

CONTRACT FOR ENGINEERING AND TESTING SERVICES

This contract for engineering and testing services ("Contract") is entered into this ____ day of _____, 20 __, by and between the City of Oklahoma City, a municipal corporation ("City"), and _____ ("Engineer").

WITNESSETH:

PROJECT NO. MC-0742 ENGINEERING AND TESTING SERVICES

WHEREAS, a registered Engineer is periodically required by the City and its beneficiary trusts to perform certain testing on various Capital Improvement and non-Capital Improvement construction projects; and

WHEREAS, all Trusts who are beneficiaries to the City may utilize this Contract for engineering and testing services for Capital Improvement and non-Capital Improvement construction projects; and

WHEREAS, the Engineer will provide professional services for the project in accordance with this Contract; and

WHEREAS, the parties desire to establish a procedure for the procurement of engineering and testing services which the Engineer may perform for the City and to establish a schedule of compensation for such services; and

WHEREAS, the Engineer was selected on the basis of a letter of interest, evaluation of available engineering and testing services, examination of staff qualifications and inspection of laboratory analysis equipment by City staff and the approval of the City Engineer of The City of Oklahoma City; and

WHEREAS, the Engineer has been selected under the standards adopted and the procedures prescribed by the resolution establishing procedures for selection of architects, engineers and planners adopted by the City Council on July 23, 1974, amended on December 31, 1974, February 21, 1978, January 22, 1980, and November 18, 1986, which resolution, with its amendments, is made a part of this Contract by reference; and

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter relating to the project, the parties agree to the following:

- 1. Definitions.** All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the context clearly indicates a different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:

- A. *Beneficiary Trusts* Any trust of which The City of Oklahoma City is a beneficiary.
- B. *City* The City of Oklahoma City, a municipal Corporation, wherein the term “City” appears in this contract, the same shall also apply (as applicable) to any of the City’s Beneficiary Trusts.
- C. *City Engineer* The officer of the City in charge of engineering, construction and maintenance contracts on public rights-of-way, on public lands and capital improvement projects.
- D. *Term of Contract* The term of this Contract shall run from date of execution through June 30, 2027.

2. **Engineering Services.** The Engineer is hereby engaged and employed by the City to perform in accordance with good engineering practices and in the best interest of the City all of the work and the various engineering services, including but not limited to the following:

The following schedule of prices established herein are applicable only to those tests performed by the Engineer pursuant to this Contract.

I. Aggregate Testing

A.	<u>Concrete Coarse Aggregates</u>		
1.	Absorption and Specific Gravity	Per Test	\$ 90.00
3.	Sieve Analysis (includes 200 sieve ASTM C-136 and C-117)	Per Test	\$ 60.25
B.	<u>Concrete Fine Aggregates</u>		
1.	Sieve Analysis (includes 200 sieve)	Per Test	\$ 49.25
2.	Fineness Modulus (calculation only)	Per Test	\$ 18.25
3.	Absorption and Specific Gravity	Per Test	\$ 90.00
C.	<u>Miscellaneous Aggregates</u>		
	Unit prices will correspond to those prices listed under Concrete Aggregates.		

II. Asphaltic Concrete

A.	Cutting cores, 8 inch thickness or less		
1.	1 to 3 cores	Per Core	\$ 63.00
2.	4 or more	Per Core	\$ 55.00
3.	Each additional inch over 8 inches	Per Inch	\$ 8.00
4.	9-point length measurement of core	Per Core	\$ 35.00
5.	Patching core hole (if required)	Per Hole	\$ 16.50
a.	Trip Charge (only when patching is completed on a subsequent day)	Per Trip	\$ 30.00
6.	Mobilization Charge	Per Project	\$150.00
B.	Extraction and Gradation		
1.	Ignition Oven Method	Per Test	\$123.00

C.	Asphalt Field Density Test		
1.	Cut-Out Method (set of 3 cores)	Per Set	\$ 57.00
2.	Nuclear Moisture/Density Gauge (2 test minimum) *** (See Section VII.)		
a.	2 test minimum, per trip	Per Test	\$ 50.00
b.	Trip Charge	Per Trip	\$ 30.00
D.	HVEEM		
1.	Three samples per set	Per Set	\$172.00
2.	Trip Charge	Per Trip	\$ 30.00
E.	Sand Equivalent	Per Test	\$ 90.00
F.	Specific Gravity (Rice Method)	Per Test	\$ 90.00
G.	Superpave Gyratory Compactor, AASHTO T312	Per Specimen	\$ 75.00
1.	Trip Charge	Per Trip	\$ 30.00

The maximum allowable time for completing and reporting extraction and gradation tests shall be within four (4) working days of obtaining the sample.

The maximum allowable time for completing and reporting HVEEM or Specific Gravity (Rice Method) tests shall be within five (5) working days of obtain the sample.

III. Base Course Testing

A.	Abrasion, Los Angeles, AASHTO T96-77 (including preparation of sample from crushed material)	Per Test	\$184.25
B.	Field Density Test		
1.	Nuclear Moisture/ Density Gauge (2 test minimum) *** (See Section VII.)		
a.	2 test minimum, per trip	Per Test	\$ 50.00
b.	Trip Charge	Per Trip	\$ 30.00
C.	*Atterberg Limits (LL, PL, and PI)	Per Test	\$ 80.00
D.	AASHTO T99 Proctor Test (Standard Method)		
1.	Method "A"	Per Test	\$160.00
2.	Method "B"	Per Test	\$160.00
3.	Method "C"	Per Test	\$160.00
4.	Trip Charge	Per Trip	\$ 30.00
E.	*Proctor Test (Modified Method)		
1.	AASHTO T180 Method "D"	Per Test	\$180.25
2.	Trip Charge	Per Trip	\$ 30.00
F.	*Aggregate Base Sieve Analysis (includes 200 sieve)	Per Test	\$ 80.00
1.	Trip Charge	Per Trip	\$ 30.00
G.	Dynamic Cone Penetrometer, ASTM D6951, includes estimated CBR vs. depth interpretation per COE equations	Per Foot	\$ 25.00
1.	Mobilization Charge	Per Project	\$ 75.00

*The maximum allowable time for completing and reporting Atterberg Limits, Proctor Tests, and Sieve Analysis Tests shall be within five (5) working days of obtaining the sample.

