



REQUEST FOR QUOTE (INFORMAL)

Q22-078DS

Date issued: May 13, 2022

HVAC AIR PURIFICATION SYSTEM TRANSIT ADMINISTRATION BUILDING

THE CITY OF COLORADO SPRINGS



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SECTION I – RFQ INFORMATION

Request for Quote (RFQ) – HVAC Air Purification System Transit Administration Building

Date Issued: 5/13/2022

Project #: Q22-075DS

ON- SITE MEETING: Please contact Dylan Smith at Transitcontracting@coloradosprings.gov for an on-site review if needed.

QUESTIONS DUE: 5/27/2022 Please email questions to Transitcontracting@coloradosprings.gov

QUOTES DUE: 6/6/2022 at 5:00 PM MST

Submittals for this project will be accepted through the Bidnet Direct Purchasing System at www.bidnetdirect.com

The City of Colorado DBA Mountain Metropolitan Transit requests firm fixed price quotes for a HVAC air purification system for our Transit Administration Building located at 1015 Transit Dr. Colorado Springs, CO 80903.

The City of Colorado Springs intends to award a contract resulting from this solicitation to the lowest, responsive, responsible respondent, whose quote, conforming to the Request for Quote, will be most advantageous to, and in the best interest of, the City of Colorado Springs, cost or price and other factors considered. The City reserves the right to reject any or all quotes and to waive informalities and/or irregularities in the quote.

All documents in this packet, including any addendum, are required for a quote to be considered responsive.

CONTACT

Dylan Smith
1015 Transit Dr.
Colorado Springs, CO 80903
(719) 385-5275
Transitcontracting@coloradosprings.gov



SECTION II – SCOPE OF WORK

1.0 GENERAL

The City of Colorado Springs dba Mountain Metropolitan Transit (MMT), applied for and was awarded a Discretionary Public Transportation COVID-19 Research and Development Grant through the U.S. Department of Transportation and Federal Transportation Administration.

MMT, would like to receive bids from licensed Heating, Ventilation and Air Conditioning (HVAC) contractors, specializing in commercial air disinfection systems, to provide and install Ultraviolet -C (UVC) lighting system and High Efficiency Particulate Air (HEPA) filtration in an existing HVAC system.

MMT intends to utilize one Contractor to provide and install the UVC Lighting System and HEPA Filtration. The contract will be valid for only the tasks related within the scope of work, with no renewal options.

2.0 SCHEDULE

After award of the contract, MMT will issue a Notice to Proceed. The contractor may then order materials and begin the scheduling process with the City Project Manager. The Contract amount shall be based on the rates negotiated with the awarded contractor and the verified scope of the project involved.

All project related tasks will be required to be completed within the agreed-upon performance period from the issuance of the Notice to Proceed, or as otherwise specified if warranted due to unforeseen conditions.

Performance period is up to **120 days** after notice to proceed has been issued.

3.0 PROJECT SCOPE AND STANDARDS

The contractor shall perform a site visit to survey existing HVAC equipment. The contractor shall provide samples for Transit approval. An estimated timeline to procure materials and project completion is required prior to schedule approval.

The work involved shall include, but not be limited to the following:

- 1) Provide all required Samples, Submittals and Mockups as requested.
- 2) Provide all preparation, materials, disposal, equipment, transportation, tools and labor.
- 3) Contractor shall supply operational and system efficacy data, to support the purchase and/or use of the product(s) offered as part of this solicitation.



- 4) The UVC Lighting System shall be internally mounted in existing HVAC equipment.
- 5) The UVC Lighting System shall be easily serviceable.
- 6) The UVC Lighting System shall have an access door or window for periodic lamp inspection.
- 7) The UVC Lighting System shall have an external disconnection switch or control, so system can be deactivated for HVAC AHU service.
- 8) The UVC Lighting System shall have external mounted ballasts and/or controls.
- 9) The UVC Lighting System lamps operating service hours, shall be a minimum of 12 months/9,000 hours, before change is required.
- 10) HEPA Filtration shall be specifically designed and sized to fit existing HVAC System Equipment.

