not perform, nor be compensated for, Additional Services

without prior written authorization from City and without an agreement between the City and Company as to the compensation to be paid for such services. City shall pay Company for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Company pursuant to the indemnification provision of this Agreement.

**3.8.3 Examples of Additional Services.** Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Company was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Company. Services caused by delinquency, default or insolvency of Company, or by major defects in the work of the Company, provided that any such services made necessary by the failure of Company to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Company.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Company is not a party.

(f) Damage Repair. Supervision of repair of damages to any Goods.

(g) Extra Environmental Services. Additional work required for environmental conditions not already contemplated within the Company's services for the Project.

### **3.9 City Responsibilities.** City's responsibilities shall include the following:

**3.9.1 Data and Information.** City shall make available to Company all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria.

**3.9.2 Project Survey.** If required pursuant to the scope of the Project and if requested by Company, City shall furnish Company with, or direct Company to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.



**3.9.3 Bid Phase.** Provide the City with Construction Documents to distribute to bidders and be available during the bid process to answer any questions.

**3.9.4 Testing.** Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

**3.9.5 Required Inspections and Tests.** Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

**3.9.6 Fees of Reviewing or Licensing Agencies.** Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

**3.9.7 City's Representative.** The City hereby designates the Director of Public Works, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Representative hereby designates City Engineer, or his or her designee, as the City's contact for the implementation of the Services hereunder. Company shall not accept direction or orders from any person other than the City's Representative or his or her designee.

**3.9.8 Review and Approved Documents.** Review all documents submitted by Company, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Company of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

### **3.10 Compensation.**

**3.10.1 Company's Compensation for Basic Services.** City shall pay to Company, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **Ten Million, Ninety-Three Thousand, and Twenty Seven Dollars (\$10,093,027.00)** ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B through D" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

**3.10.2 Payment for Additional Services.** At any time during the term of this Agreement, City may request that Company perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If City requires Company to hire consultants to perform any Additional Services, Company shall be

compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Company shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

**3.10.3 Reimbursable Expenses.** Reimbursable expenses are in addition to compensation for the Services and Additional Services. Company shall not be reimbursed for any expenses unless authorized in writing by City .

**3.10.4 Payment to Company.** Company's compensation and reimbursable expenses shall be paid by City to Company no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibits "B through D" attached hereto and incorporated herein by reference. In order to receive payment, Company shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid at the address listed in Section 3.29. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Company shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Company shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Company shall be compensated as set forth in the termination provision herein.

**3.10.5 Withholding Payment to Company.** The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Company is liable under the Agreement or state law. Payments to the Company for compensation and reimbursable expenses due shall

not be contingent on the completion or ultimate success of the Project. Payment to the Company shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from parties not within the Company's reasonable control.

**3.10.6 Prevailing Wages.** Company is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Company agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Company with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Company shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Company's principal place of business and at the Project site. Company shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Company or its consultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Company and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

**3.10.7 Registration.** If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Company and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Company shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

**3.10.8 Labor Compliance.** This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Company's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Company or any subcontractor that affect Company's performance of Services, including any delay, shall be Company's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Company caused delay and shall not be compensable by the City. Company shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Company or any subcontractor.

### **3.11 Notice to Proceed.**

Company shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

### **3.12 Termination, Suspension and Abandonment.**

**3.12.1 Grounds for Termination; Company's Termination for Cause.** City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Company shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Company shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Company. Company hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Company may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Company as provided in this Agreement.

**3.12.2 City's Suspension of Work.** If Company's Services are suspended by City, City may require Company to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Company.

**3.12.3 Goods, Documents, and Other Data.** Upon suspension, abandonment or termination, Company shall provide to City all Goods, preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Company's Services under this Agreement. Upon payment of the amount required to be paid to Company pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Goods and Project Documents prepared by or on behalf of Company under this Agreement. Company shall make such Goods and documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

**3.12.4 Employment of other Companies.** In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.13 Ownership and Use of Documents; Confidentiality.**

**3.13.1 Ownership.** All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, design presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Company or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Company shall

provide to City copies of all Project Documents required by City. In addition, Company shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Company shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

**3.13.2 Right to Use.** Company grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Company, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Company in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Company or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Company.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Company shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Company's seal from the Project Documents and hold harmless Company and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

**3.13.3 License.** This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Company shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

**3.13.4 Right to License.** Company represents and warrants that Company has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Company prepares or causes to be prepared pursuant to this Agreement. Company shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Company makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Company and provided to Company by City.

**3.13.5 Confidentiality.** All Project Documents, either created by or provided to Company in connection with the performance of this Agreement, shall be held confidential by Company to the extent they are not subject to disclosure pursuant to the Public Records Act. All

Project Documents shall not, without the written consent of City, be used or reproduced by Company for any purposes other than the performance of the Services. Company shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Company which is otherwise known to Company or is generally known, or has become known, to the related industry shall be deemed confidential. Company shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

### **3.14 Indemnification.**

3.14.1 To the fullest extent permitted by law, Company shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Company, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Company's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Company's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Company, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Company's obligation to defend, indemnify, and/or hold harmless arises out of Company's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Company's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Company, and, upon Company obtaining a final adjudication by a court of competent jurisdiction, Company's liability for such claim, including the cost to defend, shall not exceed the Company's proportionate percentage of fault.

**3.15 Insurance.** Company shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Company shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

**3.15.1 Types of Insurance Required.** As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, Company shall, at its expense, procure and maintain in full force and effect for the duration of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Company agrees to amend, supplement or endorse the policies to do so.

**3.15.2 Additional Insured.** The City of San Bernardino, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Company's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

### **3.15.3 Commercial General Liability**

(a) The Company shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

### **3.15.4 Automobile Liability**

(a) At all times during the performance of the work under this Agreement, the Company shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

#### **3.15.5 Workers' Compensation/Employer's Liability**

(a) Company certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Company has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Company shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Company shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

#### **3.15.6 Professional Liability (Errors and Omissions)**

(a) If Company is also the manufacturer of any equipment included in the Goods, or the Goods themselves, Company shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment and Goods with limits of not less than \$1,000,000.

(b) At all times during the performance of the work under this Agreement the Company shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Company. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

#### **3.15.7 Privacy/Network Security (Cyber**

(a) At all times during the performance of work under this Agreement, the Company shall maintain privacy/network security insurance, in a form and with insurance



companies acceptable to the City, for: (1) privacy breaches, (2) system breaches, (3) denial or loss of service, and (4) the introduction, implantation or spread of malicious software code.