IV. Concrete

A.	Concrete Beams, Furnishing Molds, Making Beams, Measuring Slump, Air Entrainment and Transporting Beams (number based on project-specific requirements) (set of three minimum)	Per Set	\$125.00
		Additional Beams	\$ 34.50
B.	Slump additional test	Per Test	\$ 27.50
C.	Air entrainment additional test	Per Test	\$ 40.75
D.	Concrete Beams, Storing and/or Testing	Per Beam	\$ 26.00
E.	Cores, 8 Inch Thickness or Less		
1.	Each additional inch over 8 Inches	Per Inch	\$ 10.75
2.	One core	Per Core	\$ 95.00
3.	Two or more cores	Per Core	\$ 70.00
4.	9-point length measurement of core	Per Core	\$ 35.00
5.	Patching core hole (if required)	Per Hole	\$ 16.00
a.	Trip Charge (to be used when patching is completed on a subsequent day)	Per Trip	\$ 30.00
6.	Mobilization Charge	Per Project	\$ 150.00
F.	Coring into non-horizontal surfaces (fee <u>in addition</u> to items listed under IV.E., as appropriate, and includes mobilization):		
1.	Coring up to 8 inches length	Per Core	\$ 33.25
2.	Each additional inch over 8 inches	Per Inch	\$ 4.25
G.	Coring through reinforcing steel (fee <u>in addition</u> to items listed under 2.IV.E and 2.IV.F., as appropriate, and includes mobilization):		
1.	Sum of steel cross sections exposed in core	Per Sq. Inch	\$ 50.00
H.	Concrete Cylinders		
1.	Concrete Cylinder, Making, Furnishing Molds and Transporting Cylinders		
a.	Four (6" x 12" cylinders) test specimens minimum for each sampling event (also includes Air Entrainment and Slump Test)	Per Cylinder	\$ 30.00
b.	Five (4" x 8" cylinders) test specimens minimum for each sampling event (also includes Air Entrainment and Slump Test)	Per Cylinder	\$ 24.00
c.	Trip Charge	Per Trip	\$ 30.00
2.	Concrete Cylinder, Storing and/or Testing		
a.	6" x 12" cylinder	Per Cylinder	\$ 16.00
b.	4" x 8" cylinder	Per Cylinder	\$ 13.00

Note: Payment for pick up of cylinders outside normal working hours or for unusual circumstances will be made when prior authorization is obtained from the City Engineer; however, cylinders made on Friday, which require pick up on Saturdays or Sundays, are assumed to have prior authorization from the City Engineer. (See testing item XII.C. for specific rate to be claimed for "additional compensation" outside normal duty hours.)

I.	Compressive Strength, Concrete Cores (4 inch min. diameter) Each		\$ 32.00
J.	Trim Concrete Cores for Compressive Strength Testing:		
	1. One end		\$ 16.75
	2. Both ends		\$ 33.50
K.	Flowable Fill (set of 3 cylinders plus flow test)	Per Test	\$ 95.00
L.	Flowable Fill (if additional cylinders are required)	Per Cylinder	\$ 25.00
M.	Mortar Compressive Strength Testing (set of 3 cubes)	Per Test	\$122.75
N.	Grout Compressive Strength Testing (set of 3 prisms)	Per Test	\$144.50

Note: Casting of Beams and Cylinders to include one set of slump and air content tests per each set of specimens made; casting of grout prisms to include a slump test per each set of specimens made.

V. Soil Testing

A.	California Bearing Ratio, ASTM D1883	Per Test	\$200.00
B.	Classification		
	1. ASTM D2487 and OSI	Per Sample	\$115.00
	2. ASTM D2488 Visual	Per Hour	\$ 94.50
C.	Field Density Test		
	1. Sand Cone Densimeter Test	Per Test	\$ 78.50
	2. Nuclear Moisture/Density Gauge (2 test minimum)***see Note		
	a. 2 Test Minimum, Per Trip	Per Test	\$ 50.00
	b. Trip Charge	Per Trip	\$ 30.00

*****Note:** All Nuclear Moisture/Density Gauges used on City-related work shall be inspected daily to ensure the device is within the manufacturer's specified tolerances for moisture and density standards. Additionally, each gauge shall be calibrated and/or verified at the frequency and in the manner specified in ASTM D7759 and D7013 and/or AASHTO T310 Annexes A1 and A2. Documentation of such certification and/or verification, along with the operating technician's safety training record and laboratory's Oklahoma Department of Environmental Quality license, is to be delivered to the City Engineer **with the executed copy of this contract.**

D.	Field Soil Resistivity (per location)	Per Test	\$ 60.00
	1. Laboratory Soil Resistivity Test	Per Test	\$ 56.75
	2. Trip Charge	Per Trip	\$ 30.00
E.	pH Test	Per Test	\$ 39.75
F.	Atterberg Limits (LL, PL, and PI)	Per Test	\$ 77.50
G.	Proctor Tests (see listing under Base Course)		
H.	Moisture determination only	Per Test	\$ 11.25
I.	Volumetric Density with Moisture	Per Test	\$ 19.50
J.	Test Borings, Soil Bearing Tests		
	1. Test Boring, Soil	Per Foot	\$ 11.50
	2. Test Boring, Sandstone, Limestone or Shale	Per Foot	\$ 16.25