Transit Campus Locations:

- 1) Transit Administration Building
1015 Transit Dr.
Colorado Springs, CO 80903

General Specifications:

- 1) The UVC Lighting System shall carry a minimum 2 year warranty – system; 1 year warranty - lamps.
- 2) Warranty shall include all parts, labor, trip charges, disposal, rental equipment and all other incidentals required to provide warranty services.
- 3) Work can be completed M-F 7AM – 4PM.
- 4) Air handler(s) must remain operational when work is not being completed.
- 5) An appointment is required for site survey, as well as to drop off samples as requested.
- 6) Price estimates shall include Davis Bacon Wages.
- 7) Certified payroll information is to be submitted weekly to City project manager, for review and approval.

4.0 TECHNICAL

The work to be done by the Contractor shall consist of the work described in more detail by the project scope. Prior to execution of notice to precede the Contractor and City Project Manager (PM) shall meet and review the scope of work. The Contractor should address any issues which may be unforeseen in the execution of the project work, at this meeting. All operations necessary for the implementation of the work shall be per the contract special provisions and technical specifications.



The Contractor shall furnish all transportation, permits, materials, tools, equipment, labor, disposal and supplies necessary to complete the specified work. These costs shall be included in the estimated project costs and covered by the Contractor.

The Contractor shall verify, and present designs and specifications prior to proposing on the project. The Contractor shall notify the PM within 48 hours if installation is to be delayed due to unforeseen circumstances.

The Contractor shall be responsible for all work, including work performed by others under a subcontract agreement.

All work required to install air disinfection systems off-site as described in the contract, shall be performed in a careful and orderly manner, with due consideration given to protection of adjoining property, the public and workmen. Any damage to work areas due to the negligence of the Contractor shall be repaired or replaced and restored to its original condition by the Contractor, at their expense to the satisfaction of the PM. The Contractor shall ensure that all areas around the service work area are not disturbed or damaged, during the removal and installation process.

The contract in reference to the specific service, will define the performance period in calendar days or specific completion date.

All proposals submitted by the Contractor, shall utilize the contract unit prices offered and/or negotiated and as stated in the awarded contract.

5.0 CHANGE ORDERS

If there is an unforeseen site condition or change required to the project that deviates from the approved bid tab or individual scope of work, a change order must be processed prior to work commencing. The Contractor shall adhere to the following protocol before proceeding with the work included in a change order:

- 1) Contractor shall submit a written change order request to the PM.
- 2) The PM evaluates the request and the need for the change. The PM then creates the official change order and receives the Contractors signature of agreement.
- 3) The PM executes the final change order and provides a final copy to the Contractor.
- 4) The Contractor may then proceed with the work described within the change order.

NOTE: This process may take up to 1-2 weeks, or more, before approval to proceed with the change order is granted. No work shall be completed until the change order is approved and finalized.



6.0 WARRANTY

In addition to the requirements covered by the Standard General Conditions of the contract, the air disinfection system and installation shall carry a minimum (2) year warranty period for the system and (1) year warranty for lamps, from the date of completion of the project. Warranty period shall include materials, labor and trip charges, directly related to the warranty claim. All materials warranty certificates must be presented to the PM at the time of completion, if applicable.

6.1 WARRANTY PROCEDURE

- (a)** In addition to any warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in material or workmanship performed by the Contractor, or any subcontractor or supplier at any tier.
- (b)** This warranty shall continue for a period of (2) years from the date of the final acceptance and issuance of the certificate of completion for the work – if applicable. If the City takes possession of any part of the work before final acceptance, this warranty shall continue for the period of (2) years from the date the City takes possession.
- (c)** The Contractor shall remedy, at the Contractors expense, any damage to City owned or controlled real or personal property, when that damage is the result of:
 - 1) The Contractors failure to conform to the contract requirements; or
 - 2) Any defect of material or workmanship.
- (d)** The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Service Contractors warranty with respect to work repaired or replaced will run for 2 years from the date of repair or replacement.
- (e)** The PM shall notify the Contactor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (f)** If the Contractor fails to remedy any failure, defect or damage with a reasonable time after receipt of notice, the City may replace, repair or otherwise remedy the failure, defect or damage at the Contractors expense.
- (g)** With respect to all warranties, expressed or implied, from subcontractors, manufacturers or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 - 1) Obtain all warranties that would be given in normal commercial practice.
 - 2) Require all warranties to be executed, in writing, for the benefit of the City.
 - 3) Enforce all warranties for the benefit of the City.
- (h)** If the Contractor's warranty under paragraph (b) of this clause has expired, the City may bring suit, at its expense, to enforce a subcontractors, manufacturers or suppliers warranty.