### **3.15.8 Minimum Policy Limits Required**

(a) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$2,000,000 per occurrence/ \$4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)
Cyber Liability	\$1,000,000 per occurrence and aggregate

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

### **3.15.9 Evidence Required**

(a) Prior to execution of the Agreement, the Company shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

### **3.15.10 Policy Provisions Required**

(a) Company shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Company shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Company shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Company's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Company shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Company shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Company or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Company hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(e) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Company from liability in excess of such coverage, nor shall it limit the Company's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

#### **3.15.11**      Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

#### **3.15.12**      Additional Insurance Provisions

(a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Company, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Company pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Company or City will withhold amounts sufficient to pay premium from Company payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Company to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Company shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Company or the City may withhold amounts sufficient to pay premium from Company payments. In the alternative, the City may suspend or terminate this Agreement.

(e) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

#### **3.15.13      Subconsultant Insurance Requirements**

(a) Company shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Company, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

#### **3.16    Records.**

Company shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Company shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Company shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

#### **3.17    Standardized Manufactured Items.**

Company shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

#### **3.18    Limitation of Agreement.**

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City

site, will be covered by, and be the subject of, a separate Agreement for design services between City and the Company chosen therefor by City.

### **3.19 Mediation.**

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

### **3.20 Successors and Assigns.**

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Company shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

### **3.21 Asbestos Certification.**

Company shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Company prepares for the Project. Company shall require all consultants who prepare any other documents for the Project to submit the same written certification. Company shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Company shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

### **3.22 No Third Party Rights.**

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

### **3.23 Governing Law.**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

### **3.24 Exhibits and Recitals.**

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

### **3.25 Severability.**

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

**3.26 Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

**3.27 Safety.**

Company shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Company shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

**3.28 Harassment Policy.**

Company shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Company shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Company's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

**3.29 Delivery of Notices.**

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**CITY:**

City of San Bernardino  
Vanir Tower, 290 North D Street  
San Bernardino, California 92401  
Attn: City Manager

**COMPANY:**

Mr. Heith Bibby, Founder  
Mandeville Modular, Inc.  
39516 30<sup>th</sup> Street East  
Palmdale, CA 93550  
(562) 661-9149

With a Copy to:

City of San Bernardino  
Vanir Tower, 290 North D Street  
San Bernardino, CA 92401  
Attn: City Attorney

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party

at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### **3.30 Time of Essence.**

Time is of the essence for each and every provision of this Agreement.

### **3.31 City's Right to Employ Other Consultants.**

City reserves right to employ other consultants in connection with this Project or other projects.

### **3.32 Prohibited Interests.**

**3.32.1 Solicitation.** Company maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Company, to solicit or secure this Agreement. Further, Company warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Company, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

**3.32.2 Conflict of Interest.** For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**3.33 Warranty of Goods.** In addition to all warranties which may be provided by law, Company warrants that the Goods delivered hereunder shall, (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by City; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty or as agreed to by Company and City, from the date of final written acceptance of the Goods by City. This warranty shall survive any inspection, delivery, acceptance, or payment by City of the Goods. Company, at its own expense, shall repair or replace, at the option of City, any defective Goods within a mutually agreed upon schedule between the City and Company. Company also warrants that the Goods are free and clear of all liens and encumbrances whatsoever, that Company is conveying good and marketable title to same, and that Company owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Company agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

**3.34 Disputes.** Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Company may be required to do, or respecting the size of any payment to Company during the performance of this Agreement, Company shall continue to perform the Work while said dispute is decided by the City. If Company disputes the City's decision, Company shall have such remedies as may be provided by law.

**3.35 Laws and Regulations; Employee/Labor Certifications.** Company shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations

in any manner affecting its performance under this Agreement, including all Cal/OSHA requirements, and shall give all notices required by law. Company shall be liable for all violations of such laws and regulations in connection with this Agreement. If the Company performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Company shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Company shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

**3.35.1 Employment Eligibility; Company.** By executing this Agreement, Company verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Company. Company also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Company shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Company shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Company's compliance with the requirements provided for in Section 3.36 or any of its subsections.

**3.35.2 Employment Eligibility; Subcontractors and Consultants.** To the same extent and under the same conditions as Company, Company shall require all of its subcontractors, and consultants performing any work relating to this Agreement to make the same verifications and comply with all requirements and restrictions provided for herein.

**3.35.3 Employment Eligibility; Failure to Comply.** Each person executing this Agreement on behalf of Company verifies that they are a duly authorized officer of Company, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Company or its subcontractors, or consultants to meet any of the requirements provided for in Sections 3.35.1 or 3.35.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Company under Section 3.35.2); or (3) failure to immediately remove from this contract any person found not to be in compliance with such requirements.

**3.35.4 Labor Certification.** By its signature hereunder, Company certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every

employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

**3.35.5 Equal Opportunity Employment.** Company represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Company shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

**3.36 Safety.** Company shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its services, the Company shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

**3.37 Subcontracting.**

As specified in this Agreement, Company shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

**3.38 Supplemental Conditions.**

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

**3.39 Electronic Signature.**

Each Party acknowledges and agrees that this Agreement may be executed by electronic or digital signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

**3.40 Compliance with Various Funding Sources.** Since this Project is funded by various funding sources, Company shall also fully and adequately comply with the provisions associated with the various funding sources included in Exhibit "E" attached hereto and incorporated herein by reference ("Funding Sources Requirements"), which are repetitive of the requirements contained at Exhibits C and E of the Request for Proposals for this Project. With respect to any conflict between federal requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.



### **3.41 Entire Agreement.**

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR AGREEMENT FOR DESIGN SERVICES AND FOR PURCHASE  
AND DELIVERY OF GOODS  
BETWEEN THE CITY OF SAN BERNARDINO  
AND MANDEVILLE MODULAR, INC.**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**CITY OF SAN BERNARDINO**

**Mandeville Modular, Inc.**

APPROVED BY:

\_\_\_\_\_  
**Rochelle Clayton**  
Acting City Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Heith Bibby  
Name

ATTESTED BY:

\_\_\_\_\_  
**Genoveva Rocha**  
City Clerk

\_\_\_\_\_  
Founder  
Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

**EXHIBIT A**  
**COMPANY'S SCOPE OF SERVICES**

**1. GENERAL REQUIREMENTS.**

**1.1 Basic Services.** Company agrees to perform all the necessary professional design and engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the parties) for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

**1.2 Exclusions from Basic Services.** The following services shall be excluded from the basic services listed above: **soils engineering, geotechnical services, hazardous waste, or toxic substances engineering.**

**1.3 Additional Services.** Company shall perform the following Additional Services for the Project: N/A

**1.4 Communication with City.** Company shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications, and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the duration of the Project and the Company's warranty period. Company shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any project manager hired by the City.

**1.5 Coordination and Cooperation with Project Manager and/or General Contractor.** The City may hire a project manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the project manager so that the Company will be fully aware of the duties and responsibilities of the project manager. The Company shall cooperate with the project manager and respond to any requests or directives authorized by the City to be made or given by the project manager. The Company shall request clarification from the City in writing if the Company should have any questions regarding the authority of the project manager.

