



## FIFTH AMENDMENT

### Spruce Wash Drainage Improvements Projects Construction Manager at Risk

### Construction Phase Services Agreement GMP 5

### Wedge Detention Basin Phase 3

Grant Agreement No.: 24-DG-11030000-015

Project No. #03-23014  
Agreement No. 2023-60

This Fifth Amendment (“Fifth Amendment”) to the fully executed Construction Phase Services Phase - Agreement No. 2023-60 dated July 14, 2023 (the “Agreement”) for the City of Flagstaff Spruce Wash Drainage Improvement Projects (the “Projects”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Flagstaff, an Arizona municipal corporation (“City”), and Eagle Mountain Construction, Inc., an Arizona corporation (“Construction Manager at Risk” or “CMAR”).

The Parties to the Agreement and other subsequent amendments, hereby agree to the following Fifth Amendment:

- A. Pursuant to Article 5 – Contract Price, Section 5.2, Exhibit B – is amended to include GMP 5 – Increase for the Wedge Detention Basin Phase 3 – Proposal for “the Wedge”, dated November 18, 2024, 3 pages, attached hereto as Attachment A.
- B. CMAR’s Wedge Detention Basin Phase 3 – GMP 5 is for the improvements for the Wedge portion of work of the Projects and shall total **eight million sixty-three thousand eight hundred ninety-six dollars and sixty-one (\$8,063,896.61)**.
- C. The total Contract Price for the complete performance of work under the Agreement and other subsequent amendments, as amended by this Fifth Amendment, shall be **(\$23,851,863.61)**.
- D. The project is funded in part with a grant from the U.S. Department of Agriculture, Forest Service, Coconino National Forest. Project is pursuant to the associated Grant Provisions, attached hereto as Attachment B.
- E. All other provisions of the Agreement and other subsequent amendments shall remain unchanged in full force and effect.

***(Signatures on Following Page)***

IN WITNESS WHEREOF, the Parties have caused this Fifth Amendment to be executed by their duly authorized representatives as of the date first written above. This Fifth Amendment will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

**City of Flagstaff**

**Eagle Mountain Construction, Inc.**

By: \_\_\_\_\_  
Greg Clifton, City Manager

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

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



November 18, 2024

Trevor Henry  
Capital Improvements Engineer  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, AZ 86004

Re: Spruce Wash Watershed Improvements (“Project”)  
City of Flagstaff Project # 03-23014  
Construction Manager at Risk – Guaranteed Maximum Price (“GMP”) 5

Dear Mr. Henry,

Eagle Mountain Construction (“EMC”) is submitting GMP 5 for the above referenced Project.

The Spruce Wash Watershed Improvements is a “suite” of 8-9 individual projects (pending final designs) along the Spruce Wash drainage corridor, with several of the scopes having multiple phases. This GMP 5 is for Phase 3 of the Wedge, consisting of the basin excavation, and construction of the structural components for the inlet and outlet structures. It also includes the Linda Vista Sidewalk scope of work, per the Final 1 plans stamped 10-7-24.

As the remaining suite of projects progress through the design phase, EMC will continue with our Design Phase services, offering constructability reviews, cost and schedule modeling, TAC Meeting attendance, and subsequent GMP development. EMC’s services for the balance of the Design Phase are reflected in the General Conditions for each project still in the design phase.

This scope is tentatively scheduled to begin as early as possible 2025, weather permitting.

We continue to be honored to be apart this Team and appreciate the opportunity to work with so many of the Project stakeholders, the team of engineers, and the City of Flagstaff staff in the execution of the ever changing and challenging Project.

