

**Interlocal Agreement  
Between the  
Austin Independent School District  
and the  
City of Austin**

This Interlocal Agreement (Agreement), authorized and governed by Chapter 791 of the Texas Government Code, is entered into by and between the Austin Independent School District (District), a political subdivision of the State of Texas, and the City of Austin (City), a Texas home-rule municipal corporation and political subdivision of the State of Texas. Each entity to this Agreement is a “Party” and jointly referred to as the “Parties”.

**RECITALS**

Chapter 791 of the Texas Government Code, as amended, entitled Interlocal Cooperation Contracts, authorizes contracts between political subdivisions for the performance of governmental functions and services.

This full-day pre-kindergarten program will provide enhanced educational support to mitigate the impacts of the pandemic on families and the educational and economic prospects of their children.

The District currently offers a state-funded half-day pre-kindergarten program for three-year-old children (Pre-K 3). During the 2019-20 academic year, the District served more than 1,600 Pre-K 3 students. Most students served in the District Pre-K 3 are eligible for the free half-day program. Families that do not meet the eligibility requirements may opt to pay tuition to participate in the program. ARPA funding will be used to expand the half-day Pre-K3 program to offer full-day Pre-K 3 at select campuses. Five classes will be expanded serving an estimated 85 Pre-K 3 students including current students in School Year 2021-22 and new students through December 2024.

The expansion from half-day to full-day Pre-K 3 will benefit students by increasing the likelihood that they will be prepared for learning in kindergarten and beyond. Also, full-day Pre-K 3 benefits families who need full-day high-quality early care and education to meet the needs of families that have employment, education, or training commitments.

The District’s Pre-K program is designed to foster children’s early years of learning, discovery, and growing independence. Every classroom is staffed with a certified teacher and a teaching assistant who are trained and receive ongoing professional learning specific to working with young children. Embedded in daily classroom routines, activities, materials, and games is an abundance of learning opportunities that help children build foundations in literacy, math, science, social studies, music, art, and physical education.

Pre-K is a phase of development when children learn key concepts directly correlated to future academic success. Social and emotional skills are developed during this time, which ensures children begin kindergarten with self-confidence and the ability to learn and work with others. In addition, students’ knowledge of a variety of topics is strengthened. This is an important component for school success and development of a lifelong love of learning.

Moreover, high-quality full-day programming provides children with the opportunity to interact with others outside of their family. This is especially important because opportunities for young children's socialization have been limited during the pandemic due to facility closures, limits on gathering sizes, and fears of contracting COVID-19 in public settings.

Before the pandemic, less than half of children residing in Austin-Travis County were ready for school by kindergarten. Children from families living below 200% of the federal poverty line, 90% of whom are children of color, were far less likely to be school ready.

Funding the District's full-day Pre-K 3 will enhance educational supports to help address existing educational disparities that have been exacerbated by the pandemic. Expanding services will not only support health, academic, and social emotional development for children, but also provide families with no-cost high-quality full-day early care and education. This enables parents to work, participate in job training, or attend school full-time, supporting their families' economic wellbeing.

### **TERM**

The period for performance of this Agreement shall commence on full execution by the parties and will end on December 31, 2024, unless renewed or terminated before that time period, in accordance with this Agreement.

The District or the City may terminate this agreement at any time, with or without cause, by giving the other Party a minimum of 30 days written notice.

### **RESPONSIBILITIES OF THE PARTIES**

In consideration of their mutual aims and interests, each Party agrees that its responsibilities under this Agreement shall be as follows:

#### **The City**

The City assumes the following responsibilities:

- Providing funding not to exceed the amount of \$902,075 as reimbursement for the costs of expanding the District's Pre-K 3 program; and
- Making payments within 30 days of receipt of approved invoices;
- Referring eligible families to the District for Pre-K; and
- Providing the District with outreach materials for other City resources and programs for which families may be eligible.

#### **The District**

The District assumes the following responsibilities:

Target Population: The District will focus on campuses that are identified as Title I campuses and have 75% or more economically disadvantaged students that are located in areas that do not have any Pre-K 3 programming nearby to access. Campuses of focus are in economically disadvantaged areas located in

HUD Qualified Census Tracts.