**2. INITIAL PLANNING PHASE.**

During the initial planning phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**2.1 Meeting Project Cost and Goals.** Company shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project cost and time line. It shall be the duty of the Company to design the Project within the established Project cost.

**2.2 Permits, Approvals and Authorizations.** As indicated in Section 3.5.4 of the Agreement, Company shall assist City in securing permits, approvals, and authorizations, as well as coordinating with utilities.

### **3. SCHEMATIC PLAN PHASE.**

During the schematic plan phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**3.1 Schematic Plans.** In cooperation with City, Company shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed design concept of the buildings ("Schematic Plans"). Company shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall be in compliance with the Americans with Disabilities Act (ADA) and meet all applicable Federal, State, County, and City laws, rules and regulations, including but not limited to Section 504 of the Rehabilitation Act of 1973 and Chapter 11B of the California Building Code - *Accessibility to Public Buildings, Public Accommodations, Commercial Buildings and Public Housing*. To ensure compliance, Company shall have Schematic Plans reviewed by a Certified Access Specialist (CASP). The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All design drawings for the Project shall be in a form suitable for reproduction.

**3.2 Copies of Schematic Plans and Other Documents.** Company, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Company shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

### **4. DESIGN DEVELOPMENT PHASE.**

During the design development phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**4.1 Design Development Documents.** Once City provides Company with specific written approval of the Schematic Plans described herein, Company shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents").

**4.2 Copies of Design Development and Other Documents.** Company, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Company shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

**4.3 Timetable.** Company shall provide a written timetable for full and adequate completion of their portion of the Project to City.

**4.4 Application for Approvals.** Company shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the

Project. Company shall furnish and process all design and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

**4.5 Color and Other Aesthetic Issues.** Company shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

## **5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.**

During the final working drawings and specifications phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**5.1 Final Working Drawings and Specifications.** Once City provides Company with specific written approval of the Design Development Documents described herein, Company shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction and manufacturing work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. City may be requested to supply Company with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Company will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Company which may not be shown on the as-built drawings.

**5.2 Form.** The Final Working Drawings and Specifications must be in such form as will enable Company and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Company.

**5.3 Approval and Revisions.** City shall review, study, and check the Final Working Drawings and Specifications presented to it by Company, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Company shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Company's professional judgment. Company shall bring any such conflicts and/or inconsistencies to the attention of City. The parties agree that Company, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes

with the Final Working Drawings and Specifications, and to hire an independent Company or other consultant to perform such reviews. Any such independent constructability and accessibility review shall be at City's expense. Company shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Company's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Company shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

#### **5.4 Copies of Final Working Drawings and Specifications and Other Documents.**

Company, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Company shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

### **6. CONSTRUCTION CONTRACT DOCUMENTS.**

During the construction contract documents phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**6.1 Bid and Contract Documents.** Company shall provide the City with all construction documents, including but not limited to any certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

### **7. BID PHASE.**

During the bid phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**7.1 Reproducible Construction Documents.** Once City provides Company with specific written approval of the Construction Documents, Company shall provide to City one set of reproducible Construction Documents.

**7.2 Distribution of Contract Documents and Review of Bids.** Company shall assist City in distributing the Construction Documents and be available to answer questions during the bid process.

### **8. MODULAR MANUFACTURING AND SITE CONSTRUCTION PHASE.**

During the modular manufacturing and site construction phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**8.1 Observation.** The Project Company may observe work executed from the Final Working Drawings and Specifications, provided that City may, in its discretion, consent to such observation by another competent representative of Company.

**8.2 General Construction Administration.** Company shall provide general construction administration of the Construction Documents in the form of Requests of Information, Clarifications, and Approval of substitutions as needed, as it relates to the work performed by the contractors.

**8.3 Site Visits of Modular Company's Work.** The Project Company shall allow the City to conduct site visits to the modular manufacturing facility to observe the progress of the modular buildings.

**8.4 Site Visits of Contractor's Work.** Company may conduct site visits to observe the work for general conformance with the Construction Documents and with any approved construction schedules or milestones.

**8.5 Site Visits of Inspector's Work.** Company may conduct site visits, if necessary, to observe the activities of the City inspectors in order to ensure accuracy of all "as-built" conditions.

**8.6 Coordination of Company's Consultants.** Company shall cause all architects, engineers, and other consultants, as may be hired by Company, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

**8.7 Reports.** Company shall make reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

**8.8 Written Reports.** Company shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

**8.9 Written Records.** Company shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project. Manufacturing travelers shall be made available for review by the City at all times.

**8.10 Material and Test Reports.** Company shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Company shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the project manager and City.

**8.11 Review and Response to Submissions.** Company shall review and respond, within five (5) business days or less, to all information requests, change requests, and other submissions of the project manager for compliance with, or alterations and additions to, the Construction Documents. Company's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

**8.12 Rejection of Work.** Company shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Company shall immediately notify the City and project manager of such rejections. Company shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

**8.13 Field Changes and Substitutions.** Company shall consult with City, in a timely manner, with regard to any field changes and substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such field changes and substitutions. Company's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

**8.14 Revised Documents and Drawings.** Company shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

**8.15 Change Requests and Material Changes.** Company shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Company shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a project manager or other person to do so, the Company shall prepare and execute all change orders and submit them to the City for authorization. Company shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Company may request changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

**8.16 Final Color and Product Selection.** Company shall coordinate final color and product selection with City's original design concept.

**8.17 Delivery of Modular Buildings.** Modular buildings shall be inspected by the City and General Contractor prior to delivery. The modular buildings shall not be considered accepted until inspected and found to be in accordance with the City's specifications. Final inspection of the Modular buildings shall be at the location specified herein, unless otherwise agreed in writing. If the modular buildings are found at any time to be defective in material or workmanship, or otherwise not in conformance with specifications, City shall have the right, in addition to any other rights which it may have under warranties or otherwise, to reject the modular buildings in whole or in part. Rejected modular buildings shall be held at Company's risk for a reasonable time thereafter and shall be returned or disposed of at Company's expense. No rejected modular buildings shall be replaced by Company without written instruction or authorization from City.

**8.18 Substantial Completion.** The City shall determine the date of substantial completion, in consultation with the Company and General Contractor.

**8.19 Punch List.** After determining that the Project is substantially complete, Company shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the project manager ("Punch List Items"). Company shall notify project manager in writing that all Punch List Items have been corrected prior to final acceptance of the Project and final payment. Company shall also notify City of all Punch List Items.

**8.20 Warranties.** Company shall provide warranties for the modules and any equipment contained therein. Company shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors



and subcontractors pursuant to the Construction Documents. Company shall coordinate and provide these materials to the City.