Sincerely,

Eagle Mountain Construction

  
**Marco Spagnuolo**  
CEO

**THE WEDGE DETENTION BASIN**

**PHASE 3**

Keynote	DESCRIPTION	QTY	Unit	Unit Cost	Total
<b>ROADWAY REMOVALS</b>					
001	SAWCUT, REMOVE & DISPOSE ASPHALTIC CONCRETE PAVEMENT	1,093	SY	\$ 12.00	\$ 13,116.00
003	REMOVE & DISPOSE PORTLAND CEMENT CONCRETE	235	SF	\$ 5.00	\$ 1,175.00
010	REMOVE & DISPOSE CONCRETE CURB & GUTTER	80	LF	\$ 5.00	\$ 400.00
020	REMOVE & DISPOSE CONCRETE VALLEY GUTTER	100	SF	\$ 5.00	\$ 500.00
090	REMOVE & DISPOSE TREES - <b>ALLOWANCE FOR REMAINING TREES</b>	1	LS	\$ 20,000.00	\$ 20,000.00
<b>RELOCATIONS &amp; ADJUSTEMENTS</b>					
101	RELOCATE STREET SIGN ON NEW POST	1	EA	\$ 550.00	\$ 550.00
130	ADJUST VALVE BOX & COVER	13	EA	\$ 1,050.00	\$ 13,650.00
140	ADJUST MANHOLE FRAME & COVER	12	EA	\$ 1,450.00	\$ 17,400.00
150	REMOVE & REPLACE RIP RAP	1	LS	\$ 1,250.00	\$ 1,250.00
160	RELOCATE MAILBOX	1	EA	\$ 850.00	\$ 850.00
180	RELOCATE LIGHT POLE	1	EA	\$ 6,850.00	\$ 6,850.00
<b>ROADWAY CONSTRUCTION</b>					
203	PAVEMENT SECTION: 4" AC / 6" ABC	4,800	SY	\$ 95.00	\$ 456,000.00
206	12" ABC ON GEOGRID	160	SY	\$ 30.00	\$ 4,800.00
210	TYPE A VERTICAL CURB & GUTTER	1,345	LF	\$ 35.00	\$ 47,075.00
218	ROLL TO VERTICAL CURB TRANSITION	4	EA	\$ 200.00	\$ 800.00
220	SIDEWALK	3,635	SF	\$ 16.00	\$ 58,160.00
221	SIDEWALK W\INTEGRAL CURB	830	SF	\$ 18.00	\$ 14,940.00
222	CURB RAMP	4	EA	\$ 5,315.00	\$ 21,260.00
226	8' VALLEY GUTTER	1,730	SF	\$ 25.00	\$ 43,250.00
228	SCUPPER	1	EA	\$ 5,250.00	\$ 5,250.00
230	6" PCC / 3" ABC RESIDENTIAL DRIVEWAY (5' DEEP)	305	SF	\$ 20.00	\$ 6,100.00
231	9" PCC / 3" ABC COMMERCIAL DRIVEWAY (5' DEEP)	410	SF	\$ 28.00	\$ 11,480.00
232	6" PCC / 3" ABC RESIDENTAIL DRIVEWAY (3' DEEP)	740	SF	\$ 22.00	\$ 16,280.00
240	6" PCC / 3" ABC DRIVEWAY MATCH-UP	2,195	SF	\$ 23.00	\$ 50,485.00
243	GRAVEL DRIVEWAY MATCHUP	24	SY	\$ 45.00	\$ 1,080.00
251	72" GATE	2	EA	\$ 3,150.00	\$ 6,300.00