Client Eligibility:

This District shall use the following criteria:

Eligibility Requirement	Description of Criteria	Verification Method
Child's age	Child must be 3 years of age on or before September 1 <sup>st</sup> of the current school year.	Child's Birth Certificate  Alternate acceptable methods include baptismal records, passports, and custodial documents.
NOTE: Age (above) required for all plus meeting one or more of the Requirements listed below:		
Educationally Disadvantaged (Income based)	Child is eligible to participate in the free/reduced meal program due to gross household income meeting the established income guidelines (130/185% Federal Poverty Guidelines) or receives SNAP, Medicaid, and/or TANF benefits	Proof of income: Most recent pay stub or unemployment statement, worker's compensation, disability payment, or no income statement  Proof of benefits: Most recent letter or benefits portal screenshot indicating child is recipient of benefits
Limited English Proficient	Language other than English is spoken in the child's home or by the child most of the time. Child is unable to speak and comprehend the English language as determined by a language proficiency assessment.	Score of 1, 2, or 3 (Non-English Speaking or Limited English Speaking) on preLAS language proficiency assessment.
Dependent status	Child of an active-duty member of the armed forces (including state military forces or a reserve component) or is the child of a member of the armed forces who was injured or killed while serving on active duty	Statement of Service, Letter from Veterans Affairs stating eligibility for disability or Letter from Commanding Officer. Do NOT upload copies of Department of Defense identification
Foster Care	Child is in or has been in has ever been in custody of Family & Protective Services (CPS or Foster Care)	DFPS Verification Letter of PreK Eligibility or other documentation of foster care
Homeless	Child qualifies as homeless as defined by the McKinney- Vento Homeless Assistance Act which indicates that family's current address is a temporary living arrangement due to loss of housing or economic hardship	Completion of Student Residency Questionnaire
Star of Texas Award	Child's parent/guardian is a first responder recipient of this award	Certificate or Letter from Governor or state representative

Service Delivery Models: The District shall deliver Services as described below:

- Outreach
- Intake
- Eligibility determination
- Service provision

**Outreach:** Communications will be available in English, Spanish, and Vietnamese. Information about the program will be clearly presented on the District’s website, Campus Websites, Facebook, Twitter, Instagram, Flyers, Banners, and signage throughout the community. The District will coordinate with external partners and organizations.

**Intake:** The District is currently using a screener to assess eligibility for free or tuition-based programming. The screener is available to be completed online (mobile friendly), hard copy, or via intake by district and campus staff. A QR code is available at every campus to access the screener. As families call the Early Learning Office and request a screener, the District will email it to them individually or assist them with intake.

**Eligibility Determination:** Will be based on criteria set by the Texas State Legislature. For families that do not qualify using these criteria, the District will provide an option for tuition-based Pre-K contingent on availability of seats.

**Service Provision:** Pre-K will be for eligible three-year-old students to participate in high-quality early care and education following a daily schedule of 7:40 a.m. to 3:10 p.m. with optional, additional no-cost two hours of afterschool programming at three of the five campuses (to be determined by greatest need). Adopted curriculum with focus on literacy and social emotional learning.

**Performance Measures:**

*a. Output Performance Measures:*

Output Measure	Total Annual	Quarters Reported*
1. Number of unduplicated children served in ARPA-funded full-day Pre-K 3	85 students; 17 per class	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4

*b. Outcome Performance Measures:*

Outcome Measure	Total Annual	Quarters Reported*
1. a. # of PK3 students on track within progress monitoring measure of social emotional behaviors (numerator)	68	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4
b. # of PK3 students enrolled in full-day programming (denominator)	85	
c. % on track within progress measure (rate)	80%	
2. a. # of PK3 students on track within progress monitoring measures of rapid letter naming and rapid vocabulary (numerator)	68	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4

b.	# of PK3 students enrolled in full-day programming (denominator)	85	
c.	% on track within progress measure (rate)	80%	

**Program Data Management:** The District’s Early Learning Department will house and oversee the data related to the expansion of PreK 3 classes. Frontline, the enrollment and attendance system, will be utilized to collect the data. The data will include:

- Campus (Zip code; HUD Census Tract): Allison (78741; 23.12), Houston (78744; 24.11), Overton (78724; 22.02), Padron (78758; 18.20) & Wooldridge (78758; 18.20)
- # of classes: 5
- # of seats: 85
- # of open seats: 85

**Marketing:** The Early Learning Department in collaboration with Communications and Marketing will develop a marketing plan aligned to the campuses that will offer full-day PreK 3. Marketing efforts may include social media posts, district and campus website information, flyers and mailers in specified areas of the community. The District will hold an Early Learning Day on April 4, 2022, to get parents enrolled in the full day PreK programs district wide to include the full day PreK ARPA funded classrooms.

