

THE STATE OF TEXAS §
§ **AGREEMENT FOR PUBLIC FACILITY PROJECT**
COUNTY OF DALLAS §

This Agreement for Public Facility Project (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”) and Falkenberg Construction Co., Inc., a Texas corporation (“Contractor”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, City Council awarded a contract to Contractor for the Justice Center Renovation Project (the “Project”) and

WHEREAS, City desires to engage the services of the Contractor as an independent contractor, and not as an employee, to provide the labor, goods, materials, equipment, installation, construction, and services described in the Contract Documents (hereinafter defined) for the Project; and

WHEREAS, the Contractor desires to provide the labor, goods, materials, equipment, installation, construction, and services described in the Contract Documents in accordance with the terms and conditions set forth in this Agreement (hereinafter defined as the “Work”);

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term; Termination

1.1 Term. The term of this Agreement shall commence on the last date of execution hereof (the “Effective Date”) and continue until the completion of the Work by the Contractor, unless sooner terminated as provided herein.

1.2 Termination. This Agreement may be terminated upon any one of the following:

(a) By written agreement of the Parties;

(b) On the date set forth in a written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement, and such breach is not cured within thirty (30) days after written notice thereof; or

(c) On the date set forth in a written notice by City, if the Contractor suffers an event of Bankruptcy or Insolvency (for the purpose of this section, “Bankruptcy or Insolvency” shall mean the dissolution or termination of Contractor’s existence as a going business, insolvency, appointment of receiver for any part of Contractor’s property, and such

appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and such proceeding is not dismissed within ninety (90) days after the filing thereof).

Article II Scope of Work; Contract Documents

2.1 The Contract Documents shall include the documents identified below, which are incorporated herein for all purposes. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence, except that the extent of any irreconcilable conflict between this Agreement and the Contract Document and Specifications (hereinafter defined), the provision most favorable to City or which sets forth the most stringent standards shall control. The following documents shall be referred to collectively as “Contract Documents.”

- A. This Agreement;
- B. The City Request for Proposal No. 24-16 incorporated herein, a copy of which is on file in the office of the purchasing manager (the “RFB”); and
- C. Contractor’s response to Bid No. 24-16 dated March 15, 2024, incorporated herein, a copy of which is on file in the office of the purchasing manager, including alternates 1 through 4 but excluding alternates 5 through 7 (the “Response”).

For the sake of clarification, the Work shall include on the base bid work described in the RFB including Alternates 1 through 4 and excluding Alternates 5 through 7.

2.2 Contractor shall perform the Work (hereinafter defined) as set forth in the Contract Documents. Contractor does not warrant the accuracy and sufficiency of the Contract Documents.

Article III Project Scope of Work

3.1 General. Contractor shall perform the “Work “required, implied, or reasonably inferable from the Contract Documents. The term “Work “ shall mean whatever is done by the Contractor or required of the Contractor to perform and complete its duties under this Agreement, including, but not limited to, the furnishing of any requested bonds and insurance and the provision and furnishing of labor, supervision, goods, services materials, tools, fuel, power, light, heat, cooling, telephone, water, sanitary facilities, transportation, equipment, licenses and permits required by this Agreement necessary unless otherwise specified in the Contract Documents.

3.2 Notice to Proceed. Contractor shall not commence the Work necessary until receipt of a written notice to proceed from the City, unless otherwise provided in the Contract Documents. Contractor shall commence the Work required under the Contract Documents within ten (10) calendar days after receipt of the City's written notice to proceed. Any Work performed or expenses incurred by Contractor prior to Contractor receipt of the written notice to proceed shall be at the sole risk and cost of the Contractor and shall not be eligible for payment by City under the Contract Documents. The Contractor shall commence the Work within ten (10) calendar days after receipt of a written Notice to Proceed and shall achieve Substantial Completion of the Work no later than fifty-one (51) weeks from the date specified in the Notice to Proceed. The Parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean all days of the week or month, no days being excepted. "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the City can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required. Contractor shall not be liable for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

3.3 Concealed or Unknown Conditions. If Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents; or (3) unknown or concealed physical conditions that Contractor should not reasonably have known or anticipated (each an "Unknown Condition"), Contractor shall provide notice of the Unknown Condition to City. If the Unknown Condition is of a nature that requires temporary cessation of the Work in order to either abate the Unknown Condition or redesign the Work in order to complete the performance of the Work and, thereby, increasing the time necessary to complete the Work, the Parties agree to negotiate a Change Order in accordance with Section 3.5 to reflect a reasonable increase in time and or compensation to complete the Work.