252	72" MODIFIED FUTS RAIL	210	LF	\$ 190.00	\$ 39,900.00
253	42" MODIFIED FUTS RAIL	350	LF	\$ 165.00	\$ 57,750.00
280	SURVEY MONUMENT, TYPE A (INTERSECTION)	4	EA	\$ 1,250.00	\$ 5,000.00
290	T-TOP TRENCH	530	SY	\$ 130.00	\$ 68,900.00
<b>STORMDRAIN CONSTRUCTION</b>					
522	STORM DRAIN VAULT: DETENTION BASIN OUTLET CONTROL	1	EA	\$ 55,000.00	\$ 55,000.00
530	EXCAVATE DETENTION BASIN (EXCLUDES DUMP FEES - ASSUME COF L.F.)	37,680	CY	\$ 38.00	\$ 1,431,840.00
541	ACCESS RAMP: RIPRAP WITH SOIL MIX	2,040	SF	\$ 12.00	\$ 24,480.00
542	EROSION PROTECTION: NON-WOVEN EROSION CONTROL BLANKET	3,890	SY	\$ 13.00	\$ 50,570.00
543	EROSION PROTECTION: HYDROSEED	85,850	SF	\$ 1.50	\$ 128,775.00
550	SOIL NAIL RETAINING WALL	6,150	SF	\$ 225.00	\$ 1,383,750.00
552	STACKED BLOCK WALL	80	SF	\$ 125.00	\$ 10,000.00
560	PLUNGE POOL / ENERGY DISSIPATOR	65	CY	\$ 250.00	\$ 16,250.00
561	LID FILTRATON SOIL, GRAV, UNDERDRAIN	1,600	SF	\$ 35.00	\$ 56,000.00
565	LOW FLOW CHANNEL	1	LS	\$ 3,100.00	\$ 3,100.00
590	DETENTION BASIN FLOW CONTROL SLIDE GATE & SCADA	1	LS	\$ 385,000.00	\$ 385,000.00
<b>STRIPING &amp; SIGNAGE</b>					
601	STOP BAR	1	EA	\$ 350.00	\$ 350.00
602	CROSS WALK	2	EA	\$ 550.00	\$ 1,100.00
603	6" WHITE LANE STRIPE	2,410	LF	\$ 4.00	\$ 9,640.00
604	4" DOUBLE YELLOW WITH BROKEN INSIDE STRIPE	450	LF	\$ 3.00	\$ 1,350.00
605	4" DOUBLE YELLOW STRIPE	620	LF	\$ 3.00	\$ 1,860.00
606	8" WHITE LANE STRIPE	35	LF	\$ 10.00	\$ 350.00
607	BIKE LANE SYMBOL	2	EA	\$ 850.00	\$ 1,700.00
608	CROSS HATCH STRIPING	1	LS	\$ 750.00	\$ 750.00
609	PAVEMENT MARKING ARROW	4	EA	\$ 850.00	\$ 3,400.00
650	WARNING SIGN ON POST	4	EA	\$ 350.00	\$ 1,400.00
651	WARNING SIGN ON FENCE	4	EA	\$ 85.00	\$ 340.00
652	NO TRESPASSING SIGN ON FENCE	1	EA	\$ 85.00	\$ 85.00
<b>ELECTRICAL</b>					
1001	TRANSFORMER - <b>BY APS</b>	1	LS	\$ -	\$ -
1010	CONDUIT	710	LF	\$ 25.00	\$ 17,750.00
1020	SES	1	LS	\$ 263,000.00	\$ 263,000.00