- (i) Unless the defect is caused by the negligence of the Contractor, subcontractor or supplier, at any tier, the Contractor is not liable for the repair of any defects of material furnished by the City, nor for the repair of any damage that may result from any defect in City furnished materials.
- (j) This warranty does not limit the City's rights under the Inspection and Acceptance clause of this contract, with respect to latent defects, gross mistakes or fraud.

7.0 INVOICE SUBMITTALS

The Contractor shall provide an invoice submittal containing the following, within 2 weeks of project completion:

- 1) Written confirmation stating that all components were installed, and systems were initialized by individuals authorized under the manufacturer's warranty (if pertinent to the warranty). **An email is sufficient.**
- 2) If engineered drawings, shop drawings, or design were required, the Contractor shall supply a complete as-built drawing, to scale, showing the locations, materials of construction and critical dimensions of all components installed.
- 3) Certified Payroll information to be submitted and approved before final invoice is submitted for final payment.

The Contractor shall provide, if applicable, the following submittals for all projects within 2 weeks of the new calendar year:

- 1) All sales tax forms, for the review by the City Finance Department.



SECTION III – EXHIBITS

- Exhibit 1 Minimum Insurance Requirements
- Exhibit 2 Price Sheet
- Exhibit 3 Qualification Statement
- Exhibit 4 Proposer/Bidder's List Information
- Exhibit 5 Anti-Collusion Affidavit
- Exhibit 6 Exceptions
- Exhibit 7 Federal Transit Administration (FTA) Clauses
- Exhibit 8 Davis Bacon Wage Determination
- Exhibit 9 Terms and Conditions



EXHIBIT 1 – MINIMUM INSURANCE REQUIREMENTS

The following listed minimum insurance requirements shall be carried by all contractors and consultants unless otherwise specified in the City's solicitation package, Special Provisions or Standard Specifications.

1. Commercial General Liability for limits not less than \$1,000,000 combined single limit with \$2,000,000 aggregate for bodily injury and property damage for each occurrence. Coverage shall include blanket contractual, broad form property damage, products and completed operations.
2. Workers' Compensation and Employers Liability as required by statute. Employers Liability coverage is to be carried for a minimum limit of \$100,000.
3. Automobile Liability covering any auto (including owned, hired, and non-owned autos) with a minimum of \$1,000,000 each accident combined single limit.
4. Excess Liability for limits not less than \$1,000,000 combined single limit for bodily injury and property damage for each occurrence.
5. Builders Risk or Installation Floater Insurance: Contractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property.
6. Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts with limits of not less than \$2,000,000 per occurrence and in the aggregate.
 - a. In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
 - b. Policy shall contain a waiver of subrogation against the CITY.
7. Pollution Legal Liability Insurance shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of



this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. Policy limits shall be no less than \$1,000,000 per loss with \$2,000,000 aggregate coverage.

8. _____ Technology Errors and Omissions Liability including Network Security and Privacy Liability not less than \$3,000,000 per loss with a \$3,000,000 aggregate.
- a. The policy shall provide a waiver of subrogation.
 - b. The insurance shall provide coverage for liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form.
 - c. Network Security Liability arising from the unauthorized access to, use of or tampering to gain access to your services including denial of service, unless caused by a mechanical or electrical failure
 - d. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon.

9. _____ Employee Crime Coverage shall include employee dishonesty, forgery or alteration and computer fraud. If Contractor is physically located on CITY premises, third party fidelity coverage extension shall apply. The policy shall include coverage for all directors, officers, agents and employees of the Contractor. Coverage limit will be not less than \$1,000,000 per loss.
- a. The bond or policy shall include coverage for extended theft and mysterious disappearance.
 - b. The bond or policy shall not contain a condition requiring an arrest and conviction.

10. _____ Liquor Legal Liability Insurance: If the event producer is a business that manufactures, distributes, sells, or serves alcoholic beverages, and intends to serve or sell alcoholic beverages at an event, they must also submit a Certificate of Insurance providing proof of a liquor legal liability insurance policy or properly endorsed general liability policy.
- a. If this event producer hires a vendor to serve or sell alcoholic beverages, rather than providing the alcohol themselves, they must submit a Certificate of Insurance from the vendor providing proof of a liquor legal liability insurance policy or properly endorsed general liability policy.
 - b. In either case, the minimum acceptable limit of liability per claim and aggregate is \$1,000,000. This requirement applies to the business or group which serves or sells the alcohol.