3.	Coring Sandstone, Limestone or Shale	Per Foot	\$ 54.75
4.	Penetration Tests	Per Test	\$ 31.25
5.	Mobilization Charge		\$228.75
6.	Soil Boring Grouting (including preparation and submittal of well boring logs) in accordance with Oklahoma Water Resources Board Regulations	Per Project	\$ 73.75 plus \$3.50/foot of grouted length
K.	Unconfined Compressive Strength	Per Sample	\$ 72.00
L.	One-dimensional Swell Test ASTM D4546	Per Test	\$421.75
M.	Consolidation, ASTM D2435	Per Test	\$437.00
N.	Permeability	Per Test	\$240.25
O.	Sampling (Shelby Tube samples)	Per Test	\$ 37.75
P.	Pressure Meter Test (3 Test Minimum per Boring)	Per Test	\$516.00
Q.	Sieve Analysis (includes 200 sieve)	Per Test	\$ 57.25
R.	Soluble Sulfate Testing (OHD L-49)	Per Test	\$ 45.00

VI. Modified Soil Base Course, Design

Sub-items B and C each include sieve analysis, Proctor, and three strength tests on laboratory-molded, cured, and conditioned test specimens. Sub-items A, B and C also include Atterberg limits. Sub-item B also includes the test under sub-item D; and lime pre-treatment requires both items C and D.

A.	Soil-Cement, PCA Short Method	Per Design	\$549.00
B.	Soil-Lime, Lime Association Method (MDTP)	Per Design	\$737.00
C.	Soil-Fly Ash or Soil-CKD, CBR Method	Per Design	\$642.75
D.	Soil-Lime, pH Method	Per Design	\$187.25

The maximum allowable time for completing testing and reporting the recommendation for soil modification shall be within seven (7) working days of obtaining the sample if the pH method is used. If using the PCA short method or Lime Association Method, the results are to be reported within sixteen (16) days of obtaining the sample.

VII. Foundation Report

Shall include information requested by the Architect or Engineer, including recommendation of loading of foundation material. Six (6) copies of the report shall be furnished at a rate to be paid as follows:

Engineer	Per Hour	\$115.00
Technician	Per Hour	\$ 51.75
Technician Per Diem	Per Day	\$150.00

Field Sampling, drilling and laboratory tests required in connection with the report shall be paid for in accordance with the applicable provisions of this Contract.

VIII. Pre-stressed Concrete Bridge Member

Complete Engineering Inspection, Testing and Reporting in accordance with the 1999 Edition Standard Specification for Highway Construction, Oklahoma State Highway Commission, "Section 503 – Pre-stressed Concrete Bridge Members" and all subsequent Revisions.

Inspection	Per Hour	\$ 61.50
------------	----------	----------

IX. International Building Code (IBC) Testing/Inspection

The Engineer shall provide testing/inspection services as authorized for such work as required by the IBC, Chapter 17, Section 1704, as follows:

Engineer	Per Hour	\$115.00
AWS Certified Welding Inspector	Per Hour	\$ 98.00
Technician	Per Hour	\$ 59.25

Structural Steel

1. Shop Inspection (only) (AWS/CWI)#1	Per Hour	\$ 98.00
2. Field Inspection (AWS/CWI)#1	Per Hour	\$ 98.00
3. Ultrasonic (Man/Equipment)	Per Hour	\$ 98.00
4. Mag or Penetrant (Inspector)	Per Hour	\$ 98.00
5. Shear Stud Bend Test	Per Hour	\$ 73.00
6. Turn-of-Nut Tightening Test	Per Hour	\$ 73.00

X. Resident Engineer, Mileage, Additional Compensation and Traffic Control Devices

A. Resident Engineer

At locations outside the City of Oklahoma City where the City Engineer may deem it necessary to assign a resident engineer, the engineering fee will be negotiated as outlined below in sub-paragraph "Tests or Services Not Included In Schedule of Prices", plus mileage invoiced at the current IRS rate per mile to and from the job site.

B. Mileage

Sampling charges set forth in this Contract apply only within a twelve (12) mile radius of the Municipal Building located at 200 N. Walker, Oklahoma City, Oklahoma. For sampling or testing beyond this area, a mileage charge invoiced at the current IRS rate per mile and \$51.75 per hour will apply based on driving time and mileage from the twelve (12) mile radius to the site and return to the twelve (12) mile radius.

C. Trip Charge

One trip charge per project, per day, may be invoiced.

D. Mobilization Charges

One mobilization charge per project may be invoiced.

E. Additional Compensation

Additional compensation, when engineering and testing services cannot be performed during normal working hours (6:00 A.M. to 6:00 P.M.) and when authorized by the City Engineer, shall be paid at a rate of \$27.00 per hour. Additional compensation is defined as being other than normal working hours including Saturday, Sunday and City recognized holidays. “Additional compensation” for engineering and testing services accomplished during other than normal working hours can only be claimed when the City has issued prior approval authority.

F. Traffic Control

Traffic Control, including but not limited to flagmen, barricades, cones, etc., in accordance with the uniform manual on traffic control devices, shall be paid at a rate of: (1) for a “major” roadway or street lane closure wherein the Engineer must subcontract the traffic control duties, the rate shall be \$95.00 per hour/per person; or, (2) when traffic control duties are performed by the Engineer’s personnel, the rate shall be \$77.00 per hour for the first flag person with a minimum charge of one (1) hour (when a second flag person is needed, compensation for the second flag person shall be at a rate of \$51.75 per hour); or, (3) when a rolling work zone is required, the rate shall be \$250.00 per hour. When the Engineer deems traffic control necessary, a written request shall be submitted to the City Engineer. Included in this request shall be an estimate of the time required and the number of flag persons needed. Traffic Control shall be compensated only when authorized by the City Engineer and in amount designated by the same. **Note:** Whether employees of the Engineer or subcontractor, flag persons used by the Engineer for traffic control services must be certified in accordance with the American Traffic Safety Services Association (see <http://atssa.com/TrainingCertification/NationalFlagger/Database.aspx>).