**THE WEDGE DETENTION BASIN**

**PHASE 3**

Keynote	DESCRIPTION	QTY	Unit	Unit Cost	Total
<b>LINDA VISTA SIDEWALK</b>					
001	SAWCUT, REMOVE & DISPOSE ASPHALTIC CONCRETE PAVEMENT	1,510	SY	\$ 12.00	\$ 18,120.00
003	REMOVE & DISPOSE PORTLAND CEMENT CONCRETE	965	SF	\$ 5.00	\$ 4,825.00
010	REMOVE & DISPOSE CONCRETE CURB & GUTTER	125	LF	\$ 5.00	\$ 625.00
050	REMOVE & DISPOSE STORM DRAIN	60	LF	\$ 65.00	\$ 3,900.00
067	REMOVE & SALVAGE & REINSTALL EX SIGN	2	EA	\$ 550.00	\$ 1,100.00
068	REMOVE & SALVAGE SIGN	15	EA	\$ 450.00	\$ 6,750.00
069	OBLITERATE STRIPE	1	LS	\$ 4,500.00	\$ 4,500.00
080	CLEAR & GRUB WITHIN THE CONSTRUCTION LIMIT	1	LS	\$ 32,500.00	\$ 32,500.00
082	REMOVE & DISPOSE RIPRAP	1	LS	\$ 2,500.00	\$ 2,500.00
203	PAVEMENT SECTION: 4" AC / 6" ABC	810	SY	\$ 95.00	\$ 76,950.00
208	FOG SEAL PER MAG SPEC. 333	1	LS	\$ 8,000.00	\$ 8,000.00
210	TYPE A VERTICAL CURB & GUTTER	1,795	LF	\$ 35.00	\$ 62,825.00
220	SIDEWALK	5,235	SF	\$ 16.00	\$ 83,760.00
224	CURB RAMP WITH DETECTABLE WARNING	1	EA	\$ 5,315.00	\$ 5,315.00
225	CURB RAMP MAG MODIFIED	2	EA	\$ 5,315.00	\$ 10,630.00
228	SCUPPER	4	EA	\$ 5,750.00	\$ 23,000.00
229	CURB CUT	2	EA	\$ 350.00	\$ 700.00
523	CURB OPENING	2	EA	\$ 350.00	\$ 700.00
524	36" ADS N-12 WT DUAL HDPE STORMDRAIN	67	LF	\$ 165.00	\$ 11,055.00
532	GRADE CHANNEL/SWALE	320	LF	\$ 60.00	\$ 19,200.00
540	18" THICK RIPRAP APRON, D50 = 6".	150	SY	\$ 55.00	\$ 8,250.00
543	EROSION PROTECTION - HYDROSEED	14,575	SF	\$ 3.00	\$ 43,725.00
602	CROSSWALK	2	EA	\$ 1,250.00	\$ 2,500.00
603	6" WHITE LANE STRIPE	1,070	LF	\$ 10.00	\$ 10,700.00
607	BIKE LANE SYMBOL	2	EA	\$ 850.00	\$ 1,700.00
610	4" YELLOW LANE STRIPE	490	LF	\$ 8.00	\$ 3,920.00
670	INSTALL EX SIGN ON NEW POST	4	EA	\$ 650.00	\$ 2,600.00
671	INSTALL NEW SIGN ON NEW POST	4	EA	\$ 650.00	\$ 2,600.00
<b>LINDA VISTA SIDEWALK SUBTOTAL</b>					<b>\$ 452,950.00</b>
<b>MISCELLANEOUS</b>					
	MOBILIZATION & DEMOBILIZATION	1	LS	\$ 315,000.00	\$ 315,000.00
	SURVEY	1	LS	\$ 64,000.00	\$ 64,000.00
	TRAFFIC CONTROL	1	LS	\$ 78,900.00	\$ 78,900.00
	AS-BUILT MEASUREMENTS/RECORD DRAWINGS	1	LS	\$ 18,600.00	\$ 18,600.00
	EROSION CONTROL/SWPPP	1	LS	\$ 29,500.00	\$ 29,500.00
<b>CONTRACT ALLOWANCES</b>					
	ROCK EXCAVATION	1,200	CY	\$ 85.00	\$ 102,000.00
<b>SUMMARY</b>					
<b>COST OF WORK</b>					<b>\$ 5,899,341.00</b>
	GENERAL CONDITIONS (GC'S) (Percent of Cost of the Work)	9.58%			\$ 565,000.00
<b>SUBTOTAL #1 - Cost of the Work + GC's</b>					<b>\$ 6,464,341.00</b>
	CONSTRUCTION FEE (Fee) (Percentage of Subtotal #1)	10.50%			\$ 678,755.81
<b>SUBTOTAL #2 - Cost of the Work + GC's + Fee</b>					<b>\$ 7,143,096.81</b>
	PERFORMANCE & PAYMENT BOND (Percentage of Subtotal #2)	0.90%			\$ 64,287.87
<b>SUBTOTAL #3 - Cost of the Work + GC's + Fee + Bonds</b>					<b>\$ 7,207,384.68</b>
	INSURANCE (Percentage of Subtotal #3)	1.00%			\$ 72,073.85
<b>SUBTOTAL #4 - Cost of the Work + GC's + Fee + Bonds + Insurance</b>					<b>\$ 7,279,458.52</b>
	SALES TAX (Percentage of GMP)	5.97%			\$ 434,438.08
<b>CMAR CONTINGENCY &amp; PRICE ESCALATION FUNDING</b>					<b>\$ 275,000.00</b>
<b>GMP</b>					<b>\$ 7,988,896.61</b>
	OWNERS CONTINGENCY (Percentage of Cost of the Work)	1%			\$ 75,000.00
<b>CONTRACT PRICE</b>					<b>\$8,063,896.61</b>