3.4 Hazardous Materials. Contractor shall not be responsible for liability arising out of the discovery or presence of Preexisting Hazardous Materials. "Preexisting Hazardous Materials" means those hazardous materials present on, below, or about the Project site as of the Effective Date. Preexisting Hazardous Materials include, without limitation, asbestos, lead paint, polychlorinated biphenyl (PCBs), mold, petroleum products, and any other material or substance known to have adverse health risks. Should Contractor discover a Preexisting Hazardous Material during the Project, Contractor may stop the Work and notify City of such condition. The discovery of Preexisting Hazardous Materials shall be treated as an Unknown Condition as set forth in Section 3.3, in which case the Parties shall comply with Section 3.3 with respect to the resolution of the Preexisting Hazardous Materials.

3.5 Change Orders.

(a) City, may from time to time, authorize change orders after the performance of the Work under the Contract has commenced necessary to decrease, increase the quantity of Work to be performed or materials, equipment or supplies to be furnished by the Contractor. The process for change orders shall be governed by Project specifications.

(b) The execution of a change order by the Contractor shall constitute the Contractor's agreement to the ordered changes to the Work under the Contract Documents. Contractor, by executing the change order, waives and releases any claim against the City for additional time or compensation relating to the Work included in the change order other than the additional time or compensation contemplated in the change order.

(c) Any Work performed or expenses incurred by Contractor prior to execution of the approved change order shall be at the sole risk and cost of the Contractor and shall not be eligible for payment by City under the Contract Documents.

3.6 Bonds. Contractor shall provide payment bonds and performance bonds for the Project to ensure completion of the Project pursuant to Chapter 2253, Texas Government Code. Contractor shall provide one (1) maintenance bond for the value of completed work for a period of one (1) year following completion of the Project in favor of City for the Project in accordance with City requirements and regulations pertaining to maintenance bonds for public improvements. During the term of this Agreement and any applicable Maintenance Bond period, Contractor agrees to respond to City requests deemed "warranty " within five (5) business days for non- emergency issues, and within twenty-four (24) hours, for emergencies, which is defined as any instance that poses a hazard to building occupants, visitors, guests, and the public, and any instance if when left unrepaired, will cause damage to any portion of the City building or facility.

3.7 Cleaning the Project Site. Contractor shall cause the Project site to be kept reasonably clean during performance of the Project Work. Upon completion of the Project Work, Contractor shall cause the Project site to be cleaned and cause the removal of all waste, rubbish, temporary structures, and other materials together with all of Contractor's property therefrom. Contractor shall cause the disposal of all refuse at a Texas Natural Resource Conservation Commission approved landfill. Contractor shall cause the restoration of all property damaged during the prosecution of the Project Work and shall leave the Project site in a clean and presentable condition. No additional payment shall be made by the City for this work, the compensation having been considered and included in the Project Price.

3.8 Access to Work and Inspections. City and the State of Texas, and their respective representatives, shall have access to the Project Work at all times. The Contractor shall take whatever steps reasonably necessary to provide such access when requested. When reasonably requested by the City, the Contractor shall perform or cause to be performed such testing as may be reasonably necessary or reasonably appropriate to ensure suitability of the jobsite or the compliance of the Project Work with the Contract Documents.

3.9 City shall furnish all surveys describing physical characteristics or legal limitations for the Project site as reasonably requested by Contractor. Contractor shall be entitled to rely on the accuracy of the information furnished by City.