**Federal Requirements:** The District acknowledges that federal ARPA funds will be used for this contract and, therefore, will comply with the mandatory federal requirements in Exhibit A, attached to and incorporated into this contract.

## **GENERAL TERMS AND CONDITIONS**

A. **Confidentiality.** The Parties recognize and acknowledge that in the course of performing services required by this Agreement, they will obtain information and knowledge relating to each other’s business, some of which information and knowledge is confidential, and that either Party could substantially detract from the value and business prospects of the other Party in the event either Party were to disclose to any person not related to the other Party or use such information and knowledge for their own or the advantage of another person or entity. Accordingly, the Parties hereby agree that they will only disclose such information on a “need to know” basis in the course of carrying out their duties hereunder, or unless otherwise required by the Texas Public Information Act or other applicable law.

B. **Modification.** This Agreement may not be altered, amended or modified except in writing, executed by duly authorized representatives of each Party.

C. **Law and Venue.** This Agreement will be governed by the laws of the State of Texas. The obligations under this Agreement are performed in Travis County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this Agreement will take place in a court of appropriate jurisdiction in Travis County, Texas.

D. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the matters covered by this Agreement, and no other agreement, statement, or promise made by either Party or to any employee, officer or agent of either Party, which is not contained in this Agreement shall be binding or valid.

E. Notices. Notices under this Agreement shall be in writing, and may be given by hand delivery, U.S. mail, or telecopy (facsimile). If sent to the parties at the contact information addresses designated herein, notice shall be deemed effective upon receipt in the case of hand delivery or telecopy and three days after deposit in the U.S. mail in case of mailing. The address of the parties for all purposes shall be:

City of Austin:

Spencer Cronk, City Manager (or successor) City of Austin  
P.O. Box 1088  
Austin, Texas 78767 And

Sylvia Holt-Rabb, Director of Economic Development (or successor) City of Austin  
P.O. Box 1088  
Austin, Texas 78767

With copy to:  
Anne Morgan, City Attorney (or successor)  
P.O. Box 1088  
Austin, Texas 78767

Austin Independent School District:

Name  
Contact info

F Assignment. Any assignment of this Agreement by a Party requires the prior written consent of the other Party.

G Severability. If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall, nevertheless, continue in full force and effect, without being impaired in any manner whatsoever.

H Limitation of Liability. Neither Party shall have liability whatsoever for or with respect to the other Party's use of any property or facility, or the actions of, or failure to act by, any employees, subcontractors, agents, or assigns of the other Party.

I Non-Appropriation. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available. The City shall provide the District with written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under this Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under this Agreement. In the event of non- or inadequate appropriation of funds, there will be no penalty charged to the City.

J Authorization. By signing below, each Party's representative warrants that he/she is duly authorized to enter into this Agreement on behalf of the Party, and that each Party to this Agreement is authorized by Texas law to accept the terms, conditions, and obligations set forth herein.

K. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

The City of Austin, Texas

\_\_\_\_\_  
Sylvia Holt-Rabb  
Acting Director, Economic Development Department  
City of Austin  
301 W. 2<sup>ND</sup> ST.  
Austin, Texas 78701

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

Austin Independent School District

\_\_\_\_\_  
Name  
Title  
address

\_\_\_\_\_  
Date

## Exhibit A – Federal Terms and Conditions

**The following Terms, Conditions, Clauses and Certifications are required by various agencies of the United States Government as part of the City’s contracts where federal funds are used or reimbursement will be sought from federal and state sources. These provisions are non-negotiable.**

### 1. Applicable to All Contracts Regardless of Dollar Value.

#### a. Prohibition on Contracting for Covered Telecommunications Equipment or Services

##### Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

##### (b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

##### (c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28

- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
  - (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.
  - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

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

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered for telecommunications equipment or services.

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

b. Domestic Preference Procurements

Domestic Preference for Procurements As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

c. Access to Records

The Contractor agrees to provide the City of Austin, Texas, State of Texas Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

d. Contract Changes or Modifications

Changes or modifications to contracts will be discussed with the Contractor. These changes will require documentation of any price increase or decrease. City will review and accept or reject price changes. City will issue a contract amendment for each change.

Changes to contract scope or price may increase the number of applicable federal contract clauses. If a contract value is increased from one dollar value threshold to another, the City will advise the Contractor of the additional applicable requirements as an amendment of the contract.

e. DHS Seal, Logo and Flags

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts.

f. Compliance with Federal Law, Regulations, and Executive Orders

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

g. No Obligation by Federal Government

The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

h. Program Fraud and Fraudulent Statements or Related Acts

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

i. Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

j. Copyright – all contracts that may involve the creation of copyrightable material.