## **GRANT PROVISIONS**

**Sponsor:** City of Flagstaff

**Funding Agency:** U.S. Department Agriculture,  
Forest Service, Coconino National  
Forest

**Grant Project Title:** The Wedge Detention Basin

**Grant Number:** 24-DG-11030000-015

## ATTACHMENT A: FOREST SERVICE AWARD PROVISIONS

- A. COLLABORATIVE ARRANGEMENTS. Where permitted by terms of the award and Federal law, Flagstaff a may enter into collaborative arrangements with other organizations to jointly carry out activities with Forest Service funds available under this award.
- B. FOREST SERVICE LIABILITY TO THE RECIPIENT. The United States shall not be liable to Flagstaff for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work under this award, including damage to any property owned by Flagstaff or any third party.
- C. NOTICES. Any notice given by the Forest Service or Flagstaff will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the Forest Service Program Manager, at the address specified in the award.

To Flagstaff, at the address shown in the award or such other address designated within the award.

Notices will be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- D. SUBAWARDS. Prior approval is required to issue subawards under this grant. The intent to subaward must be identified in the approved budget and scope of work and approved in the initial award or through subsequent modifications. Approval of each individual subaward is not required, however the cooperator must document that each sub-recipient does NOT have active exclusions in the System for Award Management (sam.gov).

The Cooperator must also ensure that they have evaluated each subrecipient's risk in accordance with 2 CFR 200.332 (b).

Any subrecipient under this award must be notified that they are subject to the OMB guidance in subparts A through F of 2 CFR Part 200, as adopted and supplemented by the USDA in 2 CFR Part 400. Any sub-award must follow the regulations found in 2 CFR 200.331 through .333.

All subawards \$30,000 or more must be reported at [fsrs.gov](https://fsrs.gov) in compliance with 2 CFR 170. See Attachment B for full text.

- E. FINANCIAL STATUS REPORTING. A Federal Financial Report, Standard Form SF-425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple awards), must be submitted quarterly. These reports are due 30 days after the reporting period ending March 31, June 30, September 30 and December 31. The final

SF-425 (and SF-425A, if applicable) must be submitted either with the final payment request or no later than 120 days from the expiration date of the award. These forms may be found at <https://www.grants.gov/web/grants/forms.html>.

- F. PROGRAM PERFORMANCE REPORTS. The recipient shall perform all actions identified and funded in application/modification narratives within the performance period identified in award.

In accordance with 2 CFR 200.301, reports must relate financial data to performance accomplishments of the federal award.

Flagstaff shall submit quarterly performance reports. These reports are due 30 days after the reporting period ending March 31, June 30, September 30 and December 31. The final performance report shall be submitted either with Flagstaff's final payment request, or separately, but not later than 120 days from the expiration date of the award.

- Additional pertinent information: submit a copy of all reports to [SM.FS.R3SPTF@usda.gov](mailto:SM.FS.R3SPTF@usda.gov).