3.10 Suspension or Stoppage of Work.

(a) City shall have the right to immediately suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for failure of the Contractor to carry out the instructions from the City or if City may on account of subsequently discovered evidence that Contractor has, or will fail to perform, in accordance with this Agreement. In such event, any payments due to the Contractor shall be suspended until Contractor has taken satisfactory corrective action. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the Project site and the Work from damage, loss, or harm. Contractor shall not be compensated for periods of delay caused by suspension of Work by City. If Work is suspended due to no fault of Contractor, an extension of time and reasonable compensation limited to Contractor rental costs and or demobilization and remobilization costs shall be granted by City by change order upon written application, which extension shall not be unreasonably denied.

(b) If Contractor persistently fails or refuses to perform the Work in accordance with this Agreement, or if City has sufficient reason to believe that Contractor is not and will not complete the Work by the scheduled date for completion or if the best interests of the public health, safety or welfare so require, City may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order with exception to Suspension or Stoppage of Work being wholly caused by City.

(c) If the Contractor's Work is stopped by the City under Paragraph 3.10, or in the event the Contractor does not timely complete the Punch List items, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the City that the cause of such stoppage will be eliminated or corrected, or as applicable the Punch List Items will be timely completed then the City may, without prejudice to any other rights or remedies the City may have against the Contractor, proceed to carry out the subject Work and/or Punch List items, as applicable. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of completing the Punch List items, and the costs of correcting the subject deficiencies, plus compensation for any engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Contractor shall pay the difference to the City.

3.11 Contractor Representations. Contractor represents and covenants that its Workforce can perform the Work for the Project and agrees to work simultaneously with any representatives assigned by or contracted by the City, as a part of the Project to ensure continuity of Project Work.

3.12 Contractor Representative. Contractor agrees to provide a representative on the Project site at all times Work is being performed, for communication with the City, receiving materials and equipment, directing Contractor's Work, and providing Project clean-up, as necessary.

3.13 Compliance with Applicable Law. Contractor shall, and shall cause its employees and sub-contractors to, comply with all personnel safety programs applicable for the Project Work and to keep the Project area clean and free from debris on a daily basis, and to keep noise and obnoxious odors to a minimum. Personnel safety programs include, but are not limited to, protective eyewear; protective clothing; appropriate footwear; ear protection; hard hat, and reflective vest. Project protection includes warning devices such as barricades, lights, signs, and other such devices as may be appropriate or required by the City to protect persons or property in, near, or adjacent to the Project site. Such property includes landscape, irrigation, walkways, doors/frames, glass, elevators, furniture, and fixtures. The Contractor shall comply with all applicable federal, State, and local laws regarding occupational safety and health, as well as providing protection of the environment. This shall include, but is not limited to, compliance with the U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and the U.S. Environmental Protection Agency (EPA) guidelines and regulations.

3.14 Project Work Disturbance. In the event Project work by the Contractor and/or its subcontractors disrupts any City service, causes damage to City property, or causes harm to any person, Contractor agrees, at its sole cost and expense, to immediately contact the City Project Manager, while providing appropriate emergency response including, but not limited to, calling police, fire and/or the appropriate utility company regarding service.

3.15 Walk Through and Punch-List. When Contractor believes the Work is substantially complete, Contractor shall notify City in writing that the Work is substantially complete and request the City inspect the Work. The Contractor agrees to perform a walk-through of the Project with the City, upon completion of the Work, and City agrees to establish a punch-list of items required for final City acceptance of the Work. Contractor further agrees to complete all punch-list items within twenty-one (21) business days after issuance of the punch-list, unless otherwise provided in the Contract Documents. Failure to complete Project and/or the punch-list within this timeframe shall result in liquidated damages being assessed against Contractor, in accordance with section 4.4.

3.16 Criminal Backgrounds. From time to time, at its sole discretion, the City may require criminal background checks on Contractor and its employees (and its sub-contractors and its employees) who will be performing after-hours Work, and/or require access to Public Safety or City facilities, technology rooms, or secure areas. Criminal background checks are conducted in accordance with Department of Public safety regulations at no charge to the Contractor. All information obtained as part of the criminal background process is kept strictly confidential. Contractor agrees to submit and cause its employees (and to cause its sub-contractor and its employees) to the criminal background process, if required by the City. All decisions regarding Contractor and its employees (and its sub-contractor and its employees) access to City facilities are final.