“License and Delivery of Works Subject to Copyright and Data Rights” The Contractor grants to the City of Austin, Texas, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City of Austin, Texas or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the (insert name of the non-federal entity) data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the (insert name of the non-federal entity).

k. Civil Rights

Recipients of Federal financial assistance from the Treasury, including the City's contractors and subcontractors are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds.

Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of

- race,
- color,
- national origin (including limited English proficiency),
- disability,
- age, or
- sex (including sexual orientation and gender identity),

in accordance with the following authorities:

- Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22;
- Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794;
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28;
- Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

1. Requirement to use minority businesses, woman-owned businesses, and labor surplus area firms.

Prime Contractors must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Prime contractor may contact the City for assistance in identifying businesses in these three categories.

- m. Parties involved in developing requirements excluded from award of subsequent contract.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for such procurements.

If a contractor is later discovered to have violated this term, contract is void. [MW: ensure language is consistent with other City terms creating void contract, such as Anti-Lobbying.] [MW: This should probably move up to the City's library of Standard Terms and Conditions.]

- n. Prohibition on contracting / subcontracting with precluded parties

Contractors may not use subcontractors identified within the System for Award Management as a precluded party.

## 2. Applicable to Contracts Over \$10,000

- a. Termination for Cause or Convenience; Process and Basis for Settlement

The City may terminate this Contract for convenience at any time with 30 calendar days' written notice to Contractor. On receipt of the Notice, the Contractor shall immediately stop performance of services (unless the Notice directs otherwise) and deliver all documents, programs, reports, and materials accumulated in performing this Contract (whether finished or in process) to the City within 10 business days, or as otherwise stated in the Notice. The City shall pay the Contractor for all reimbursable costs and obligations incurred up to the date of termination. However, in no event shall the Contractor be entitled to recover any profit for unperformed Services. In the event of a termination for convenience, the City shall have the right (but not the obligation) to take over the Services and complete them by contract or otherwise, including the option to require the Contractor to assign any or all of its subcontracts to the City.

b. Procurement of Recovered Materials where materials are involved

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 –

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

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

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

3. Applicable to Contracts Over \$25,000

a. Suspension and Debarment

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

The contractor must comply with 2 C.F.R. Part 180, subpart C and 2C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City of Austin, Texas. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of Austin, Texas, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- b. Registration with and maintenance of account with GSA System for Award Management (SAM)

Prime and all subcontractors (if any) shall register with the System for Award Management.

LINK: <https://sam.gov/content/entity-registration>

Per Executive Orders 12549 and 12689, a contract award must not be made to parties listed on the government-wide exclusions in the System for Award Management.

4. Applicable to Contracts Over \$100,00 with mechanics or laborers

- a. Contract Work Hours and Safety Standards Act

Compliance with the Contract Work Hours and Safety Standards Act.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (insert name of grant recipient or subrecipient) shall upon its own action or upon written request of an

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

## 5. Applicable to Contracts Over \$100,000

### a. Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

If applicable, contractors must sign and submit the certification included on the final page with each bid or offer exceeding \$100,000.

6. Applicable to Contracts Over \$150,000

a. Clean Air Act and Federal Water Pollution Control Act

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The contractor agrees to report each violation to the (insert name of non-federal entity entering into the contract) and understands and agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to the (insert name of the non-federal entity entering into the contract) and understands and agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as required to assure notification to the (insert name of the pass-through entity, if applicable), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

7. Applicable to Contracts Over \$250,000

a. Remedies for Violation or Breach of Contract; Sanctions and Penalties

A party shall be in default (“Default”) under the Contract if the party (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, and following receipt of notice of such failure, fails timely to cure the failure within [*time to cure*] or fails to provide adequate assurance of performance within [*should be same amount of time*].

8. Applicable to Contracts Over \$750,000

- a. When the City spends an amount in excess of \$750,000 with a contractor, whether in a single order or contract, or as the result of a series of purchases assembled into a reimbursement project, the City will be the subject of a “single audit” for each such event.
- b. Contractor is advised that the requirements of a single audit may result in requirements to produce additional documentation for the City.