- G. NOTIFICATION. Flagstaff shall immediately notify the Forest Service of developments that have a significant impact on the activities supported under this award. Also, notification must be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

- H. CHANGES IN KEY PERSONNEL. Any revision to key personnel identified in this award requires notification of the Forest Service Program Manager by email or letter.

- I. USE OF FOREST SERVICE INSIGNIA. In order for Flagstaff to use the Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted by the Forest Service's Office of Communications (Washington Office). A written request will be submitted by Forest Service, Program Manager, to the Office of Communications Assistant Director, Visual Information and Publishing Services prior to use of the insignia. The Forest Service Program Manager will notify Flagstaff when permission is granted.

- J. FUNDING EQUIPMENT. Federal funding under this award is not available for reimbursement of Flagstaff's purchase of equipment. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over one year. Supplies are those items that are not equipment.

- K. PUBLIC NOTICES. It is Forest Service's policy to inform the public as fully as possible of its programs and activities. Flagstaff is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments.

Flagstaff may call on Forest Service's Office of Communication for advice regarding public notices. Flagstaff is requested to provide copies of notices or announcements to the Forest Service Program Manager and to Forest Service's Office Communications as far in advance of release as possible.

- L. DISPUTES. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution (ADR) procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

Should the parties be unable to resolve the issue of controversy through ADR, then the Signatory Official will make the decision. A written copy of the decision will be provided to the Cooperator.

Decisions of the Signatory Official shall be final unless, within 30 days of receipt of the decision of the Signatory Official, the Cooperator appeals the decision to the Forest Service's Deputy Chief, State, Private, and Tribal Forestry (SPTF). Any appeal made under this provision shall be in writing and addressed to the Deputy Chief, SPTF, USDA, Forest Service, Washington, DC 20024. A copy of the appeal shall be concurrently furnished to the Signatory Official.

A decision under this provision by the Deputy Chief, SPTF, is final. The final decision by the Deputy Chief, SPTF, does not preclude the Cooperator from pursuing remedies available under the law.

- M. AWARD CLOSEOUT. Flagstaff must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

Any unobligated balance of cash advanced to Flagstaff must be immediately refunded to the Forest Service, including any interest earned in accordance with 2 CFR 200.344(d).

If this award is closed without audit, the Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

- N. TERMINATION. This award may be terminated, in whole or part pursuant to 2 CFR 200.340.

- O. DEBARMENT AND SUSPENSION. Flagstaff shall immediately inform the Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should Flagstaff or any of their principals receive a transmittal letter or other official federal notice of debarment or suspension, then they shall notify the Forest Service without undue delay. This applies whether the exclusion,

debarment, or suspension is voluntary or involuntary. The Recipient shall adhere to 2 CFR Part 180 Subpart C in regards to review of sub-recipients or contracts for debarment and suspension.

All subrecipients and contractors must complete the form AD-1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions. Blank forms are available electronically. Completed forms must be kept on file with the primary recipient.

- P. MEMBERS OF CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this award, or benefits that may arise therefrom, either directly or indirectly.
- Q. SCIENTIFIC INTEGRITY. USDA is committed to the highest levels of integrity in all of our scientific activities and decision making. This includes to performing, recording and reporting the results of scientific activities with honesty, objectivity, and transparency. All persons performing under this agreement shall adhere to the principles of scientific integrity described in [Departmental Regulation \(DR\) 1074-001](#).
- R. GEOSPATIAL DATA. All data collected will meet the requirements of the Geospatial Data Act of 2018 where applicable. This will always include the documentation of all relevant metadata standards, use of standard data formats; description of quantitative measures of uncertainty and source of uncertainty and sources of uncertainty associated with the data. Additionally, the data must meet specific standards specified elsewhere to ensure the data is useful to support the USDA's mission. The recipient/cooperator agrees to comply with USDA's Department-wide enterprise geospatial data management policy implemented in Departmental Regulation 3465-001 which establishes the USDA policy for defining the strategic direction necessary to optimize the management of the USDA geospatial data and geospatial infrastructure, including all geospatial data created for, by, and enhanced by USDA.
- S. PUBLIC ACCESS TO SCHOLARLY PUBLICATIONS AND DIGITAL SCIENTIFIC RESEARCH DATA. The recipient agrees to comply with USDA's Department-wide [public access policy](#) implemented in [Departmental Regulation 1020-006](#) which establishes the USDA policy for public access to scholarly publications and digital scientific research data assets. The USDA will make all peer-reviewed, scholarly publications and digital scientific research data assets arising from unclassified scientific research supported wholly or in part by the USDA accessible to the public, to the extent practicable.
- T. BUY AMERICA BUILD AMERICA. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