3.17 Contractor Conduct. Contractor (and its sub-contractors) representatives, and employees shall conduct themselves in a professional and workmanlike manner at all times when performing the Work and on the Project site, including wearing appropriate clean work attire consistent with the type of work being performed, and hard hat, reflective vest, and protective eyewear when required by the Contract Documents. The use of any tobacco product, including smokeless tobacco, vapor, and E-cigarettes, inside City facilities is prohibited. Smoking is permitted outside of City facilities, in designated smoking areas, if at least fifty (50) feet from any facility door. City shall cause the removal of, and, to require Contractor to remove Contractor's (and its sub-contractor's) employees from the Project site if in violation of the foregoing standards.

3.18 Prevailing Wage Rates. The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances, or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen, and persons furnishing labor and services to the Project. City has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Agreement. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the Owner of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by City, Contractor shall make available for inspection and copying its books and records at Contractor's corporate Office provided such location is in Dallas, County, Texas. including, but not limited to, its payroll records, account information and other documents as may be required by the City to ensure compliance with this provision.

3.19 All laborers and mechanics employed by contractors or subcontractors on the project shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the U.S. Secretary of Labor, regardless of contractual relationship. Wages must be paid weekly.

3.20 Domestic preference is recommended for materials and supplies.

3.21 All laborers and mechanics employed by Contractor or subcontractors on the Project shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the U.S. Secretary of Labor, regardless of contractual relationship. Wages must be paid weekly. When required by Federal program legislation, Contractor agrees that, for the City's prime construction contracts/purchases in excess of \$2,000, Contractor shall comply with the Davis-Bacon Act (40 USC 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, Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, Contractor shall pay wages not less than once a week. Current prevailing wage determinations issued by the Department of Labor are available at www.wdol.gov. Contractor agrees that, for

any purchase to which this requirement applies, the award of the purchase to the Contractor is conditioned upon Contractor's acceptance of the wage determination.

3.22 Contractor further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 USC 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.

3.23 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 government-wide 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 1966 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. Contractor certifies that Contractor is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractor further agrees to immediately notify the Owner if Contractor is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

3.24 Contract Work Hours and Safety Standards Act. Where applicable, for all of the Owner's contracts or purchases in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, Contractor is 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 USC 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."

3.25 Byrd Anti-Lobbying Amendment (31 USC 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 USC 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. As applicable, Contractor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

3.26 For contracts funded in whole or part with Federal Grant Funds the Contractor shall comply with the Contract Rider attached hereto as Exhibit "A".

Article IV Compensation and Method of Payment

4.1 General.

(a) Contract Price. City shall pay, and Contractor shall accept, as full and complete payment for the Work required under the Contract Documents a total amount not to exceed One Million Seven Hundred Thirty-One Thousand Nine Hundred Twenty-One and No/100 Dollars (\$1,731,921.00) to be paid as set forth herein (the "Contract Price"), which includes One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) Project Contingency and Alternates 1 through 4, and excludes Alternates 5 through 7.

(b) Payment of the Contract Price. Unless otherwise provided in the Contract Documents the Contractor shall be paid within thirty (30) days after substantial completion of the Work with the amount of Retainage (hereinafter defined) being withheld.

4.2 Retainage. An amount equal to ten percent (10%) of the Contract Price shall be retained by City if the Contract Price is less than Four Hundred Thousand Dollars (\$400,000.00) and five percent (5%) if the Contract Price is Four Hundred Thousand Dollars (\$400,000.00) or more ("Retainage"), and shall be paid over by City to Contractor as the final installment of the Contract Price after the following has occurred to the reasonable satisfaction of City:

(a) Contractor shall have completed all punch-list items, if any.

(b) City shall have conducted a final inspection and has accepted the Work.

(c) City shall have received a completion certificate executed by Contractor and the City's inspector stating that the Work has been completed in accordance with the Contract Documents, together with such other evidence that no mechanics or materialmen's liens or other encumbrances have been filed against the Work or the Project.

(d) Contractor shall have delivered and assigned (or caused to be delivered and assigned) all warranties and maintenance bond(s) for the Work to the City.

(e) Submittal of executed Contractor's affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property, might be responsible, have been fully paid or otherwise satisfied.