G. Work Zone Permits

Obtaining and processing work zone permits related to testing services under the auspices of this contract shall be paid at the rate of \$50.00 per work zone permit.

XI. Tests or Services Not Included In Schedule of Prices

For tests not covered by the schedule of prices in this Contract, a price will be negotiated by City staff in charge of the project and approved by the City Engineer and City Council or responsible Trust before the services are performed.

XII. Prices

It is understood by and between the parties that prices (in effect at the time a work order is issued to perform engineering and testing services under this contract) shall be based on the date of the work order and engineering and testing services contract prices in effect at the time of the work order, i.e., testing work orders written during the design phase of a project shall reflect testing prices in effect at the time of the initial testing work order and remain the same prices charged (invoiced) until completion of design work (regardless of duration); testing work orders written during the construction phase of that same project shall reflect testing prices in effect at the time of the testing work order and remain the same prices charged (invoiced) until completion of construction work (regardless of duration). All testing prices include mobilization except whereas indicated otherwise.

XIII. Effective Prices

The prices established in this Contract for Engineering and Testing Services between the City and the Engineer shall remain in full force and effect until both parties execute a new contract.

XIV. Failed Tests

It is understood by and between the parties that any tests ordered by the City Engineer that fail to meet the construction contract documents, plans or specifications are the responsibility of the Contractor(s) and said failed tests will be deducted by the City's project engineer/manager from pay applications submitted to the City by the Contractor(s).

All test failures are to be reported by the close of business on the day of the occurrence. Reports are to be emailed to the Public Works Department - Field Services Division, at failedtests@okc.gov.

Failed field tests are to be reported to the Contractor's project manager, superintendent, foreman or other contractor person in charge immediately upon completion of the test(s). The "Field Report of Non-Compliance" (see Contract Exhibit C attached hereto) is to indicate that the Contractor was notified and the report is to list the name of the Contractor's representative receiving the verbal notification.

A copy of the "Field Report of Non-Compliance" and the "Laboratory Report of Non-Compliance" forms are attached to this Contract as "Exhibit C" and "Exhibit D", respectively.

Field Reports of Non-Compliance (Exhibit C) should be sent when criteria do not meet specification requirements or Exhibit E testing guidelines (whichever applies – see last paragraph of this section below):

- A. Densities do not meet the minimum requirement for compaction (soil & asphalt) and aggregate base.
- B. Concrete slump does not meet specification requirement.
- C. Concrete air content does not meet specification requirement.

Lab Reports of Non-Compliance (Exhibit D) should be sent when criteria do not meet specification requirements or Exhibit E testing guidelines (whichever applies – see last paragraph of this section below):

- A. Asphalt extraction and gradations do not meet the specification requirement.
- B. Aggregate Base gradations do not meet specification requirements.
- C. Concrete strength tests do not meet specification requirements.

Guidance for sampling, testing, and acceptance criteria for routine Oklahoma City construction materials testing is attached as "**Exhibit E – Sampling, Testing, and Acceptance Guide for Routine Oklahoma City Construction Materials Testing**". This Exhibit provides a guideline for testing routine items, which have no project-specific plans

and specifications to dictate acceptance criteria. Acceptance criteria for major projects with project-specific specifications should be clearly delineated in those specifications and acceptance criteria stated therein apply (Exhibit E guidelines do not apply wherein project specifications state acceptance criteria).

XV. Testing on Airports (Federal Aviation Agency Requirements)

When performing any engineering/testing services within “secure areas” of airfield projects, the Engineer must have at least one security-badged person with the crew on-site at all applicable times. If the Engineer has equipment entering and leaving the airfield, an additional security-badged person must escort the vehicles on and off of the airfield. Acquisition of security badges for the Engineer and/or the Engineer’s personnel requires the successful completion of a 5 year background FBI criminal history check and other requirements as outlined by the respective airport authority.

Additionally, if the project is FAA-funded the Engineer must be currently accredited by a nationally-recognized accreditation authority in accordance with the following:

- A. For asphalt testing ASTM D3666
- B. For concrete testing ASTM C1077 and ASTM C78

XVI. Testing Laboratory Accreditation

The Engineer shall submit (**with this Contract**) evidence of AASHTO Materials Reference Laboratory accreditation. If the Engineer is not currently accredited, submit evidence (with this contract) demonstrating that the firm’s testing laboratory has submitted application for accreditation and a statement that the laboratory is on track for accreditation (also provide a specific date by which accreditation is anticipated).

- 3. Work Orders.** The Engineer shall proceed with the provision of work and/or services for this Contract upon receipt of work orders from the City Engineer. If the Engineer cannot perform the work and/or services within the time provided, and upon the submission by the Engineer of a request in writing to the City Engineer, indicating the length of extension required to perform a task, the City Engineer may at their sole discretion grant a reasonable extension of time. The request from the Engineer shall state the reason for the extension request, along with evidence showing that the Engineer is unable to complete this work in the time specified in the work order for reasons beyond its control. The Engineer is prohibited from claiming damages for delays and extensions of time.

Upon designation of the Engineer as a project testing firm by the City Engineer (and as approved by the City or its beneficiary trusts), the Engineer will be provided a written notice to proceed (work order), which will include the project name/number, City’s assigned project engineer/manager, architect or engineer of record, prime contractor of record, and a copy of the project plans and specifications.