The undersigned certifies and agrees to carry and maintain the insurance requirements indicated above throughout the contract Period of Performance.

(Name of Company)

(Signature)

(Date)



EXHIBIT 2 – PRICE SHEET

Please submit quote sheet on company letterhead through the Bidnet Direct Purchasing System



EXHIBIT 3 – QUALIFICATION STATEMENT

CITY OF COLORADO SPRINGS QUALIFICATION STATEMENT

This statement will provide information which will enable the City to evaluate the qualifications of your firm and staff with regard to the requirements of this Request for Proposal. Please complete this form in its entirety and submit it (in the number of copies requested) along with the other required proposal documents. If a request in the Qualification Statement is contained in the proposal, indicate the section in the proposal where that information can be found.

(PRINT)

FIRM NAME: _____
ADDRESS: _____
CITY STATE ZIP: _____
AUTHORIZED REPRESENTATIVE: _____
TITLE: _____
AUTHORIZED SIGNATURE: _____
PHONE: _____ FAX: _____
E-MAIL ADDRESS: _____

1. TYPE OF BUSINESS

2. TYPE OF LICENSE & LOCATION

CORPORATION INDIVIDUAL
PARTNERSHIP JOINT VENTURE _____
OTHER: _____

3. TYPE OF SERVICE TO BE PROVIDED FOR RFP: _____

4. NUMBER OF YEARS IN BUSINESS: _____

5. ON A SEPARATE SHEET PROVIDE A BRIEF HISTORY OF YOUR FIRM, STAFF SIZE AND EXPERIENCE. SUBMIT A RESUME FOR THE PROJECT MANAGER AND EACH KEY PERSONNEL ASSIGNED TO THIS PROJECT.

6. WHAT OTHER NAME(S) HAS YOUR COMPANY OPERATED UNDER: _____

7. HAVE YOU OR YOUR FIRM EVER FAILED TO COMPLETE ANY WORK AWARDED TO YOU? YES NO IF "YES", EXPLAIN:

8. HAS ANY OFFICER OR PARTNER OF YOUR ORGANIZATION EVER BEEN AN OFFICER OR PARTNER OF ANOTHER ORGANIZATION THAT FAILED TO COMPLETE A CONTRACT WITHIN THE LAST FIVE (5) YEARS? YES NO
IF "YES", EXPLAIN:



RFP YR-NMBR
QUALIFICATION STATEMENT – PAGE 2

9. HAS YOUR FIRM OR ANY PARTNERS OR OFFICERS EVER BEEN INVOLVED IN ANY BANKRUPTCY ACTION? YES NO IF "YES", EXPLAIN:

10. ARE YOU PRESENTLY INVOLVED IN ANY LITIGATION WITH ANY GOVERNMENT AGENCY? YES NO IF "YES", EXPLAIN TYPE, KIND, PLAINTIFF, DEFENDANT, ETC., AND STATE THE CURRENT STATUS:

11. BANK REFERENCE: _____
 ADDRESS: _____
 CONTACT: _____ PHONE: _____

12. LIST THREE (3) SIMILAR PROJECTS (LOCAL OR STATE-WIDE) **FROM LAST FIVE (5) YEARS**-INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT), CONTACT NAME, ADDRESS, TELEPHONE NUMBERS
 NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.

1. Location of Project: _____
 Size of Project: _____
 Contract Amount: _____
 Contact Name and Title: _____
 Contract Address: _____
 Contact telephone and FAX Numbers: _____
2. Location of Project: _____
 Size of Project: _____
 Contract Amount: _____
 Contact Name: _____
 Contact Address: _____
 Contact telephone and FAX Numbers: _____
3. Location of Project: _____
 Size of Project: _____
 Contract Amount: _____
 Contact Name: _____
 Contact Address: _____
 Contact telephone and FAX Numbers: _____



13. LIST CURRENT SIMILAR PROJECTS (LOCAL OR STATE-WIDE) UNDER CONTRACT- INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT) CONTACT NAME, ADDRESS, TELEPHONE NUMBERS.

NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.