(f) Contractor shall deliver to City, one (1) set of as-built prints and one (1) set of electronic Portable Document Format (PDF) files, with all construction variances and utility location changes noted.

(g) If applicable, a set of record (“as built”) drawings, professionally prepared by a licensed engineer, in hardcopy, PDF digital and CAD digital formats in accordance with the current standards set forth by City Engineering Department, unless otherwise provided in the Contract Documents or otherwise approved by the Director of the City.

(h) Removed all materials, equipment, tools, and supplies, not required to remain on- site as indicated by the City, including storage containers, lifts, trash receptacles, and dumpsters.

(i) Re-established the Project site to its original condition including, but not limited to, furniture, fixtures, equipment, finishes, landscaping, irrigation, and/or any concrete, disturbed by Contractor’s work.

(j) Return of keys and/or security cards issued to Contractor for Project access.

4.3 Project Records and Audits. Contractor shall keep, and cause each sub-contractor to keep, a complete and accurate record to document the performance of the Work and to expedite any audit that might be conducted by City. Contractor shall maintain, and cause each contractor to maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement for the Work; and Contractor shall make, and cause each contractor to make such materials available to City for review and inspection during the term of this Agreement and for a period of two (2) years from the date of City acceptance of the Work, or until any pending litigation or claims are resolved, whichever is later.

4.4 Liquidated Damages. Contractor shall pay to City the sum of Five Hundred and No/100 Dollars (\$500.00) per day for each and every day of unexcused delay in achieving completion of the Work beyond the date set forth for completion of the Work, including the completion of all Punch-List items identified by the City following substantial completion. Any sums shall be payable hereunder by Contractor, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by City, estimated at or before the time of execution of this Agreement. The Contractor shall commence the Work within ten (10) calendar days after receipt of a written Notice to Proceed and shall achieve Substantial Completion of the Work no later than 365 calendar days from the date specified in the Notice to Proceed. The Parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term “calendar days” shall mean all days of the week or month, no days being excepted. When City reasonably believes that the Work will be delayed, City shall be entitled, but not required, to withhold from any amounts otherwise due Contractor an amount then reasonably determined by City to be adequate to recover liquidated damages applicable to such delays. If and when Contractor overcomes the delay in achieving the completion of the Work, or part thereof, for which City has withheld payment, City shall promptly release to Contractor those funds withheld as

liquidated damages. Upon dispute between City and Contractor on what determines an excused or unexcused delay, the Architect after consultation with City shall have the sole discretion to determine whether a delay is excused, or unexcused, and such determination shall be final.

4.5 No Damages for Delay. No claim shall be made by the Contractor to City, and no damages, costs or extra compensation shall be allowed or paid by City to Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Agreement except for what is allowed by Texas Property Code. The Contractor's sole remedy in the event of any delay or hindrance, Contractor shall be entitled to time extensions and remobilization costs if delay is considered excused, by written change order. Should the Contractor be delayed by an act of City, labor strike, pandemic, or government-mandated shutdown or should City order a stoppage of the Work for insufficient cause, an extension of time shall be granted by the City by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

Article V Devotion of Time; Personnel; and Equipment

5.1 Contractor shall devote such time as reasonably necessary for the satisfactory performance of the Work under this Agreement. Should the City require additional services not included under this Agreement, Contractor shall make reasonable efforts to provide such additional services within the time schedule without decreasing the effectiveness of the performance of the Work required under this Agreement and shall be compensated for such additional services on a time and materials basis, in accordance with Contractor's standard hourly rate schedule, or as otherwise agreed in writing by the Parties.

5.2 To the extent reasonably necessary for the Contractor to perform the Work under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the Work under this Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Contractor hereunder and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 Contractor shall furnish the facilities, equipment, and personnel necessary to perform the Work required under this Agreement unless otherwise provided herein, without relying on City resources for water, sewage disposal, cleaning, or any other waste disposal.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Contractor may not assign this Agreement, without the prior written consent of the City.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All Work to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor shall supervise the performance of its work and services and shall be entitled to control the manner and means by which its work and services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail or overnight courier to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City, to:

Attn: City Manager
City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

Attn: Peter G. Smith
City Attorney
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

If intended for Contractor, to:

Attn: John Castro, President
Falkenberg Construction Co., Inc.
2435 109th Street
Grand Prairie, Texas 75050

6.9 Insurance.

(a) Contractor shall (and shall cause its subcontractors) during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage, and minimum aggregate limit of not less than \$2,000,000.00 (this policy shall be primary to any policy or policies carried by or available to City and shall include products/completed operations coverage with a minimum aggregate of \$2,000,000.00 and personal and advertising injury coverage with a minimum occurrence limit of \$1,000,000.00); (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance and shall include bodily injury, occupational illness or disease coverage with Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000 covering all of Contractor's employees involved in the provision of services under this Agreement and shall contain an Alternate Employer Endorsement to include the City being named an Alternate Employer under the Workers Compensation policy. A copy of the endorsement shall be provided to the City and attached to the Certificate of insurance signed by person authorized by the insurer to confirm coverage on its behalf; and (iv) Policy of Property/Builders Risk Insurance Policy with "all-risk" coverage on the entire Project construction value with replacement cost basis of the Project work and materials in transit and stored off the Project site destined for incorporation.

(b) All policies of insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; and (3) provide for

a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. Contractor shall provide written notice to the City of any material change to the insurance required herein.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.

(d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of the Work and upon request by the City.

(e) Contractor shall cause its subcontractors performing the Work to obtain and maintain the insurance coverages as required in Section 6.9 (a) – (d) herein, which shall remain in full force and effect during the term of this Agreement.

6.10 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE WORK OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS “CITY”) FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY’S OBLIGATIONS HEREUNDER. CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS’ FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE CONTRACTOR’S NEGLIGENT PERFORMANCE OF THE WORK UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS, SUBCONTRACTORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL DEFEND AND INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE CONTRACTOR’S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY DEFENDS, INDEMNIFIES AND HOLDS HARMLESS CITY FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS,

AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, INCURRED BY CITY IN CONNECTION WITH ANY ACTION AGAINST CITY FOR PERSONAL INJURY OF ANY EMPLOYEE OF THE CONTRACTOR OR ANY OF CONTRACTOR'S SUB-CONTRACTORS AND CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED OR CONTROLLED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OF CITY.

6.11 Debarment and Suspension.

(a) In accordance with 2 CFR section 180.300, the principal of this Agreement as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.

(b) If during the Agreement period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City.

(c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors and will inform the City of any violations of this section by subcontractors to the contract.

(d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.12 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.13 Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

(a) Contractor verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

(b) Contractor verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.

(c) Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

(d) This section does not apply if Contractor is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2024.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Benjamin W. Williamson, City Manager

ATTEST:

By: _____
Stacy Henderson, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED this _____ day of _____, 2024.

FALKENBERG CONSTRUCTION CO., INC.

By: _____
Jack Castro, President

EXHIBIT "A"

CONTRACT RIDER FOR CONTRACTS FUNDED IN WHOLE OR PART WITH FEDERAL GRANT FUNDS

This Contract is funded in whole or in part by federal grants. Procurements in excess of the Simplified Acquisition Threshold must contain terms and provisions required under federal procurement guidelines, 2 CFR Part 200, Appendix II. This is an acknowledgement that federal funds will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, policies, procedures, and directives. The provisions of this Contract Rider will supersede any conflicting provision of the Contract Documents.

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

Equal Employment Opportunity

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements 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 by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 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 No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

EXHIBIT "A"

7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Taking reasonable efforts to award subcontracts to be performed by eligible businesses located in or owned by residents of the City; and
6. 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.

Davis-Bacon Act Compliance

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. *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

Minority/Women's Business Enterprises

The Contractor must make every effort and take all necessary affirmative steps to use local business firms and must contract with and assure that small, minority-owned, and/or women-owned businesses 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 as potential sources;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

EXHIBIT "A"

mechanics, subject to the provisions 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 hereinafter. 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 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 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

EXHIBIT "A"

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 asset for the meeting of obligations under the plan or program.

3. *Withholding.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from 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 City 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.

4. *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 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 agency on request. 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

EXHIBIT "A"

and current address of each covered worker, and shall provide them upon request to the 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 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 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 section available for inspection, copying, or transcription by authorized representatives of the City 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.