4. **No Extra Work.** No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the City unless the City Engineer first approves such work or service in writing.
5. **Stop Work.** Upon notice to the Engineer, the City Engineer may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspend any of the required provisions of the Indemnity and/or Insurance paragraphs of this Contract.
6. **Registered Professional Engineer/Personnel.** All final testing reports submitted by the Engineer shall bear the signature and seal of a Registered Professional Engineer of the State of Oklahoma certifying all tests performed. Such Registered Professional Engineer must be a full-time (not part-time) employee of the Engineer.
7. **Compensation.** Under the terms of this Contract, the Engineer agrees to perform the work and services described in the scope of work and the body of the Contract. The City agrees, in accordance with the limitations and conditions set forth in the body of the Contract and below, to pay an amount outlined in the work order provided to the Engineer for such testing.

Compensation for basic services shall be computed, based on the fee schedule as outlined in the Basic Services paragraph of this Contract; but, in no event may the Engineer receive compensation in excess of the prices listed in the fee schedule.

8. **Payments.**

- A. Invoices shall be submitted monthly to:

The City of Oklahoma City of Oklahoma
Department of Public Works (or project department owner)
Attn: (Insert Name of City or Trust's Project Manager)
420 W. Main Street, Suite 700 (or project department address)
Oklahoma City, Oklahoma 73102

The City will endeavor to pay all invoices within thirty (30) calendar days of date of receipt of the invoice. Invoices for the amount and value of the work and services performed by the Engineer shall meet the standards of quality as established under this Contract. The City agrees to pay the Engineer, as compensation for such Engineering services as listed. The invoices shall be prepared by the Engineer and be accompanied by all supporting data required by the City (copy of the test report and any other documentation deemed necessary to substantiate the invoice). Payment of any invoice for any work or services may not be deemed to be recognition of satisfactory performance of said work or services or a waiver of any right of the City or any obligation of the Engineer should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract.

- B. The Engineer shall present two (2) copies of the invoice with two (2) properly executed claim vouchers to the City for compensation and payment. The City will review the invoice and claim voucher for payment and the approved elements of the invoice or claim in accordance with this Contract. Should the City question or request additional documentation or disapprove all or a portion of any invoice, the Engineer will be notified so that it may provide additional documentation sufficient to permit the invoice and claim to be paid, in whole or in part. Provided; however, no invoices or claims shall be paid the aggregate of which is in excess of the not to exceed amounts or limitations established in the Compensation paragraph of this Contract.
 - C. Final payment shall not be deemed to waive any rights or obligations of the parties to this Contract.
9. **Indemnity.** The Engineer will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the City or participating trusts or their agents, representatives, subcontractors, suppliers or any other entity for whom the Engineer is not otherwise legally responsible.

The Engineer must indemnify the City and participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Engineer and any person or entity for which the Engineer is legally responsible are adjudicated liable.

10. **Insurance.** Prior to approval of this contract, the Engineer shall obtain insurance coverage as provided below. The Engineer must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City and its participating trusts on a timely basis if requested by City staff.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the City and its participating trusts. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Contract under any other provision of this Contract, including but not limited to any indemnification provision.

- A. **Additional Insureds:** All liability policies (except professional liability and worker's compensation and employer's liability policies) shall provide that the City and its participating trusts are named additional insureds without reservation or restriction.

All insurance coverage of the Engineer shall be primary to any insurance or self-insurance program carried by the City and its participating trusts.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

Subrogation as to any additional insured shall be waived.

- B. Deductibles: All policies must be fully insured with any single policy deductible not exceeding \$25,000 per occurrence. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Engineer is stating a deductible does not exist and thus a deductible is not approved or accepted. If the Engineer's deductible is higher than declared, then the City and its participating trusts will hold an equal amount from pay claims until corrected.

Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Engineer's self-insured retention.

- C. Policy Limits: The insurance coverage and limits required of the Engineer under this Contract are designed to meet the minimum requirements of the City and its participating trusts. Such coverage and limits are not designed as a recommended insurance program for the Engineer. The Engineer alone shall be responsible for the sufficiency of its own insurance program. Should the Engineer have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Engineer should seek professional assistance.

Except for professional liability insurance, all policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Engineer shall also provide tail coverage that extends a minimum of two years from the expiration of this Contract.

The minimum aggregate limits of such insurance policies and continuing coverage shall be:

- (1) Worker's Compensation and Employer's Liability Insurance. The Engineer shall provide and maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the Project, and in case any work is subcontracted, the Engineer shall

require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Engineer. In the event any class of employees engaged in work performed under the Contract or at the site of the Project is not protected under such insurance heretofore mentioned, the Engineer shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.

- (2) Commercial General Liability Insurance. The Engineer shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, as provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (3) Automobile Liability Insurance. The Engineer shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

(4) Professional Liability Insurance. The Engineer shall provide and maintain professional liability insurance coverage in an amount not less than \$1,000,000 aggregate annual limit liability. Such insurance coverage shall be maintained during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the City.

D. Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the City Engineer prior to execution of this Contract and are attached hereto. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.

E. Cancellation. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Engineer authorizes the City and its participating trusts to confirm all information so furnished as to the Engineer's compliance with its bonds and insurance requirements with the Engineer's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Contract is a breach of this Contract for which the Engineer shall repay and reimburse all payment made under the Contract and such other damages, losses, and costs incurred by the City and its participating trusts. The City and its participating trusts may at their option suspend this Contract until there is full compliance with this paragraph, or may cancel or terminate this Contract and seek damages for the breach of this Contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to The City and its participating trusts. The City and its participating trusts expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit below the aggregate limit required to this contract, the Engineer shall immediately notify the City and its participating trusts and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City and its participating

trusts request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit below the aggregate limit required by this contract, the Engineer hereby agrees to promptly authorize and have delivered to the City and its participating trusts such statement.