1. Location of Project: _____
 Size of Project: _____
 Contract Amount: _____
 Contact Name and Title: _____
 Contact Address: _____

Contact telephone and FAX Numbers: _____

2. Location of Project: _____
 Size of Project: _____
 Contract Amount: _____
 Contact Name and Title: _____
 Contact Address: _____
 Contact telephone and FAX Numbers: _____

3. Location of Project: _____
 Size of Project: _____
 Contract Amount: _____
 Contact Name and Title: _____
 Contact Address: _____
 Contact telephone and FAX Numbers: _____

14. LIST OF SUB-CONTRACTORS TO BE USED FOR THIS PROJECT: (INCLUDE NAME, ADDRESS, TELEPHONE NUMBER, TYPE OF WORK)

1. Name: _____
 Address: _____
 Telephone Number: _____
 Type of Work: _____

2. Name: _____
 Address: _____
 Telephone Number: _____
 Type of Work: _____

3. Name: _____
 Address: _____
 Telephone Number: _____
 Type of Work: _____

IF ADDITIONAL INFORMATION IS PROVIDED ON A SEPARATE SHEET FOR ANY OF THE ITEMS, CLEARLY SPECIFY WHERE IT CAN BE LOCATED IN YOUR PROPOSAL PACKAGE.



EXHIBIT 4 – PROPOSER/BIDDERS LIST INFORMATION

This information will be used for statistical information as allowable but is required.

The City of Colorado Springs dba Mountain Metropolitan Transit (MMT) maintains bidding statistics, regarding **ALL** firms bidding on prime contracts and **subcontracts** on DOT-assisted projects in accordance with the federal regulation 49 CFR Part 26.11.

Return this form as part of your bid/proposal regardless of your Disadvantaged Business Enterprises' (DBE) and non-DBEs status. (A DBE is a firm that meets the criteria in 49 CFR 26).

Thank you for your assistance with this request. If you have any questions, comments or suggestions, please contact Patty Bailey, MMT's DBE Liaison Officer (719) 385-7431 or Patty.Bailey@ColoradoSprings.gov.

Firm Name: _____

Firm Address: _____

Status: Non-DBE ____ DBE ____

Company's Type of Work: _____

Month/Year firm started: _____

Annual Gross Receipts of the Firm: (check one)

- | | |
|-----------------------------------|---------------------------------|
| _____ Less than - \$500,000 | _____ \$500,001 - \$1,000,000 |
| _____ \$1,000,001 – \$2,000,000 | _____ \$2,000,001 - \$5,000,000 |
| _____ \$5,000,001 and \$8,000,000 | _____ \$8,000,001 and Above |



EXHIBIT 5 – ANTI-COLLUSION AFFIDAVIT

The Offeror by signing their proposal submitted to the City is certifying that the Offeror has not participated in any collusion or taken any action in restraint of free competitive bidding. This statement may also be in the form of an affidavit provided by the City and signed by the Offeror. The original of the signed anti-collusion affidavit, if separately required and provided with the RFQ, shall be submitted with the proposal. The proposal will be rejected if it does not contain the completed anti-collusion affidavit.

DATE OF QUOTE: _____ PHONE: _____

COMPANY: _____

SIGNATURE: _____

PRINTED NAME & TITLE: _____

E-MAIL ADDRESS: _____

QUOTE TERM: _____



EXHIBIT 6 – EXCEPTIONS

Print the words "no exceptions"(here)_____ if there are no exceptions taken to any of the terms, conditions, or specifications of these proposal documents or contract.

If there are exceptions taken to any of the terms, conditions, or specifications of the proposal document or contract, they must be clearly stated on a separate sheet of paper attached to this sheet and returned with your proposal.

Note: All potential Offerors are hereby advised that exceptions taken may be considered during the evaluation phase which may affect the final scoring of proposals. Offerors stipulating that the City must use their contract or agreement may be determined non-responsive and their Proposal determined unacceptable.

Company Name: _____

Address: _____
(City, State and Zip Code)

Authorized Signature: _____

Date: _____

Printed Name/Title: _____

Return this form with your quote.



**EXHIBIT 7 – FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES
FOLLOWS THIS PAGE**

Federal Clauses

ACCESS TO RECORDS AND REPORTS

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

AMERICANS WITH DISABILITIES ACT(ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

1 Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2 Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3 Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4 Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C.