**8.21 Certificate of Completion.** Company shall provide inspection completion reports and Quality Control Reports for modules to the City. Company shall participate in any further inspections of the Project necessary to issue the Certificate of Completion and final certificate for payment.

**8.22 Documents for Project Close-Out.** Company shall cause all other architects, engineers and other consultants, as may be hired by Company, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Company shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

## **9. AS-BUILT DRAWINGS.**

During the as-built drawings phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**9.1 As-Built Drawings and Specifications.** Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Company shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Company shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Company by any inspectors and the project manager, and shall obtain certifications from any inspectors and the project manager that the drawings are correct.

**9.2 Approval.** Once City provides Company with specific written approval of the As-Built Drawings and Specifications, Company shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

**9.3 Documents for Final Payment.** Prior to the receipt of Company's final payment, Company shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Company's Certificate of Completion.

## **10. WARRANTY PERIOD.**

During the warranty period phase of the Project, Company shall do all of the following, as well as any incidental services thereto:

**10.1 Advice.** Company shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

**EXHIBIT B1-B3**  
**FEE AND PHASING/FUNDING SCHEDULES**

**1. FEE SCHEDULE.**

Company will invoice City on a monthly cycle based on the following fee schedule. Company will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Company will inform City regarding any out-of-scope work being performed by Company for which Company intends to seek compensation from City.

**2. FUNDING SCHEDULE & PHASING (B1-B3)**

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	\$438,827.25	percent (5%)
Schematic Plan Phase:	\$438,827.25	percent (5%)
Design Development Phase:	\$438,827.25	percent (5%)
Final Working Drawings & Specifications Phase:	\$438,827.25	percent (5%)
Finalized Construction Documents/ CADD Files	\$877,654.50	percent (10%)
Manufacturing Phase:	\$1,755,309.00	percent (20%)
Progress Payment for 50% of Modular Completion	\$1,755,309.00	percent (20%)
100% Delivery All Modules Complete Phase:	\$1,755,309.00	percent (20%)
Warranty Period Phase:	\$877,654.50	percent (10%)



11/6/24  
Attn: Director Public Works  
Job Number: 241107

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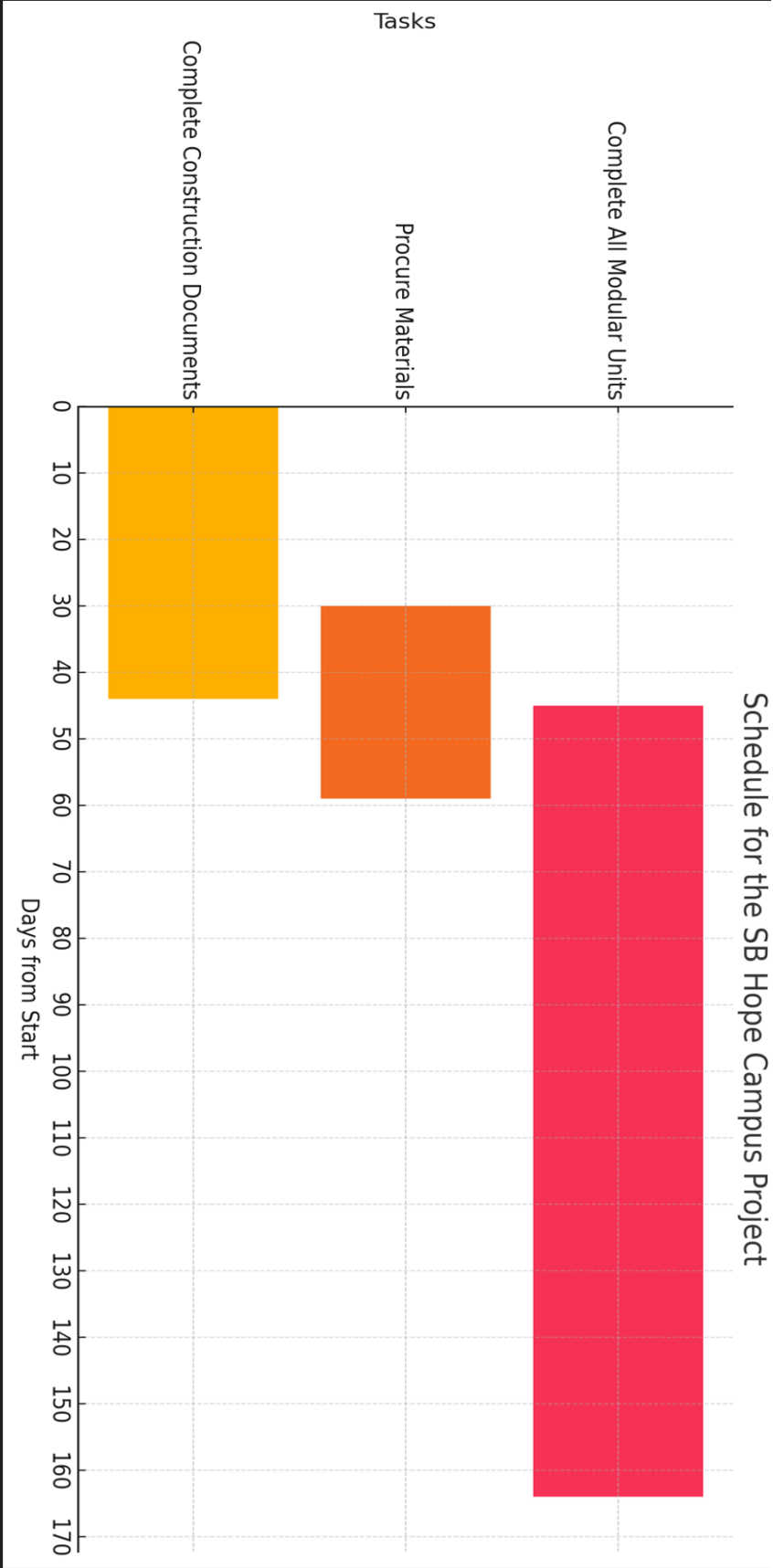


Exhibit B-3

## EXHIBIT C

### COMPENSATION RATES AND REIMBURSABLE EXPENSES

#### 1. HOURLY COMPENSATION RATES.

The following Unit Rates are inclusive of all applicable taxes, overhead, and burdens and benefits of every nature applicable to the Services, and profit, and are valid for one year from the Effective Date of the Contract at which time the Unit Rates may be modified in accordance with the Contract.