The Engineer must carry and maintain the contract-required insurance coverages and may not cancel, fail to be renewed, nor decrease their limits without thirty (30) days written notice to the City and its participating trusts. In the event that a contract-required insurance coverage (policy) is canceled by the Engineer's insurance company and through no fault of the Engineer, the Engineer must immediately provide written notice to the City and its participating trusts and immediately provide properly executed Certificate(s) of Insurance evidencing coverage (policy) replacement of the canceled coverage(s). The Certificate(s) of Insurance must specifically indicate (in the remarks section of the form or elsewhere) the project number and project description. An authorized representative of the insurance companies listed on the Certificate(s) of Insurance must sign the Certificate(s).

- F. Duration of Coverage. All insurance coverage required under this Contract except professional liability insurance shall be maintained in full force and effect until completion and formal acceptance of the Project by the City and its participating trusts. The Engineer shall maintain in full force in effect the required professional liability insurance stated above during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the City and its participating trusts.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract.

- G. The Engineer and its insurer will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the City or participating trusts or their agents, representatives, subcontractors, suppliers or any other entity for whom the Engineer is not otherwise legally responsible.

The Engineer and its insurer must indemnify the City and participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Engineer and any person or entity for which the Engineer is legally responsible are adjudicated liable.

- 11. Termination for Convenience.** The City may terminate this Contract, in whole or in part, for the City's convenience. The City may terminate by delivery of a notice to the Engineer, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Engineer shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), upon payment for work performed, deliver to the City all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise.

Upon termination for the convenience by the City, the City shall pay the Engineer for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by the not to exceed amounts set out in this Contract.

The rights and remedies of the City provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph "Indemnity" or "Insurance" of this Contract.

12. **Notices.** All notices and orders given pursuant to this Contract shall be in writing, delivered or mailed by United States certified mail, return receipt requested, postage prepaid and addressed as follows:

To the City:

The City of Oklahoma City
Department of Public Works
420 West Main Street, Seventh Floor
Oklahoma City, Oklahoma 73102
Attn: Deborah K. Miller, P.E., Interim Director of Public Works/Interim City Engineer
Phone Number: (405) 297-2581 Fax Number: (405) 297-2117

To the Engineer:

Firm

Address

Oklahoma City, Oklahoma ZIP

Attn: Name, Title

Phone Number (405) 000-0000

Fax Number (405) 000-0000

The address of any person or party may be changed by notice to the other party given in the manner described above. All such notices and orders shall be deemed received when delivered or when deposited in the United States mail.

13. **Compliance with laws, ordinances, specifications and regulations.** The Engineer shall comply with all existing and applicable federal, Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions

thereto, applicable to the work and/or services provided by this Contract. All work product provided by the Engineer must comply with and provide for compliance with all Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto in the use of the work product of the Engineer.

14. **Records and accounts.** During the term of this Contract and continuing for a period of five (5) years after the completion of construction and final acceptance of the completed project by the City, the Engineer shall maintain all documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the City subsequent to final completion of the project and its internal accounting records and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services and reimbursable expenses for this Contract. The Engineer must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Engineer shall permit periodic audits by the City and the City's authorized representative. The periodic audits of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the City and the Engineer. Agreement as to the time and place for audits may not be unreasonably withheld.

15. **Reporting.** When requested by the City, the Engineer shall report to the City through the City Engineer as outlined below.

All final test reports will contain the names of the Architect or Engineer of Record and Contractor of Record performing the work on the listed project

All final test reports will be sent via e-mail to testingreports@okc.gov within three (3) business days of completion of the test.

Also, e-mail one (1) copy each of the completed final test report to the following:

- A. The Architect or Engineer of Record
- B. The Contractor of Record
- C. The material supplier for testing of all asphalt and concrete materials.

All reporting of testing performed with a pass/fail criteria will indicate on the report that the test(s) "passed" or "failed". Retesting of a failed test will be indicated as such on the report (also see Paragraph 2.XVI "Failed Tests" of this Contract for additional requirements).

16. **Prohibition against collusion.** The Engineer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Engineer to solicit or secure this Contract. The Engineer further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. In

addition, the Engineer must execute the Noncollusion Affidavit, attached as Exhibit A, prior to the effective date of this Contract.

17. **Ownership of documents.** All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the City and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Engineer. Reuse of said documents by the City shall be at the City's risk and responsibility and not that of the Engineer. The parties may use any portions of said documents at their own risk and responsibility.
18. **References not incorporated.** The use of language or definitions from the Federal Acquisition Regulations (“FAR”), the American Institute of Architects (“AIA”) or any other publication is not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
19. **Standard of care.** In providing the work and services herein, the Engineer shall maintain during the course of this Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Engineer agrees to require all of its consultants, by the terms of its consultants' contracts, to provide services at the same standard of reasonable care, skill, diligence and professional competence required of the Engineer.
20. **Backup Required.** In accordance with good engineering practices, the Engineer must back up all data, surveys, tests, work, plans, specifications, notes, calculations, RFI, records, reports, documents (collectively referred to as “data”) in the form of an electronic file on a USB drive, data storage, or to an offsite electronic storage facility. Should any data become lost, corrupted, inaccessible, or unusable (collectively “loss”), the Engineer must timely recreate all data within the original time frame of the engineering contract at its sole cost. No extensions or additional time will be granted the Engineer for loss of data. No additional payment or reimbursement will be made to the Engineer for loss of data. The Engineer will be responsible for any and all costs, expenses, or lost opportunities incurred by The City, Trust, and construction contractor resulting from the failure to meet schedules, milestones, performance standards, or performance requirements related to loss of data.
21. **Sub-consultants.** The Engineer agrees to submit for approval by the City, prior to their engagement, a list of any sub-consultants or subcontractors the Engineer intends to engage to perform work and/or services and the scope of work and/or services to be performed related to this Contract. Such approval of subcontractors and sub-consultants and scope of work and/or services to be performed will not be unreasonably withheld. The Engineer must notify the City and seek pre-approval of any substitutions or changes in sub-consultants or subcontractors and changes in the subcontractor or sub-consultant’s scope of work and services related to this Contract. Approval of subcontractors or sub-consultants or their work