§ 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT

a. 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.

b. The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

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

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

ENERGY CONSERVATION

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

EQUAL EMPLOYMENT OPPORTUNITY

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer 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 it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting 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 non-compliance with the nondiscrimination clauses of this contract or with any of such 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 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 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

FEDERAL CHANGES

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FLY AMERICA

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(2) 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>.”

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.”

PROMPT PAYMENT

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

SEISMIC SAFETY

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

SPECIAL DOL EEO CLAUSE

Applies to construction contracts > \$10,000; This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

TERMINATION

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall

allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

VETERANS HIRING PREFERENCE

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.



**EXHIBIT 8 – DAVIS BACON WAGE DETERMINATION
FOLLOWS THIS PAGE**

"General Decision Number: C020220022 05/06/2022

Superseded General Decision Number: C020210022

State: Colorado

Construction Type: Building

County: El Paso County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	01/28/2022

2	02/18/2022
3	02/25/2022
4	05/06/2022

ASBE0028-002 07/01/2019

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 32.98	14.73

ELEC0113-005 06/01/2021

	Rates	Fringes
ELECTRICIAN (Includes Low Voltage Wiring).....	\$ 34.15	16.87

ELEV0025-001 01/01/2022

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 49.74	36.885

FOOTNOTE:

- a. Vacation: 6%/under 5 years based on regular hourly rate for all hours worked. 8%/over 5 years based on regular hourly rate for all hours worked.
- b. PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; and Christmas Day.

ENGI0009-017 05/01/2021

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Crane)		
141 tons and over.....	\$ 35.17	12.35
50 tons and under.....	\$ 31.70	12.35
51 to 90 tons.....	\$ 31.97	12.35
91 to 140 tons.....	\$ 33.05	12.35

IRON0024-009 12/01/2021

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 31.00	14.25

IRON0024-011 12/01/2021

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 31.00	14.25

PAIN0079-009 08/01/2017

	Rates	Fringes
PAINTER (Spray).....	\$ 20.50	8.41

PLAS0577-002 05/01/2020

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 29.00	12.95

 PLUM0058-003 07/01/2021

	Rates	Fringes
PLUMBER (Excludes HVAC Duct, Pipe and Unit Installation).....	\$ 35.85	16.25

 PLUM0058-004 07/01/2021

	Rates	Fringes
PIPEFITTER, Includes HVAC Pipe Installation (Excludes HVAC Duct and Unit Installation).....	\$ 35.85	16.25

 * SFC00669-002 04/01/2022

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 41.46	25.84

 SHEE0009-005 07/01/2021

	Rates	Fringes
SHEET METAL WORKER (Excludes HVAC Duct, Pipe and Unit Installation).....	\$ 36.45	20.15

 * SUC02013-008 07/31/2015

	Rates	Fringes
BRICKLAYER.....	\$ 21.96	0.00
CARPENTER.....	\$ 22.63	6.98
LABORER: Common or General.....	\$ 13.40 **	1.40
LABORER: Mason Tender - Brick...	\$ 15.99	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 16.00	0.00
LABORER: Pipelayer.....	\$ 16.96	3.68
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 20.26	8.62
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 18.58	2.42
OPERATOR: Grader/Blade.....	\$ 21.50	0.00
PAINTER (Brush and Roller).....	\$ 17.20	0.00
ROOFER.....	\$ 16.71	0.00

SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 25.18	6.30
SHEET METAL WORKER (HVAC Unit Installation Only).....	\$ 24.00	2.18
TRUCK DRIVER: Dump Truck.....	\$ 17.34	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198

indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour

National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"



EXHIBIT 9 – TERMS AND CONDITIONS

1. Acceptance-Agreement. Contractor's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this offer in Contractor's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Contractor without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Contractor, such acceptance is limited to the express terms contained on the face and on the back hereof. Additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected, but this purchase order shall not operate as a rejection of the Contractor's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.

2. Termination for Convenience of the City. City reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Contractor shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination. The City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Contractor make it impossible or against the City's interest to complete the Agreement. Contractor shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided.

3. Termination for Cause. The City may also terminate this order or any part hereof for cause in the event of any default by the vendor, or if the vendor fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide the City, upon request, of reasonable assurances of future performance shall all be causes allowing the City to terminate this order for cause. In the event of termination for cause, the City shall not be liable to Contractor, for any amount, and Contractor shall be liable to the



City for any and all damages, sustained by reason of the default which gave rise to the termination.