<b>Manufacture (Mandeville Modular, Inc)</b>	<b>Rate</b>
<b>Fee Schedule Category</b>	
Principal	\$350.00
General Counsel	\$300.00
Project Executive	\$288.59
Program Manager	\$288.59
Business Analyst	\$288.59
Tech Integration	\$288.59
Project Estimator	\$288.59
Production Manager	\$288.59
Project Scheduler	\$259.74
Design Manager	\$259.74
Construction Manager	\$259.74
Project Manager	\$250.00
Contract Manager	\$195.00
Financial Analyst	\$184.67
Project Controls	\$155.21

#### 2. REIMBURSABLE EXPENSES.

N/A

#### 3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

#### 4. ADDITIONAL CONSULTANTS.

N/A

**EXHIBIT D**

**FEE RATES FOR MODULAR BUILDINGS AND OTHER EQUIPMENT**

Description	Total Cost	\$/SF
Architecture, Structural Engineer, Civil, MEP	\$ 685,045	\$ 16.31
CASP Design and Review	\$ 48,500	\$ 1.15
Volumetric Modular Units	\$ 7,938,000	\$ 189.00
Project Management	\$ 105,000	\$ 2.50
<b>Total Estimated Cost</b>	<b>\$ 8,776,545</b>	<b>\$ 208.97</b>
15% Contingency	\$ 1,316,482	\$ 31.34
<b>Total Estimated Cost w/ Contingency</b>	<b>\$ 10,093,027</b>	<b>\$ 240.31</b>

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program authorized by the American Rescue Plan Act (ARPA) will be used for the total cost of the agreement in the amount of \$10,093,027.

**EXHIBIT E**  
**FUNDING SOURCES REQUIREMENTS**

Source	Type	Status	Expenditure Deadline
CDBG	Federal	Committed	4/1/2025
ARPA	Federal	Committed	12/31/2026
HOME ARP	Federal	Committed	9/1/2030
HHAP 3	State	Committed	6/30/2026
San Bernardino County	TBD	Pledged	TBD
Hospital/HMO Funding	Private Donation	Pledged	TBD

## EXHIBIT F

### Site Design and Modular Design / Building Services

#### STATEMENT OF WORK & TECHNICAL SPECIFICATION:

The City is seeking a Modular Company with either an in-house architect or the ability to partner with an architect. The Modular Company will directly contract with Civil, MEP and structural to deliver a full project CD Package for submission to both the City and the State of California for review and approval to develop SB Hope Navigation Center Campus including all onsite work. The selected Modular Company shall be an advocate for the City and represent the best interests of the City in the performance of services and modular building quality.

It is desirable for the Modular Supplier (Manufacturer) to have extensive experience in understanding and working concurrently with multiple public entities such as: the United States Department of Housing and Urban Development (HUD); the State of California, cities, as well as special districts such as the South Coast Air Quality Management District. It is also desirable for the Proposer to provide evidence of similar modular emergency housing projects provided, especially within the State of California. Listed experiences shall be calculated evaluation criterion.

**MODULAR DESIGN:** All designs must also be reviewed and approved by the City and appropriate local jurisdictions. The Manufacturer shall construct and deliver a modular building that when delivered to the project site, shall be assembled on stem wall foundations built to the Manufacturer's guidelines and approved and inspected by the appropriate jurisdiction's Building Department. The City is seeking to provide accessible emergency housing for people experiencing homelessness which may include disabled persons. To that end, proposed modules must meet all Federal, State and Local accessibility design and construction requirements. Manufacturer shall ensure that all applicable Building Codes are met including but not limited to: California Building Code (CBC); California Electrical Code (CEC); California Mechanical Code (CMC); California Plumbing Code (CPC); and the California Energy Code – Title-24 (CEC) CalGreen (CalG).

The Manufacturer shall provide within their resumes for similar products provided for successful previous projects. Provided designs shall be a calculated evaluation criterion.

#### OTHER REQUIREMENTS

Fire Suppression: Manufacturer shall include within their costs all fire suppression systems and supportive appurtenances as determined by the State of California and local codes. Fire and Domestic water lines shall be pressure tested both at the before and after delivery. A General Contractor shall be separately contracted by the City to install service lines to Manufacturer's connections.

HVAC System: Manufacturer shall include ENERGY STAR certified, ductless, multi zone heating and cooling systems as manufactured by Mitsubishi Electric or an approved equal. VRF systems are acceptable. The system shall be sized and zoned according to local code and meet all other



energy efficiency standards required. Brand and model numbers of proposed equipment shall be submitted with the proposal. These costs shall be included within the price per square-foot.

Appliances: Manufacturer shall include outlets, traps, drains, gas lines, electrical outlets, etc. to meet the needs of a commercial kitchen and the standards of San Bernardino County Department of Public Health standards, including but not limited to a commercial refrigerator, commercial freezer, commercial stove and commercial ovens, and a commercial hood with grease traps and fire suppression, floor drains etc. Modular Manufacturer does not need to purchase equipment, however appropriate mechanical, electrical and plumbing and spacing should accommodate the aforementioned.

Commercial Kitchen: Must meet all requirements of the County of San Bernardino Department of Public Health and sizable enough to cook three meals a day for 200 individuals.

Exterior:

- Roofing system with minimum 20-year warranty, shall be TPO, PVC, or other single ply product
- Exterior cladding installed in factory or prepped for field install
- Doors and door hardware to be approved by City of San Bernardino
- Exterior Lights per code
- Minimum ceiling height 8'-0"
- Windows: Material- Thermally broken aluminum
- Glass: Dual-Paned Efficiency: Low-E
- Insulation per code
- Walls: R-19 Floor: R-21 Roof: R-38

Interior:

- Type X Finished, Texture, Washable Vinyl Wallcoverings Throughout
- Painted & Textured Ceiling Throughout
- Interior lighting with Rocker-Type (Decora) Wall Switches
- Flooring shall be commercial-grade sheet product or VCT in all areas except commercial kitchen. Commercial kitchen to receive broadcast epoxy floor with integral coving.
- Vinyl topset base
- Lever Latch Door Handles

Utility:

- Electrical panels sized correctly to handle all loads
- Commercial boiler system

- 6 front loading washers, 6 front loading dryers
- Wire for Electric Programmable Thermostat
- Smoke Detector(s) w/Battery backup
- Backup Carbon Monoxide Detector(s)

Bathrooms:

- Locker room-style community bathroom which shall include (10) private ADA roll-in showers with grab bars attached to changing space with ADA benches, grab bars and locks.
- Bathroom partitions with paper holders
- (10) ADA 1.28 Gallon Low-Flow Elongated Toilets in stalls.
- (10) wall mount lavatory sinks with single lever faucets
- (10) wall mounted mirrors that are shatter proof for safety.
- (2) additional single occupancy restrooms for Employee/ Staff with ADA 1.28 Gallon Low-flow elongated toilets, wall mounted lavatory sinks with single lever faucets, paper holders, and mirrors in each
- Bathroom exhaust fans per code

Foundation: The Manufacturer shall design and supply a stem wall foundation plan for each module which shall meet applicable building codes. Plan shall include detailed location for points of connection for utilities including electrical, plumbing, telephone, cable and any other applicable connections.