and services will not relieve or release the Engineer from responsibility or liability to perform all work and services under this Contract and will not create any responsibility, liability or duty upon the City as to the selection of or work and services provided by the subcontract or sub-consultant under this Contract.

22. **Nondiscrimination.** In connection with the performance of work and/or services under this Contract, the Engineer agrees as follows:

- A. The Engineer shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). The Engineer shall take affirmative action to insure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer shall agree to post, in a conspicuous place, Exhibit B.
- B. In the event of the Engineer's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the City. The City may declare the Engineer ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by the Engineer.
- C. The Engineer agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract. The Engineer shall also execute the Nondiscrimination Certificate, attached and incorporated as Exhibit B, prior to the effective date of this Contract.

23. **Assignment.** Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Engineer to provide professional and personal services to the City, the parties agree that the Engineer may not assign its obligations, rights or interest in this Contract except the assignment of subcontractors and sub-consultants as set forth in the Termination for default paragraph of this Contract.

24. **Termination for default.** The City may terminate or cancel this Contract for cause, in whole or in part, for failure of the Engineer to fulfill in accordance with good engineering practices and in the best interests of the City or to promptly fulfill its obligations under this Contract.

- A. After due default notice and thirty (30) days within which to correct the default, this Contract may be terminated by the non-defaulting party upon written notice. Upon termination for cause by the City, the City shall pay the Engineer for all work and services completed in accordance with good engineering practices and in the best

interests of the City and useable by the City for the project(s) in the Notice to Proceed, up to the time of the effective date of termination.

- B. If this Contract is terminated by reason of a default of the Engineer prior to the completion of this project, regardless of the reason for said termination, the Engineer shall immediately assign to the City any Contracts and/or agreements relative to this project entered into between the Engineer and its subcontractors and sub-consultants, as the City may designate in writing and with the consent of the subcontractors and sub-consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the City, the City shall only be required to compensate such subcontractors and sub-consultants for compensation accruing to such parties under the terms of their agreements with the Engineer from and after the date of such assignment to and acceptance by the City. All sums claimed by such subcontractor or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the City shall constitute a debt between the Engineer and the affected subcontractors or sub-consultants, and the City shall in no way be deemed liable for such sums. The Engineer shall include this provision and the City's rights and obligations hereunder in all agreements or contracts entered into with the Engineer's subcontractors and sub-consultants.
 - C. In the event of the termination of this Contract by default of the Engineer, the Engineer further agrees that all of its obligations and duties contained in this Contract shall survive such termination for default and shall not, in any way, relieve the Engineer of the obligations provided for in this Contract.
 - D. If this Contract is terminated by reason of default on the part of the Engineer, upon final determination by a court that the termination was improper, the termination will be deemed converted to a cancellation for convenience and the Engineer's remedy shall be limited to the recovery of compensation set out in the Cancellation for convenience paragraph of this Contract.
25. **Time is of the essence.** Both the City and the Engineer expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the City to timely object to the time of performance shall not waive any right of the City to object at a later time.
26. **No damage for delay.** No payment, compensation or adjustment of any kind other than an approved extension of time shall be made to the Engineer for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Engineer agrees that it will make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.

27. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
28. **Entire agreement.** This Contract, including its exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the City and the Engineer concerning the Contract. Neither the City nor the Engineer has made or shall be bound by any agreement or any representation to the other concerning this Contract, which is not expressly set forth herein.
29. **Amendment.** This Contract may be modified only by a written amendment of subsequent date hereto, approved by the City and the Engineer. In the event the Engineer's scope of work is increased or changed so as to materially increase the need for Engineering services in excess of the not to exceed total compensation, the Engineer may seek to amend this Contract.
30. **Execution in counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
31. **Descriptive headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
32. **Construction and enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.
33. **Survival of representations.** All representations and covenants of the parties shall survive the expiration of the Contract.
34. **Parties bound.** This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
35. **Venue of actions.** The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the District Court of Oklahoma County.
36. **Effective date.** The effective date of this Contract shall be the execution of this contract by the City.
37. **Term of Contract.**
 - A. This Contract authorizes the City Engineer to issue Work Orders under this Contract during the contract term as provided herein and the term of this Contract will be from

the effective date though June 30, 2027, plus such extended time as necessary until all Work Orders issued during the contract term are complete.

- B. The City may issue Work Orders under this Contract at any time during the contract term.
- C. The Engineer will provide such services as set forth in any Work Order issued under this Contract and this Contract will be deemed extended for such extended time as may be necessary for the completion of services set forth in any Work Order issued during the contract term under this Contract.
- D. If this Contract is extended for completion of any Work Order, upon completion of all the Work Orders issued under this Contract, the City Engineer will issue a notice to the Engineer denoting the termination of this Contract and any extended time.
- E. The Engineer must provide such services and comply with this Contract until expiration of the contract term or through any extended time, if any, until notification of termination of this Contract from the City Engineer, whichever is later.
- F. The City will not be obligated to pay the Engineer under any Work Order (including any services, expenses, and additional services) until the funds have been encumbered. Any Work Order must not exceed the available funds for the year in which the Work Order was issued. Any extended time to complete the Work Order will not change the available funds for the year in which the Work Order was issued.
- G. If the City should need any additional services or a change of the scope of services in any Work Order issued during the contract term, a new separate Work Order must be issued under a separate contract or an amendment to this Contract. An extended time will not extend the authorization to issue a new Work Order under this Contract after the expiration of the contract term.