## 9. Applicable Only to Construction Projects

### a. 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 7 See 2 C.F.R. Part 200, Appendix II, § C. Contract Provisions Guide 11 orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of

Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other Contract Provisions Guide 12 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until

satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings

b. Davis-Bacon Act

**§ 5.5 Contract provisions and related matters.**

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

**(1) *Minimum wages.***

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**(ii)**

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting

[officer](#) shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

**(B)** If the contractor and the [laborers](#) and mechanics to be [employed](#) in the classification (if known), or their representatives, and the [contracting officer](#) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the [contracting officer](#) to the [Administrator](#) of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The [Administrator](#), or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the [contracting officer](#) or will notify the [contracting officer](#) within the 30-day period that additional time is necessary.

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

**(D)** The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this [contract](#) from the first day on which work is performed in the classification.

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

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the [wages](#) of any [laborer](#) or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the [Secretary](#) of Labor has found, upon the written request of the contractor, that the applicable standards of the [Davis-Bacon Act](#) have been met. The [Secretary](#) of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**(2) Withholding.** The (write in name of [Federal Agency](#) or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this [contract](#) or any other Federal [contract](#) with the same prime contractor, or any other federally-assisted [contract](#) subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered

necessary to pay [laborers](#) and mechanics, including [apprentices](#), trainees, and helpers, [employed](#) by the contractor or any subcontractor the full amount of [wages](#) required by the [contract](#). In the event of failure to pay any [laborer](#) or mechanic, including any [apprentice](#), [trainee](#), or helper, [employed](#) or working on [the site of the work](#) (or under the [United States Housing Act of 1937](#) or under the [Housing Act of 1949](#) in the construction or development of the project), all or part of the [wages](#) required by the [contract](#), the (Agency) may, after written notice to the contractor, [sponsor](#), applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) Payrolls and basic records.**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all [laborers](#) and mechanics working at [the site of the work](#) (or under the [United States Housing Act of 1937](#), or under the [Housing Act of 1949](#), in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of [wages](#) paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the [Davis-Bacon Act](#)), daily and weekly number of hours worked, deductions made and actual [wages](#) paid. Whenever the [Secretary](#) of Labor has found under [29 CFR 5.5\(a\)\(1\)\(iv\)](#) that the [wages](#) of any [laborer](#) or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the [Davis-Bacon Act](#), the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the [laborers](#) or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing [apprentices](#) or [trainees](#) under approved programs shall maintain written evidence of the registration of [apprenticeship programs](#) and certification of [trainee](#) programs, the registration of the [apprentices](#) and trainees, and the ratios and wage rates prescribed in the applicable programs.

**(ii)**

(A) The contractor shall submit weekly for each week in which any [contract](#) work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the [agency](#) is a party to the [contract](#), but if the [agency](#) is not such a party, the contractor will submit the payrolls to the applicant, [sponsor](#), or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)](#), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each [employee](#) (e.g., the last four digits of the [employee's](#) social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the [agency](#) is a party to the [contract](#), but if the [agency](#) is not such a party, the contractor will submit them to the applicant, [sponsor](#), or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or

the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the [sponsoring](#) government [agency](#) (or the applicant, [sponsor](#), or owner).

**(B)** Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons [employed](#) under the [contract](#) and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, [29 CFR part 5](#), the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, [29 CFR part 5](#), and that such information is correct and complete;

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

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

**(C)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by [paragraph \(a\)\(3\)\(ii\)\(B\)](#) of this section.

**(D)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and [section 231](#) of title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under [paragraph \(a\)\(3\)\(i\)](#) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview [employees](#) during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the [Federal agency](#) may, after written notice to the contractor, [sponsor](#), applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to [29 CFR 5.12](#).

**(4) Apprentices and trainees -**

**(i) Apprentices.** [Apprentices](#) will be permitted to work at less than the predetermined rate for the work they performed when they are [employed](#) pursuant to and individually registered in a bona fide [apprenticeship program](#) registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, [Employer](#) and Labor Services, or with a [State Apprenticeship Agency](#) recognized by the Office, or if a person is [employed](#) in his or her first 90 days of probationary employment as an [apprentice](#) in such an [apprenticeship program](#), who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, [Employer](#) and Labor Services or a [State Apprenticeship](#)