5. *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

EXHIBIT "A"

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.
6. *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.
7. *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

EXHIBIT "A"

compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

8. *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.
9. *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.
10. *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.
11. *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.

Copeland "Anti-Kickback" Act.

1. *Contractor.* The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or appropriate 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 of these contract clauses.

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

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 above, 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 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 City or appropriate federal agency 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

EXHIBIT "A"

liquidated damages as provided in the clause set forth in this section.

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

Federal Clean Air Act; Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance or grants.
4. 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.
5. The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.
6. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance or grants.

Suspension and Debarment

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 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). (

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer (contractor) agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 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.

In submitting a bid in response to this Invitation, and in accordance with 2 CFR section 180.300, the principal of this contract as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies. If during the contract period the contractor or its principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the Contractor or principal shall immediately inform the City. The principal agrees that this section will be enforced on each of its subcontractors and will inform the City of any violations of this section by subcontractors to the contract. The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

Byrd Anti-Lobbying Act; Contractor Certification

The contractor, by execution of the Contract, certifies, to the best of his or her knowledge and belief, that:

1. 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

EXHIBIT "A"

- 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal 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.
 3. 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. Code. 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. Signature of Contractor's Authorized Official
2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

Covered Telecommunications or Video Surveillance Services

1. *Definition of covered telecommunications equipment.* For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, and as described in Public Law 115-232, covered telecommunications equipment is:
 - i. telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
2. *Prohibitions.* The contractor is prohibited from obligating or expending loan or grant funds 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

Recovered Materials Procurement

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

EXHIBIT "A"

- essential component of any system, or as critical technology of any system; or
- 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.
- iv. Unless an exception in this section applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee federal funds through this Contract to:
- (a) 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;
 - (b) 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;
 - (c) 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
 - (d) 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.
3. *Exceptions.*
- i. This section does not prohibit contractors from providing:
 - (a) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (b) 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.
 - ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - (a) Covered telecommunications equipment or services that are not used as a substantial or essential component of any system; and are not used as critical technology of any system.
 - (b) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
4. *Reporting requirement.*
- i. 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 this section to the City, unless elsewhere in this contract are established procedures for reporting the information.
 - ii. The Contractor shall report the following information pursuant to the foregoing subsection:
 - (a) 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.
 - (b) Within 10 business days of submitting the above information: Any further available information about mitigation actions

EXHIBIT "A"

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 telecommunications equipment or services.

5. *Subcontracts.* The Contractor shall insert the substance of this section, including this subsection, in all subcontracts and other contractual instruments.”

Preference for Domestic Products

1. 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 (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section should be included in all subcontracts including all contracts and purchase orders for work or products under this Contract.
2. For purposes of this section:
 - i. “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.
 - ii. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Federal Acknowledgements

1. 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.
2. 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.

Compliance with other laws and certification of eligibility to contract.

Any offer to contract with the City shall be considered an executed certification that the Contractor will comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court, administrative bodies or tribunals in any matter affecting the performance of the Contract, including without limitation, immigration laws, workers’ compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations.

Liability and Indemnity of City.

Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party’s rights, defenses, remedies, or immunities that would exist by law in the absence of the provision. (Section 5, Article XI, Texas Constitution).

Indemnity and Independent Contractor Status of Contractor.

Contractor shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney’s fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the Contract and/or arising out of a willful or negligent act or omission of the Contractor its officers, agents, and employees. It is understood and agreed that the Contractor and any employee or subcontractor of Contractor shall not be considered an employee of the City. The Contractor shall not be within the protection or coverage of the City’s workers’ compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all Contractor’s employees, representatives, or subcontractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City or is found to interfere with the effective and efficient operation of the City’s workplace.

Confidentiality.

EXHIBIT "A"

Any provision in the Contract that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Texas law is invalid. (Chapter 552, Texas Government Code).

Governing Law and Venue.

Texas law governs this Contract and any suit arising under this Contract must be filed in a court of proper jurisdiction in Dallas County, Texas, or in Ellis County if the job site is situated in Ellis County.

Certificate of Interested Parties (Texas Ethics Commission Form 1295).

