

Attachment “E”
Supplemental Conditions for
Community Development Block Grant- Disaster Recovery Contracts

Compliance with Applicable Laws and Acts. This Project is being partially funded with Community Development Block Grant funds provided to the City of San Marcos, hereinafter known as “the City” by the United States Department of Housing and Urban Development (“HUD”).

The Contractor shall comply with all applicable federal, state and local laws, regulations and ordinances related in any way to this Contract. Without limiting the foregoing, the Contract is subject to 24 C.F.R. Part 5 and all applicable legal authorities cited therein. Contractor shall notify the City in writing of any failure to comply with applicable laws, regulations, or ordinances, where such failure affects in any way Contractor’s ability to provide service(s) under this Contract.

Without limiting the foregoing, Contractor shall comply with the following statutes and regulations as they may apply:

- A. Workers Compensation laws.
- B. Minimum and maximum salary and wage statutes and regulations, including but not limited to:
 - a. Fair Labor Standards Act of 1938, as amended;
 - b. Equal Pay Act of 1963, PL 88-38;
 - c. The Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 C.F.R. Part 5);
 - d. Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 C.F.R. Part 5); and
 - e. All other applicable regulations implementing the above laws.
- C. Non-discrimination statutes and regulations, including but not limited to:
 - a) Title VII of the Civil Rights Act of 1964, as amended;
 - b) Section 504 of the Rehabilitation Act of 1973, as amended;
 - c) The Age Discrimination Act of 1975, as amended; and
 - d) All applicable regulations implementing the above laws.

Section 1. Required Registrations. The Federal Funding Accounting and Transparency Act requires any consultant or contractor providing services in connection with projects receiving CDBG-DR funding to obtain a Data Universal Numbering System (“DUNS”)

Section 2. Termination for Cause and for convenience.

- A. The contract, when executed, may be terminated by either party upon 10 calendar days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- B. The City may terminate this Contract for convenience and without cause upon at least 7 calendar days prior written notice to the Contractor. In the event of termination for convenience, the City may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Purchasing Manager:
 - a. Any completed supplies and/or partially completed supplies and materials that the Contractor has specifically produced or specially acquired for the performance of the terminated part of the agreement.
 - b. Upon such termination the Consultant will:

- i. Stop work to the extent specified; ii. Terminate any subcontractors as they relate to the terminated work; iii. Be paid for all work performed to date;
- c. The Contractor will not be paid for any work performed or costs incurred that reasonably could have been avoided.

Section 3. Copeland Anti-Kickback Act Compliance. The Contractor shall comply with the requirements of 40 U.C.S. 3145, as supplemented by 29 C.F.R. Part 3 (the Copeland Act). The “Anti-Kickback” section of the Act precludes a contractor or subcontractor 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. All suspected or reported violations must be reported to HUD.

Section 4. Civil Rights / ADA Compliance. The Contractor shall provide all work required under this Contract in a manner that complies with the Civil Rights Act of 1964, as amended, Title VII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 120107, and 12086.

- A. The Contractor shall not discriminate against any employee or applicant for employment based on race, color, sex, age, religion, national origin or disability. Contractor also agrees that Contractor will not discriminate against any individual or group based on race, color, sex, age, religion, national origin, or disability and in accordance with 42 U.S.C.A. Section 53.09, 24 C.F.R. Parts 1, 6 and 8 as they relate to discrimination, 41 C.F.R. Part 60 and Executive Order No. 11246 as amended by Executive Order 11375, and all other applicable federal, state, and local Equal Employment Opportunity and Affirmative Action rules, regulations and laws.
- B. The Contractor shall comply with 42 U.S.C.A. Section 53.09 and 24 C.F.R. Parts 1, 6 and 8 as they relate to no discrimination, Executive Order 11246 titled “Equal Employment Opportunity” as amended by Executive Order 11375 (41 C.F.R. Part 60); and all other applicable federal, state and local Equal Employment Opportunity and affirmative action rules, regulations and laws.
- C. The Contractor, with regard to work performed by it during the term of this Contract, shall not discriminate on the grounds of race, color, sex, age, religion, national origin or disability.
- D. The contractor agrees to comply with all Federal regulations issued pursuant to compliance with 504 of the Rehabilitation Act of 1973 (29 U.S.C. 7940 which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program.
- E. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this Contract and the regulations relevant to non-discrimination on the grounds of race, color, sex, age, religion, national origin, or disability.
- F. The Contractor shall provide all information and reports necessary for the City to comply with applicable HUD regulations and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by HUD or the City to be pertinent to ascertain compliance with HUD regulations.
- G. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City and shall set forth what efforts it has made to obtain the information.

Section 5. Equal Opportunity: The Contractor hereby agrees to comply with Equal Opportunity Laws, except as otherwise provided under 41 CFR Part 60, for all work that meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3.