[Agency](#) (where appropriate) to be eligible for probationary employment as an [apprentice](#). The allowable ratio of [apprentices](#) to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an [apprentice](#) wage rate, who is not registered or otherwise [employed](#) as [stated](#) above, shall be paid not less than the applicable wage rate on the [wage determination](#) for the classification of work actually performed. In addition, any [apprentice](#) performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the [wage determination](#) for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every [apprentice](#) must be paid at not less than the rate specified in the registered program for the [apprentice's](#) level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable [wage determination](#). [Apprentices](#) shall be paid fringe benefits in accordance with the provisions of the [apprenticeship program](#). If the [apprenticeship program](#) does not specify fringe benefits, [apprentices](#) must be paid the full amount of fringe benefits listed on the [wage determination](#) for the applicable classification. If the [Administrator](#) determines that a different practice prevails for the applicable [apprentice](#) classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, [Employer](#) and Labor Services, or a [State Apprenticeship Agency](#) recognized by the Office, withdraws approval of an [apprenticeship program](#), the contractor will no longer be permitted to utilize [apprentices](#) at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) [Trainees](#).** Except as provided in [29 CFR 5.16](#), [trainees](#) will not be permitted to work at less than the predetermined rate for the work performed unless they are [employed](#) pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of [trainees](#) to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every [trainee](#) must be paid at not less than the rate specified in the approved program for the [trainee's](#) level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable [wage determination](#). [Trainees](#) shall be paid fringe benefits in accordance with the provisions of the [trainee](#) program. If the [trainee](#) program does not mention fringe benefits, [trainees](#) shall be paid the full amount of fringe benefits listed on the [wage determination](#) unless the [Administrator](#) of the Wage and Hour Division determines that there is an [apprenticeship program](#) associated with the corresponding journeyman wage rate on the [wage determination](#) which provides for less than full fringe benefits for [apprentices](#). Any [employee](#) listed on the payroll at a [trainee](#) rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the [wage determination](#) for the classification of work actually performed. In addition, any [trainee](#) performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the [wage determination](#) for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize [trainees](#) at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of [apprentices](#), [trainees](#) and journeymen under this part shall be in conformity with the equal employment opportunity requirements of [Executive Order 11246](#), as amended, and [29 CFR part 30](#).

(5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this [contract](#).

(6) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses contained in [29 CFR 5.5](#)(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) 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 the [contract](#) clauses in [29 CFR 5.5](#).

(7) **Contract termination: debarment.** A breach of the [contract](#) clauses in [29 CFR 5.5](#) may be grounds for termination of the [contract](#), and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR](#) parts [1](#), [3](#), and [5](#) are herein incorporated by reference in this [contract](#).

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

(10) **Certification of eligibility.**

(i) By entering into this [contract](#), the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the [Davis-Bacon Act](#) or [29 CFR 5.12](#)(a)(1).

(ii) No part of this [contract](#) shall be subcontracted to any person or firm ineligible for award of a Government [contract](#) by virtue of section 3(a) of the [Davis-Bacon Act](#) or [29 CFR 5.12](#)(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. [Criminal Code](#), [18 U.S.C. 1001](#).

c. Copeland Anti-Kickback – Applicable to Construction contracts greater than \$2,000

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

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier

subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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.

d. Value Engineering

Prime contractors are encouraged to submit value engineering recommendations for changes to construction contracts where there are opportunities for cost reductions without compromising purpose or quality. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [MW: maybe we just pull the language from the FAR here. Also, GSA contracts included value engineering clauses for service contracts. We might want to move it to the “all procurements” section on that basis. If a contractor can conclusively demonstrate a cost reduction that does not compromise quality or purpose, then that benefits all parties. However, VE normally results in a “reward”, “rebate” or other consideration to the contractor to offset the lost billables.]

10. Applicable to Funding Agreements Only

a. Rights to Inventions Made Under a Contract or Agreement

“License and Delivery of Works Subject to Copyright and Data Rights” The Contractor grants to the City of Austin, Texas, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the (insert name of the non-federal entity) or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the (insert name of the non-federal entity) data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the (insert name of the non-federal entity).

11. Records Retention

Records retention by the contractor varies based on source of funds. This contract has the following document retention requirements. (Check only one, then erase the others)

FEMA Public Assistance: minimum of three (3) years after submission of final federal financial report.

US Treasury – CARES Act: Seven (7) years after last action (Completion; final report; litigation; dispute or audit)

US Treasury – American Rescue Plan Act (SLFRF): Five (5) years after funds expended or returned to Treasury.

Records retention will be reviewed prior to completion of contract, and contractor will be specifically released from further document production or retention as part of the City’s Contract Closeout process.

Contractor acknowledges these additional Special Supplemental Terms, Conditions, Clauses and Certifications incorporated in full or by reference above as part of the City’s contract.

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Signature of Contractor’s Authorized Official

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Name and Title of Contractor’s Authorized Official

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Date

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**  
Certification for Contracts, Grants, Loans, and Cooperative Agreements The undersigned certifies, to the best of his or her knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was

made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date