Delivery of Modular Units: The Manufacturer shall provide the transportation of each module to the project site and set on foundation that has been provided by a general contractor contracted by the City.

Boiler system: The Manufacturer shall include natural gas fired commercial boiler systems manufactured by Rheem or an approved equal. The boiler shall be sized according to local code. Brand and model numbers of proposed equipment shall be submitted with the proposal. These costs shall be included within the price per square-foot.

Plumbing Fixtures: The manufacturer shall include all plumbing fixtures as specified below. All fixtures shall be low flow, water saving fixtures which meet accessibility design requirements and all applicable codes. Brand and model numbers of proposed fixtures shall be submitted with the proposal. These costs shall be included within the price per square-foot.

Lighting: The Manufacturer shall include all interior and exterior lighting fixtures. Proposed fixtures shall be commercial style LED fixtures that meet all applicable energy codes. Brand and model numbers of proposed fixtures shall be submitted with the proposal. These costs shall be included within the price per square-foot.

Flooring: Manufacturer shall install commercial sheet product or VCT with vinyl topset base where possible. Commercial kitchen shall receive broadcast epoxy floor with integral coving. Brand and style of proposed flooring shall be included with the submittal. Final color and style shall be selected by the owner.

Bathrooms: Manufacturer shall install non-slip commercial sheet good flooring in bathroom and shower areas. Brand and style of proposed flooring shall be included with the submittal. Final color and style shall be selected by the owner. These costs shall be included within the price per square-foot.

Pricing: Proposer shall provide pricing on a per square- foot price to design, manufacture, deliver, and install each modular section. The specifications listed above shall not be considered an all-inclusive list of final specifications. The Manufacturer shall also include all items typically used in modular construction as a final product to be included with their costs. The pricing shall be a calculation criterion.

Production of the Modular Units: Manufacturer shall provide evidence that production shall not restrict the project's demand. This can be shown as plant production schedule, staging/storing, and travel time to project. Production evidence shall be calculated evaluation criterion.

Assembly of Modular Units: The City retains the right to select a General Contractor ("Contractor") to assemble the modular units at the project site. The Manufacturer shall provide a list of all pre-approved assembly contractors for warranty requirements. This list shall be provided with RFP and shall be included when the City procures Contractor for the project. The Manufacturer shall provide assembly literature that shall be included in any construction plans and specifications, or on-site guidance during installations.

Storage: The Manufacturer shall store all modules at their yard until work at each site warrants delivery and placement of each section. Delivery and placement of the modular sections shall be coordinated through the City's General Contractor completing the onsite work.

## OTHER OBLIGATIONS

**SITE REGULATORY REQUIREMENTS:** The City's General Contractor will be responsible for obtaining and adhering to all permits and approvals required by the necessary regulatory agencies, including but not limited to permitting, inspection, and certification for the Site and Project. All fees required to obtain any such permits and approvals, shall be the sole responsibility of City's General Contractor. Any site-specific regulatory requirements for the assembly, use and occupancy of the Modules shall be the sole responsibility of City's General Contractor.

**RELEASE OF MODULES:** City's General Contractor will release the modules for delivery once an in-factory sign off has occurred. A representative of the City's General Contractor must visit the factory 72-hours prior to the release of modules and agree that the condition of the product meets their expectation for delivery and ready for transport.

**DELIVERY:** Upon completion of fabrication of a Module or Modules, the City's General Contractor approves the release of Modules for transport and delivery. Modular Manufacturer

shall hire carrier to transport Modules to a temporary or permanent location as directed by City and/or City's General Contractor (such permanent location of installation referred to hereinafter as "Property") and Modular Manufacturer shall pay all carrier charges. Modular Manufacturer bears responsibility for the Modules during transport, and until the City accepts them.

**ON-SITE SECURITY AND WEATHER PROTECTION:** Upon acceptance by the City, City's General Contractor shall bear all responsibility for the Modules. It is highly recommended that until entire building is erected, City's General Contractor provides security and weather protection for the Modules beginning at the time of delivery and Modules remain protected regardless of time of year.

## **EXHIBIT G**

### **FEDERAL CONTRACT PROVISIONS**

During the performance of this Agreement, Consultant shall comply with all applicable federal laws and regulations, including, but not limited to, the federal contract provisions in this Exhibit "G".

#### **REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.327)**

Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. The Contract Documents include remedies for breach and termination for cause and convenience.

Appendix II to Part 200 (C) – Equal Employment Opportunity: If this Agreement meets the definition of a "federal assisted construction contract" in 41 CFR § 60-1.3, Consultant agrees as follows during the performance of this Agreement:

The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant 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 Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

The Consultant 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 Consultant's legal duty to furnish information.

The Consultant 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 Consultant's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

The Consultant will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) 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 Consultant 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 the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant 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 Agreement.

The City agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of the Consultant 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 City 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 the grant (contract, loan, insurance, guarantee) for this project; 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.

Appendix II to Part 200 (D) – Davis-Bacon Act: Not applicable to this Agreement since it is funded by CSLFRF.

Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act: Not applicable to this Agreement since it is funded by CSLFRF.

Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

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

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

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 Consultant or subcontractor under any such contract or any other Federal contract with the Consultant, or any other federally-assisted contract subject to the Contract Work Hours and

Safety Standards Act, which is held by the Consultant, such sums as may be determined to be necessary to satisfy any liabilities of Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.

Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The Consultant shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.

Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:  
If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Consultant must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency..

Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act:

Pursuant to the Clean Air Act, (1) Consultant 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., (2) Consultant 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 awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

Pursuant to the Federal Water Pollution Control Act, (1) Consultant 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., (2) Consultant 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 awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

Appendix II to Part 200 (H) – Debarment and Suspension:

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

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

Consultant warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Consultant also agrees to verify that all subcontractors performing work under this Agreement are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Consultant further agrees to notify the City in writing immediately if Consultant or its subcontractors are not in compliance during the term of this Agreement.

Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: 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 by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Appendix II to Part 200 (J) – §200.323 Procurement of Recovered Materials:

Consultant shall 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 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired 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.

In the performance of this Agreement, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.

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

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

Appendix II to Part 200 (K) – §200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:

Consultant shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Agreement. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Telecommunications or video surveillance services provided by such entities or using such equipment.

Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

Appendix II to Part 200 (L) – §200.322 Domestic Preferences for Procurement:

Consultant shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts.

For purposes of this section:

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

## **CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS (2 C.F.R. § 200.321)**

Consultant shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.

Affirmative steps shall include:

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

Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

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

Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

Consultant shall submit evidence of compliance with the foregoing affirmative steps when requested by the City.

## **COMPLIANCE WITH U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS**

Maintenance of and Access to Records. Consultant shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. Consultant agrees to provide the City, Treasury Office of Inspector General and the Government Accountability Office, or any of their authorized representatives access to any books, documents, papers, and records (electronic and otherwise) of the Consultant which are directly pertinent to this Agreement for the purposes of conducting audits or other investigations. Records shall be maintained by Consultant for a period of five (5) years after completion of the Project.