4. Warranty. Contractor expressly warrants that all goods or services furnished under this Agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which the City intends to use the goods or services, Contractor warrants that such goods or services will be fit for such particular purpose. Contractor warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to the City, its successors, assigns and customers, and users of products sold by the City. Contractor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly without expense to the City, when notified of such nonconformity by the City, provided the City elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, the City, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by the City in doing so.

5. Force Majeure. In the event of either party being rendered unable wholly, or in part, by force majeure to carry out its obligations under this Agreement, then on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied on, the obligation of the party giving such notice, so far as it is affected by force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, as far as possible, be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of the public enemies, wars, blockages, insurrections, landslides, earthquakes, fires, and floods.

6. Patents. Contractor agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against the



City or its agents, customers, or other vendors, for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods, or services furnished hereunder, and Contractor further agrees to indemnify the City, its agents and customer against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. The City may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Contractor.

7. Insurance. In the event that Contractor's objections hereunder require or contemplate performance of services by Contractor's employees, or persons under contract to Contractor, to be done on the City's property, or property of the City's customers, the Contractor agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the City. Contractor shall maintain all necessary insurance coverages, including public liability and workers' compensation insurance. Contractor shall indemnify and hold harmless and defend the City from any and all claims or liabilities arising out of the work covered by this paragraph.

8. Indemnification. Contractor shall defend, indemnify and hold harmless the City against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Contractor, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Contractor.

9. Changes. The funds appropriated for this Contract are equal to or exceed the awarded contract amount.

a. The Contractor and the City agree and acknowledge as a part of this Contract, that no change order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for this Contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Contract.



b. The Contractor and the City further agree and acknowledge as a part of this Contract that no change order or other form or order or directive which requires additional compensable work to be performed under this Contract shall be issued by the City unless funds are available to pay such additional costs, and, regardless of any remedy-granting provision included within this Contract, the Contractor shall not be entitled to any additional compensation for any additional compensable work performed under this Contract, and expressly waives any rights to additional compensation, whether by law or equity, unless prior to commencing the additional work, the Contractor was given a written change order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which change order was signed by the authorized City representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this Contract.

c. The City shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. Contractor agrees to accept any such changes subject to this paragraph.

10. Inspection/Testing. Payment for the goods delivered hereunder shall not constitute acceptance thereof. The City shall have the right to inspect such goods and to reject any or all of said goods which are in the City's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Contractor at its expense and, in addition to the City's other rights, the City may charge Contractor all expenses of unpacking, examining, repacking and reshipping such goods. In the event the City receives goods whose defects or nonconformity is not apparent on examination, the City reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Contractor from the obligation of testing, inspection and quality control.

11. Entire Agreement. This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties.

12. Assignments and Subcontracting. No part of this order may be assigned or subcontracted by the Contractor without prior written approval of the City.



13. Setoff. All claims for money due or to become due from the City shall be subject to deduction or setoff by the City by reason of any counterclaim arising out of this or any other transaction with Contractor.

14. Shipment. If in order to comply with the City's required delivery date it becomes necessary for Contractor to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Contractor unless the necessity for such rerouting or expedited handling has been caused by the City.

15. Waiver. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

16. Delivery and Taxes. Time is of the essence of this Contract, and if delivery of items or rendering of services is not completed by the time promised, the City reserves the right without liability in addition to its other rights and remedies to terminate this Contract by notice effective when received by Contractor as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Contractor with any loss incurred. The Contractor shall pay all sales and use taxes required to be paid to the State of Colorado on the work covered by this Agreement. The Contractor shall execute and deliver and shall cause his subcontractors to execute and deliver to the City, certificates as required, to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and therefore, not subject to state and local sales tax, use tax, or federal excise taxes.

17. Limitation on the City's Liability - Statute of Limitations. In no event shall the City be liable for anticipated profits or for incidental or consequential damages. The City's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach thereof shall in no case exceed

the price allocable to the goods or services or unit thereof which gives rise to the claim. The City shall not be liable for penalties of any description. Any action resulting from any breach on the part of the City as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

18. Interpretation and Integration. No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the



same manner as the execution of this contract. This is a completely integrated agreement and contains the entire agreement of the parties, and any prior written or oral agreements which are different from the terms, conditions and provisions of this Agreement shall be of no effect and shall not be binding upon either party. This Agreement and its provision shall be binding upon and to the benefit of the parties and their respective successors or assignees.