1. For contracts that require City council approval or that is for services that would require a person to register as a lobbyist under Chapter 305 of the Texas Government Code, the City may not accept or enter into a contract until it has received from the contractor a completed and signed Texas Ethics Commission (TEC) Form 1295 complete with a certificate number assigned by the (TEC), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The contractor understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering the Contract.
2. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and provided to the City. The TEC Form 1295 may accompany the bid or may be submitted separately but must be provided to the City prior to the award of the contract. Neither the City nor its consultants have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising any potential the contractor with respect to the proper completion of the TEC Form 1295.

Conflicts of Interest

Chapter 176 of the Texas Local Government Code requires that any Bidder or person considering doing business with a Local Government entity, disclose in the CIQ questionnaire form, the Bidder or person's affiliation or business relationship that might cause a Conflict of Interest. The CIQ form shall be submitted with the Bidder's completed Bid Packet. Failure to

submit any form under this Section shall result in the Bid being considered non-responsive.

The Bidder shall further certify (a) that its bid submittal is genuine and is not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation; (b) that he/she has not directly or indirectly induced or solicited any other respondent to put in a false or sham bid; (c) that he/she has not solicited or induced any other person, firm, or corporation from proposing; and (d) that he/she has not sought by collusion to obtain for him/herself any advantage over any other respondents or over the City.

The Contractor shall file an updated completed CIQ questionnaire with the City's appropriate records administrator not later than the seventh business day after the date on which the Contractor becomes aware of an event that would make a statement in the previously filed CIQ questionnaire incomplete or inaccurate.

Energy Boycott.

In accordance with Chapter 2274, Texas Government Code (Acts 2021, 87th Leg., S.B. 13), the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that the company: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The signatory executing the Contract on behalf of the contractor verifies that the contractor does not boycott energy companies and will not boycott energy companies during the term of the Contract. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and does not apply if the City determines the requirements of Subsection 2274.002(b) are inconsistent with the City's constitutional or statutory duties related to the issuance, incurrence or management of debt obligations or the deposit, custody, management, borrowing or investment of funds.

Firearms.

In accordance with Chapter 2274, Texas Government Code (Acts 2021, 87th Leg., S.B. 19) the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that the company: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a

EXHIBIT "A"

firearm entity or firearm trade association. The signatory executing the Contract on behalf of the contractor verifies that the contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and does not apply if the City contracts with a sole-source provider or if the City does not receive any bids, if applicable, from a company that is able to provide the required verification.

Critical Infrastructure.

In accordance with Chapter 2274, Texas Government Code, the City may not enter into a contract or agreement with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more (1) if the company would be granted direct or remote access to or control of critical infrastructure in Texas, excluding access specifically allowed by the City for product warranty and support purposes and (2) if the City knows the company is (A) owned by or the a majority of stock or other ownership interest of the company is held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of such countries, or (B) headquartered in such countries. The signatory executing the Contract on behalf of the contractor represents that neither The contractor nor any of its parent companies, wholly owned subsidiaries, majority-owned subsidiaries, and other affiliates is a company of which the City may not contract pursuant to Section 2274.0102, Texas Government Code. The foregoing verification is made solely to comply with Section 2274.0102, Texas Government Code.

Anti-Boycott Israel Verification.

In accordance with Chapter 2271, Texas Government Code, the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing the Contract on behalf of the contractor verifies that the contractor and its parent company, wholly owned

subsidiaries, majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent the Contract is a contract for goods or services, will not boycott Israel during the term of the Contract. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The signatory understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the signatory and exists to make a profit. This section does not apply to a contractor that is a sole proprietorship and/or which has less than 10 full-time employees. This section does not apply to a contract valued at less than \$100,000.

Iran, Sudan, and Foreign Terrorist Organizations.

The signatory executing the Contract on behalf of the contractor represents that neither the contractor nor any of its parent company, wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable federal law and excludes the entity and each of its parent company, wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The signatory understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the signatory and exists to make a profit.

EXHIBIT "A"

ACKNOWLEDGED AND AGREED:

CONTRACTOR

By

(Signature)

(Type/Print Name)

(Title)