Compliance with Federal Regulations. Consultant agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Consultant also agrees to comply with all other applicable federal statutes, regulations, and executive orders, including, without limitation, the following:

Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

New Restrictions on Lobbying, 31 C.F.R. Part 21.

Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

Compliance with Federal Statutes and Regulations Prohibiting Discrimination. Consultant agrees to comply with statutes and regulations prohibiting discrimination applicable to the CSLFRF program including, without limitation, the following:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

False Statements. Consultant understands that making false statements or claims in connection with the CSLFRF program is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

Protections for Whistleblowers.

In accordance with 41 U.S.C. § 4712, Consultant may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following:

A member of Congress or a representative of a committee of Congress;

An Inspector General;

The Government Accountability Office;

A Treasury employee responsible for contract or grant oversight or management;

An authorized official of the Department of Justice or other law enforcement agency;

A court or grand jury; or

A management official or other employee of Consultant, or a subcontractor who has the responsibility to investigate, discover, or address misconduct.

Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Consultant is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles, and encourage its subcontractors to do the same

Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Consultant should encourage its employees and subcontractors to adopt and enforce policies that ban text messaging while driving, and Consultant should establish workplace safety policies to decrease accidents caused by distracted drivers.

Assurances of Compliance with Civil Rights Requirements. The Civil Rights Restoration Act of 1987 provides that the provisions of this assurance apply to the Project, including, but not limited to, the following:

Consultant ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166; directives; circulars; policies; memoranda and/or guidance documents.

Consultant acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, are limited in their English proficiency. Consultant understands that the denial of access to persons to its programs, services and activities because of their limited proficiency in English is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964. Accordingly, Consultant shall initiate reasonable steps, or comply with Treasury's directives, to ensure meaningful access to its programs, services and activities to LEP persons. Consultant understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary to ensure effective communication in the Project.

Consultant agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on LEP, please visit <http://www.lep.gov>.

Consultant acknowledges and agrees that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance and is binding upon Consultant and Consultant's successors, transferees and assignees for the period in which such assistance is provided.

Consultant agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Consultant and the Consultant's subcontractors, successors, transferees and assignees:

The subcontractor, successor, transferee and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by Department of the Treasury Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also extends protection to persons with "Limited English proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d *et seq.*, as implemented by Department of the Treasury Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement).

Consultant understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Consultant, or in the case of a subsequent transfer, the transferee, for

the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Consultant for the period during which it retains ownership or possession of the property.

Consultant shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. Consultant shall comply with information requests, on-site compliance reviews, and reporting requirements.

Consultant shall maintain a complaint log and inform the Department of the Treasury of any accusations of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Consultant must also inform the Department of the Treasury if Consultant has received no complaints under Title VI.

Consultant must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Consultant and the administrative agency that made the finding. If the Consultant settles a case or matter alleging such discrimination, Consultant must provide documentation of the settlement. If Consultant has not been the subject of any court or administrative agency finding of discrimination, please so state.

If Consultant makes sub-awards to other agencies or other entities, Consultant is responsible for assuring that sub-recipients also comply with Title VI and all of the applicable authorities covered in this assurance.

COMPLIANCE WITH AMERICAN RESCUE PLAN ACT (ARPA)  
CORONAVIRUS LOCAL FISCAL RECOVERY FUND (CLFRF) FEDERAL GUIDELINES  
USE OF ARPA CLFRF AND REQUIREMENTS

This Contract may be funded in whole or in part with funds provided by the American Rescue Plan Act - Coronavirus Local Fiscal Recovery Fund (ARPA), *Federal Award Identification Number (FAIN): SLT0628 and Assistance Listing Number (formerly known as a CFDA number): 21.027*, and therefore Contractor agrees to comply with any and all ARPA requirements in addition to any and all applicable County, State, and Federal laws, regulations, policies, and procedures pertaining to the funding of this Contract. The use of the funds must also adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. Any funds expended by Contractor or its subcontractor(s) in any manner that does not adhere to the ARPA requirements shall be returned or repaid to the City or County. Any funds paid to Contractor i) in excess of the amount to which Contractor is finally determined to be authorized to retain; ii) that are determined to have been misused; or iii) that are determined to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid, shall constitute a debt to the federal government. Contractor agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to the Act, and guidance issued by Treasury regarding the foregoing. Contractor shall provide for such compliance in any agreements with subcontractor(s).

Contractor agrees to comply with the following:

- A.** In accordance with Title 2 Code of Federal Regulations (C.F.R.) Section 200.322, the non-Federal Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: "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" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- B.** In accordance with Title 2 C.F.R. Section 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances: Obligor or expending covered telecommunications and video surveillance services or equipment or services (as described in Title 2 C.F.R. Section 200.216) to: 1) Procure or obtain, extend or renew a contract to procure or obtain; 2) Enter into a contract (or extend or renew a contract) to procure; or 3) Obtain the equipment, services, or systems, as described in Title 2 C.F.R. Section 200.216 that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and: (i) For the purpose



of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (ii) Telecommunications or video surveillance services provided by such entities or using such equipment; and (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

- C. A non-Federal Contractor that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, 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 Title 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired 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.
- D. Byrd Anti-Lobbying Amendment (31 U.S.C. Section 1352) - 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 by Title 31 U.S.C. Section 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- E. Clean Air Act (42 U.S.C. Sections 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1389), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. Sections 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. Sections 1251-1389).
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under Title 37 C.F.R. Section 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Title 33 U.S.C. Sections 1251-1387 recipient or subrecipient must comply with the requirements of Title 37 C.F.R. Part 401, "Rights to Inventions Made by

Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- G.** Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708). Where applicable, all contracts awarded by the non-Federal Contractor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with Title 40 U.S.C. Sections 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under Title 40 U.S.C. Section 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of Title 40 U.S.C. Section 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- H.** Davis-Bacon Act, as amended (40 U.S.C. Sections 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal contractor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal Contractor must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. Section 874 and 40 U.S.C. Section 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal contractor must report all suspected or reported violations to the Federal awarding agency.

  - i.** The Contractor and all Subcontractors and Sub-subcontractors are required to pay their employees and workers a wage not less than the minimum wage for the work classification as specified in both the Federal and California wage decisions. See Section 3.10.6 “Prevailing Wages” for additional information regarding California Prevailing Wage Rate Requirements and the applicable general prevailing wage determinations which are on file with the City and are available to any interested party on request. The higher of the two applicable wage determinations, either California prevailing wage or Davis-Bacon Federal prevailing wage, will be enforced for all applicable work/services under this Contract.
- I.** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations

Council (Councils) as authorized by Title 41 U.S.C. Section 1908, must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

- J. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal Contractor including the manner by which it will be effected and the basis for settlement.
- K. Equal Employment Opportunity. Except as otherwise provided under Title 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in Title 41 C.F.R. Section 60-1.3 must include the equal opportunity clause provided under Title 41 C.F.R. Section 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The identified clause is below and Contractor shall comply with the clause and all legal requirements and include the equal opportunity clause in each of its nonexempt subcontracts.