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

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. 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.
- D. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the said labor union or workers' representatives of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant order of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures

authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- H. The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 6. Certification of Eligibility. Contract awards cannot 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 and 12689. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By submitting a bid or proposal in response to the Request for Quote/Proposals, the Contractor certifies that at the time of submission, he/she/it is not on the federal government's list of suspended, ineligible, or debarred contractors.

- A. In the event of placement on the list between the time of bid/proposal submission and time of contract award, the bidder/proposer shall immediately notify the City.
- B. Contractor certifies that its contractors and subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- C. Placement of Contractor on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify the City as required may result in the termination of this Contract for default.
- D. The Contractor shall furnish a copy of the certification in accordance with 24 C.F.R Part 24 (Debarment and Suspension) to the City of San Marcos with the bid packet.

Section 7. "Section 3" Clause

Provisions are applicable to covered projects for which the amount of HUD assistance exceeds \$200,000 and/or the contract or subcontract exceeds \$100,000.

- A. Compliance
Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the Contractor and any of the Contractor's Contractors and subcontractors. Failure to fulfill these requirements shall subject the City, the Contractor and any of the Contractor's Contractors and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Contractor further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Contractor further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Contractor certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

Section 8. Subcontractors.

- A. The Contractor shall not permit any subcontractor to perform any work included in the Project until the Contractor has verified the Subcontractor as eligible to participate in federally funded contracts.
- B. No proposed contractor will be disapproved by the City except for cause.
- C. The Contractor will be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them.
- D. The Contractor will cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the Contract.
- E. Nothing contained in the Contract will create any contractual relationship between any subcontractor and the Owner.

Section 8. Non-Segregated Facilities. [Applicable to contracts exceeding \$10,000.00]

- A. The Contractor certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments; and that it does not and will not permit its employees to perform any of their services at any location, under its control, where segregated facilities are maintained. As used in this paragraph the term “segregated facilities” means waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or nation origin because of habit, local custom or otherwise.

- B. The Contractor further certifies that (except where it has obtained identical certification from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000.00 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:
- a) Obtain identical certifications from the proposed subcontractors;
 - b) Retain the certifications in its files; and
 - c) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

Notice to Prospective Subcontractors of Requirement for Certifications of Non-Segregated Facilities

A Certification of Non-Segregated Facilities must be submitted before the award of a subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The Certification may be submitted either for each subcontract or for all subcontractors during a period (i.e. quarterly, semi-annually, or annually).

Section 9. Non-Collusion Certification. The Contractor certifies that the bid covered in this Contract is made without collusion with any other person, firm or corporation.

Section 10. Organizational Conflicts of Interest Certification. The Contractor certifies that to the best of his/her knowledge and belief and except as otherwise disclosed, he/she does not have any organizational conflict of interest which is defined as a situation in which the nature of the work to be performed under this Contract and the Contractor's organizational, financial, contractual or other interests may, with some restriction on future activities:

- A. Result in an unfair competitive advantage to the Contractor; or B.
- Impair the Contractor's objectivity in performing the Contract work.

The Contractor agrees to abide by the provisions of 2 CFR 200.318(c) which states: *No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity [City] may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.*

Section 11. Maintenance of and Right of Access to Records.

- A. The Contractor shall maintain all books, documents, papers, accounting records, other records and other evidence directly pertaining to the work performed under this Contract, including the Exhibits and Attachments hereto, and costs and expenses of such work. With respect to accounting records, the Contractor shall maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, including source documentation such as cancelled checks, paid bills, payrolls, time and attendance records, Contract award documents, and other documentation as required by the City.
- B. The records described in Paragraph 1 above shall be maintained during the Contract period and for four (4) years after receipt of final payment and all other pending matters are closed, whichever occurs last.

- C. At no expense to the Owner or the City of San Marcos, HUD, the Comptroller General of the United States or any of their duly authorized representatives shall have access to the records described in Paragraph 1 above for purposes of making audits, examinations, excerpts and transcripts.

Section 12. Miscellaneous Provisions.

- A. The Project is subject to the Texas Public Information Act. All information submitted by bidders is subject to release under this Act.
- B. Contractor will take all necessary affirmative steps to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The contractor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- C. Rights to Inventions. The Contractor shall comply with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements."

Section 13. Davis-Bacon and Related Acts (DBRA) Compliance. Generally applicable to construction contracts at or above \$2,000. For contracts subject to compliance with DBRA, applicable conditions are found in the attached "*Supplementary Conditions for the Contract for Construction*" and "*HUD Form 4010*", as well as the Wage Rates issued by the Department of Labor and attached hereto. The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

The Contractor agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Contractor agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

Section 14. Federal Funding Accountability and Transparency Act. The vendor agrees to report executive compensation Information for the five most highly compensated executives in the preceding year if all of the following criteria are met:

1. The vendor received 80% or more of its annual gross revenues in federal awards.
2. Vendor revenues are greater than \$25 million annually,
3. The public does not have access to compensation of the executives through periodic reports filed under 13(a) or 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d), or Section 6104 of the Internal Revenue Code of 1986.