19. Intellectual Property Rights. The Parties hereby agree, and acknowledge, that all products, items, writings, designs, models, examples, or other work product of the Contractor produced pursuant to this Contract are works made for hire, and that the City owns, has, and possesses any and all ownership rights and interests to any work products of the Contractor made under this Contract, including any and copyrights, trademark, or patent rights, and that compensation to the Contractor for Agreement and acknowledgement of this intellectual property right section of this Contract is included in any compensation or price whatsoever paid to the Contractor under this Contract. It is the intent of the parties that the City shall have full ownership and control of the Contractor's work products produced pursuant to this Contract, and the Contractor specifically waives and assigns to the City all rights which Contractor may have under the 1990 Visual Artists Rights Act, federal, and state law, as now written or later amended or provided. In the event any products, items writing, designs, models, examples, or other work product produced pursuant to this Contract is deemed by a court of competent jurisdiction not to be a work for hire under federal copyright laws, this intellectual property rights provision shall act as an irrevocable assignment to the City by the Contractor of any and all copyrights, trademark rights, or patent rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, including all rights in perpetuity. Under this irrevocable assignment, the Contractor hereby assigns to the City the sole and exclusive right, title, and interest in and to the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, without further consideration, and agrees to assist the City in registering and from time to time enforcing all copyrights and other rights and protections relating to the Contractor's products, items writings, designs, models, examples, or other work product in any and all countries. It is the Contractor's specific intent to assign all right, title, and interest whatsoever in any and all copyright rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, in any media and for any purpose, including all rights of renewal and extension, to the City. To that end, the Contractor agrees to execute and deliver all necessary documents requested by the City in connection therewith and appoints the



City as Contractor's agent and attorney-in-fact to act for and in Contractor's behalf and stead to execute, register, and file any such applications, and to do all other lawfully permitted acts to further the registration, prosecution, issuance, renewals, and extensions of copyrights or other protections with the same legal force and effect as if executed by the Contractor; further, the parties expressly agree that the provisions of this intellectual property rights section shall be binding upon the parties and their heirs, legal representatives, successors, and assigns. Further, Contractor shall indemnify and hold the City harmless from any and all claims or actions brought against the City with regard to intellectual property rights which may result from any work product produced under this Contract.

20. Appropriation Of Funds. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

21. Compliances. In the conduct of the services/work of the supplies, equipment or materials contemplated hereunder, the Contractor shall comply with all applicable state, federal and local law, rules and regulations, technical standards or specifications issued by the City. Contractor must qualify for and obtain any required licenses prior to commencement of work.

22. Independent Contractor. In the performance of the obligations under this Agreement, the parties agree Contractor is at all times acting and performing as an independent contractor. The City shall neither have, nor exercise, any control or direction over the manner and means by which Contractor performs its obligations,



except as otherwise stated in this Agreement. Contractor understands and agrees that its employees are not City employees. Contractor is solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation for

benefit to its employees under this Agreement. Further, it is expressly understood and agreed that Contractor employees are not entitled to any City payroll, insurance, unemployment, workers' compensation, retirement, or any other benefits.

23. Compliance With Immigration And Control Act. Contractor certifies that Contractor shall comply with the provisions of C.R.S. Sec. 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor represents, warrants, and agrees that it (i) has confirmed that it does not employ any illegal aliens, either through participation in the eVerify program administered by the Social Security Administration and Department of Homeland Security or by means of the Colorado Department of Labor program, and (ii) otherwise will comply with the requirements of C.R.S. Sec. 8-17.5-102(2)(b). Contractor will comply with all reasonable requests made in the course of an investigation under C.R.S. Sec. 8-17.5-102 by the Colorado Department of Labor and Employment. If Contractor fails to comply with any requirement of this provision or C.R.S. Sec. 8-17.5-101 et seq., the City may terminate this contract for breach.

24. Law. This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.

25. Books of Account and Auditing. The Contractor shall make available to the City, if requested, true and complete records which support billing statements, reports, performance indices, and all other related documentation. The City's authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing billing statements, reports, performance indices, and all other related documentation. The Contractor agrees that it will keep and preserve for at least seven (7) years all documents related to the Contract which are routinely prepared, collected or compiled by the Contractor during the performance of this Contract.