- i. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at Title 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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 the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

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

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.

- L.** Data Collection Requirements – Contractor agrees to collect pre-post data per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; and Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available to County, State or Federal governments upon request.
- M.** Data Submission Requirements - Contractor agrees to furnish data to the County upon request, per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available at request.
- N.** Project Progress Reporting - Contractor agrees to provide project timeline and progress updates to the City upon request, per County, and United States Treasury guidelines and timeline. Contractor agrees to routine and impromptu program and project evaluation by the City.

- O.** Contractor shall comply with Title 2 Code of Federal Regulations Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), including, but not limited to, Title 2 C.F.R. Section 200.303 (internal control), Title 2 C.F.R. Sections 200.331 through 200.333 (subrecipient monitoring and management), and Title 2 C.F.R. Part 200 Subpart F (audit requirements), as these sections currently exist or may be amended. The use of funds must also adhere to official federal guidance issued or to be issued on what constitutes an eligible expenditure. Any funds expended by Contractor or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the County. Contractor agrees to comply with all official guidance regarding the ARPA CLFRF. Contractor also agree that as additional federal guidance becomes available, an amendment to this Contract may become necessary. If an amendment is required, Contractor agrees to promptly execute the Contract amendment.
- P.** Contractor shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with Title 2 C.F.R. Section 200.334 (retention requirements for records). Such documentation shall be produced to City upon request and may be subject to audit. Unless otherwise provided by Federal or State law (whichever is the most restrictive), Contractor shall maintain all documentation connected with its performance under this Contract for a minimum of five (5) years from the date of the last payment made by City or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of the City, the State or the United States Government during normal business hours at Contractor. Copies will be made and furnished by Contractor upon written request by City.
- Q.** Contractor shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Contractor's requests for reimbursement which segregate and accumulate costs of Contractor and produce monthly reports which clearly identify reimbursable costs, matching fund costs (if applicable), and other allowable expenditures by Contractor. Contractor shall provide a monthly report of expenditures under this Contract no later than the 20<sup>th</sup> day of the following month.
- R.** Contractor shall cooperate in having an audit completed by City, at City's option and expense. Any audit required by ARPA CLFRF and its regulation and United States Treasury guidance will be completed by Contractor at Contractor's expense.
- S.** Contractor shall repay to City any reimbursement for ARPA CLFRF funding that is determined by subsequent audit to be unallowable under the ARPA CLFRF within the time period required by the ARPA CLFRF, but no later than one hundred twenty (120) days of Contractor receiving notice of audit findings, which time shall include an opportunity for Contractor to respond to and/or resolve the findings. Should the findings not be otherwise resolved and Contractor fail to reimburse moneys due City within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both parties or required by the ARPA CLFRF, City reserves the right to withhold future payments due Contractor from any source under City's control.
- T.** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Title 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply.

- U.** Universal Identifier and System for Award Management (SAM), Title 2 C.F.R. Part 25.
- V.** Reporting Subaward and Executive Compensation Information, Title 2 C.F.R. Part 170.
- W.** OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement), Title 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to Title 2 C.F.R. Part 180 and Treasury's implementing regulation at Title 31 C.F.R. Part 19. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 C.F.R. Section 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 Title 2 C.F.R. Part 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. 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.
- X.** Recipient Integrity and Performance Matters, pursuant to which the award terms set forth in Title 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- Y.** Government Requirements for Drug-Free Workplace, Title 31 C.F.R. Part 20.
- Z.** New Restrictions on Lobbying, Title 31 C.F.R. Part 21.
- AA.** Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. Sections 4601-4655) and implementing regulations.
- BB.** Applicable Federal environmental laws and regulations.
- CC.** Statutes and regulations prohibiting discrimination include, without limitation, the following:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d et seq.) and Treasury's implementing regulations at Title 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Sections 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sections 12101 et seq.), which prohibits discrimination on the basis of disability under programs,

activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

**DD.** Contractor understands that making false statements or claims in connection with the ARPA funded activities is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

**EE.** Any publications produced with ARPA funds must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLT-0628 awarded to San Bernardino County by the U.S. Department of Treasury."

**FF.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is being encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

**GG.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is being encouraged to adopt and enforce policies that ban text messaging while driving and establishing workplace safety policies to decrease accidents caused by distracted drivers.

**HH.** As a recipient of federal financial assistance, the Civil Rights Restoration Act of 1987 applies, and Contractor assures that it:

- i. Ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. Sections 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at Title 31 C.F.R. Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda and/or guidance documents.
- ii. Acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities, because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Contractor shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail provide language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication.
- iii. Agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services, and activities.
- iv. Agrees to maintain a complaint log of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act and implementing regulations and provide, upon request, a list of all such



reviews or proceedings based on the complaint, pending or completed, including outcome.

**II.** The City must include the following language in every contract or agreement subject to Title VI and its regulations:

“The sub-grantee, contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or nation origin (42 U.S.C. Section 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, Title 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. Section 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, Title 31 C.F.R. Sections Part 22, and herein incorporated by reference and made a part of this contract or agreement.”

**JJ.** Contractor shall cooperate in any enforcement or compliance review activities by the City, and/or the Department of the Treasury. Contractor shall comply with information requests, on-site compliance reviews, and reporting requirements.

**KK.** Contractor shall maintain records and financial documents sufficient to evidence compliance with section 603(c), regulations adopted by Treasury implementing those sections, and guidance issued by Treasury regarding the foregoing.

**LL.** City has the right of access to records (electronic or otherwise) of Contractor in order to conduct audits or other investigations.

**MM.** Contractor shall maintain records for a period of five (5) years after the completion of the contract or a period of five (5) years after the last reporting date the City is obligated with the Department of the U.S. Treasury, whichever is later.

**NN.** Contractor must disclose in writing any potential conflict of interest in accordance with Title 2 C.F.R. Section 200.112.

**OO.** In accordance with Title 41 U.S.C. Section 4712, subrecipient or Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following: (i) A member of Congress or a representative of a committee of Congress; (ii) An Inspector General; (iii) The Government Accountability Office; (iv) A Treasury employee responsible for contract or grant oversight or management; (v) An authorized official of the Department of Justice or other law enforcement agency; (vi) A court or grand jury; or (vii) A management official or other employee of Recipient, subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct. Subrecipient or Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

- PP.** City and Contractor acknowledge that if additional federal guidance is issued, an amendment to this Contract may be necessary. In the event any of the terms in this Exhibit conflict with any other terms in the Contract, the terms in this Exhibit shall control.