(1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(2) All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and

(3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

*Incorporation into an infrastructure project.* The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

*Categorization of articles, materials, and supplies.* An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

*Application of the Buy America Preference by category.* An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

*Determining the cost of components for manufactured products.* In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product

(whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

(1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

(3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

(5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

(6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers. When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

- (1) applying the Buy America Preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [USDA Buy America Waivers for Federal Financial Assistance](#).

### Definitions

**“Buy America Preference”** means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

**“Construction materials”** means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

- (1) The listed items are:
  - (i) Non-ferrous metals;
  - (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);

- (iii) Glass (including optic glass);
- (iv) Fiber optic cable (including drop cable);
- (v) Optical fiber;
- (vi) Lumber;
- (vii) Engineered wood; and
- (viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

**“Infrastructure”** means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

**“Infrastructure project”** means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

**“Iron or steel products”** means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

U. TRAFFICKING IN PERSONS.

1. Provisions applicable to a Recipient that is a private entity.

- a. You as the Recipient, your employees, Subrecipients under this award, and Subrecipients’ employees may not:
  - (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - (2) Procure a commercial sex act during the period of time that the award is in effect; or
  - (3) Use forced labor in the performance of the award or subawards under the award.
- b. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a Subrecipient that is a private entity:
  - (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

- (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
      - i. Associated with performance under this award; or
      - ii. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),”.
2. Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity:
  - a. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  - b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
    - (1) Associated with performance under this award; or
    - (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),”
3. Provisions applicable to any recipient.
  - a. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - b. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - (2) Is in addition to all other remedies for noncompliance that are available to us under this award.
  - c. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
4. Definitions. For purposes of this award term:
  - a. “Employee” means either:
    - (1) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
    - (2) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  - b. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for

labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- c. "Private entity":
  - (1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - (2) Includes:
    - i. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - ii. A for-profit organization.
- d. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

#### V. DRUG-FREE WORKPLACE.

- 1. Flagstaff agree(s) that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must
  - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
  - b. Specify the actions Flagstaff will take against employees for violating that prohibition; and
  - c. Let each employee know that, as a condition of employment under any award, the employee:
    - (1) Shall abide by the terms of the statement, and
    - (2) Shall notify Flagstaff in writing if they are convicted for a violation of a criminal drug statute occurring in the workplace, and shall do so no more than 5 calendar days after the conviction.
- 2. Flagstaff agree(s) that it will establish an ongoing drug-free awareness program to inform employees about
  - a. The dangers of drug abuse in the workplace;
  - b. The established policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation and employee assistance programs; and
  - d. The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
- 3. Without the Program Manager's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this instrument, or the completion date of this award, whichever occurs first.

4. Flagstaff agrees to immediately notify the Program Manager if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the award number of each award on which the employee worked. The notification must be sent to the Program Manager within 10 calendar days after Flagstaff learns of the conviction.
  5. Within 30 calendar days of learning about an employee's conviction, Flagstaff must either
    - a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
    - b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- W. PROHIBITION AGAINST USING FUNDS WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS.
1. The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
  2. The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
  3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
  4. If the Government determines that the recipient is not in compliance with this award provision, it;
    - a. Will prohibit the recipient's use of funds under this award in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; and
    - b. May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.
- X. ELIGIBLE WORKERS. Flagstaff shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 U.S.C. 1324(a)). Flagstaff shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or supplemental instruments awarded under this award.
- Y. FREEDOM OF INFORMATION ACT (FOIA). Public access to award or agreement records must not be limited, except when such records must be kept confidential and

would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). Requests for research data are subject to 2 CFR 315(e).

Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).

- Z. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, “Federal Leadership on Reducing Text Messaging While Driving,” any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperators, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- AA. PROMOTING FREE SPEECH AND RELIGIOUS FREEDOM. As a recipient of USDA financial assistance, you will comply with the following:
1. Do not discriminate against applicants for sub-grants on the basis of their religious character.
  2. 7 Code of Federal Regulations (CFR) part 16.3(a), Rights of Religious Organizations.
  3. Statutory and National policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, 2 CFR 200.300.
- BB. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. The cooperator (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information.

In accordance with 2 CFR 200.216, the grantee (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:

- (1) procure or obtain, extend or renew a contract to procure or obtain;
- (2) enter into a contract (or extend or renew a contract) to procure; or
- (3) obtain the equipment, services or systems.



**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion  
 Lower Tier Covered Transactions**

*The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a, as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 CFR §§ 180.300, 180.335, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.*

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal or civil fraud, privacy, and other statutes may be applicable to the information provided.*

***(Read instructions on page two before completing certification.)***

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME	PR/AWARD NUMBER OR PROJECT NAME
NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)	
SIGNATURE	DATE

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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### *Instructions for Certification*

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant must provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 CFR Parts 180 and 417. You may contact the Department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it may not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency with which this transaction originated.
- (6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the General Services Administration's System for Award Management Exclusions database.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## **FEDERAL - GRANT PROVISIONS**

The Contractor and its Subcontractor shall comply with the following grant provisions;

### **Applicable Laws**

Compliance with all applicable Federal, State, and Local laws and regulations.

### **Awards to debarred and suspended parties**

The City will not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, ``Debarment and Suspension."

### **Contracting with small and minority firms, women's business enterprise and labor surplus area firms.**

(1) The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

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

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

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

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

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

### **Equal Employment Opportunity**

Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

### **Clean Water and Air Act**

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

### **Energy Policy and Conservation Act**

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 (Pub. L. 94-163, 89 Stat. 871).

### **Resource Conservation and Recovery Act**

Compliance with the Resource Conservation and Recovery Act (RCRA) requires federal agencies to assess the impact that debris, debris removal, hazardous wastes, and hazardous waste clean-up projects will have on air and water quality and take actions to prevent degradation. RCRA gives EPA the authority to control hazardous waste from the "cradle-to-grave" to facilities that generate hazardous materials and sets forth a framework for the management of non-hazardous waste (42 USC, 6901).

## **Conflicts of Interest**

The City (grantee) and Contractor (subgrantees) will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

## **Copyrights**

Reports, maps or other documents produced in whole or in part are works for hire and shall not be the subject of any application for copyright by or on behalf of the Contractor or its Subcontractor. The Contractor shall advise the City or its designee at the time of delivery of any copyrighted or copyrightable work furnished under this Agreement, or any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

## **Patent Fees and Royalties**

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in Funding Agency Contracting Provisions for Construction Projects the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

## **Responsible Contractors**

The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

## **Access and Retention of Records**

Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

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This content is from the eCFR and is authoritative but unofficial.

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## Title 2 – Grants and Agreements

### Subtitle A – Office of Management and Budget Guidance for Federal Financial Assistance

#### Chapter II – Office of Management and Budget Guidance

#### Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

**Authority:** 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

**Source:** 89 FR 30136, Apr. 22, 2024, unless otherwise noted.

#### Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) **NOT APPLICABLE** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal 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. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be

prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- (E) **NOT APPLICABLE** Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

*[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]*