[Remainder of this page intentionally left blank]

**EXHIBIT B
NONDISCRIMINATION CERTIFICATE
PROJECT NO. MC-0742
ENGINEERING AND TESTING SERVICES**

State of Oklahoma)
County of Oklahoma) SS.

In connection with the performance of work under this Contract, the Engineer agrees as follows:

- A. The Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). The Engineer shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer and sub-consultants shall agree to post in a conspicuous place, Exhibit B.
- B. In the event of the Engineer's noncompliance with this nondiscrimination Certificate, the Contract may be canceled, terminated or suspended by the City. The City may declare the Engineer, ineligible for further contracts until satisfactory proof of intent to comply shall be made by the Engineer and/or sub-consultants.
- C. The Engineer agrees to include the requirements of this Nondiscrimination Certificate in any subcontracts connected with the performance of this Contract.

I have read the above clause and agree to abide by its requirements.

Printed name of the Engineer: _____

Signature of executing individual: _____

Title: _____

Address of the Engineer _____

(A.C.) Tel. Number and FAX Number _____

Signed and sworn to before me on this _____ day of _____, 2021, by _____, P.E., as _____.

My Commission Expires/Commission Number: _____ Notary Public

_____/_____(Seal)

EXHIBIT C
FIELD REPORT OF NON-COMPLIANCE
PROJECT NO. MC-0742
ENGINEERING AND TESTING SERVICES

Name of Engineering & Testing Firm/Laboratory: _____

Oklahoma City Project Number: _____

Contractor: _____

Date Tested: _____

Specific Location: _____

Type of Material (check below or write in): _____

Concrete _____ Asphalt _____ Soil _____ Aggregates _____

Stabilized Subgrade _____

Test Results: _____

Specified Limits: _____

Type of Test: _____

Test Method: _____

Enter Name of Contractor's Representative Notified: _____

Contractor's Signature: _____

Field Technician Signature: _____

This report is for information only.
Email this report to: failedtests@okc.gov

EXHIBIT D
LABORATORY REPORT OF NON-COMPLIANCE
PROJECT NO. MC-0742
ENGINEERING AND TESTING SERVICES

Name of Engineering & Testing Firm/Laboratory: _____

Oklahoma City Project Number: _____

Contractor: _____

Date Sampled: _____

Date Tested: _____

Specific Location: _____

Type of Material (check below or write in): _____

Concrete _____ Asphalt _____ Soil _____ Aggregates _____

Stabilized Subgrade _____

Test Results: _____

Specified Limits: _____

Type of Test: _____

Test Method: _____

Laboratory Technician: _____

This report is for information only.
E-mail this report to: failedtests@okc.gov

EXHIBIT E
SAMPLING, TESTING, AND ACCEPTANCE CRITERIA FOR ROUTINE OKLAHOMA CITY CONSTRUCTION MATERIALS
TESTING
PROJECT NO. MC-0742
ENGINEERING AND TESTING SERVICES

Test	Frequency	Method	Acceptance Criteria
Asphalt Cement Extraction on Asphaltic Concrete	One set of test for each 500 tons of each mix design produced, but not less than one set of tests per day for each mix design used on that day	ASTM D6307 or AASHTO T308	Tolerance from approved mix design job mix formula AC content, rounded to nearest 0.1%: +/- 0.4% for individual sample; +/- 0.2% for average for a particular mix design on the project
Gradation of Extracted Aggregate from Asphaltic Concrete		ASTM D5444 or AASHTO T30	Tolerance from approved mix design job mix formula gradation, rounded to nearest 1% for sieves larger than #200 or to nearest 0.1% for #200 sieve: +/- 7% for No. 4 & Larger Sieves +/- 4% for No. 10, 40, and 80 Sieves +/- 2.0% for No. 200 Sieve
Maximum Theoretical Specific Gravity of Asphaltic Concrete (MTSG)		ASTM D2041 or AASHTO T209	None - used in other density evaluations
Laboratory-Molded Density of Asphaltic Concrete		OHD L8 & L14	Range of allowable ratio of lab-molded density to MTSG determined for the sample, rounded to nearest 0.01: 0.94 to 0.96 for 3 million ESALs or more 0.95 to 0.97 for 0.3 to less than 3 million ESALs 0.96 to 0.98 for less than 0.3 million ESALs
Hveem Stability of Asphaltic Concrete		ASTM D1560 or AASHTO T246	Minimum Hveem stability, rounded per test method requirements 40

Test	Frequency	Method	Acceptance Criteria
Roadway Density of Asphaltic Concrete	4 nuclear density tests or one set of 3 core specimens per 500 Tons or fraction thereof for each mix design used	ASTM D2950 (nuclear) or ASTM D1188, D2726, or D6752 or AASHTO T166, T275, or T331 (cores)	Range of allowable ratio of roadway density to MTSG, rounded to nearest 0.01: 0.92 to 0.96 For nuclear density method, use mix design MTSG at JMF AC content. For roadway core method use MTSG determined for test representing the particular lot in question.

Test	Frequency	Method	Acceptance Criteria
Asphalt Pavement Thickness	As directed by City Engineer	ASTM C174 Modified for Asphalt	Tolerance from specified pavement thickness, rounded to nearest 0.1 inch (reporting precision of method): up to 0.3 inch deficiency in thickness

Test	Frequency	Method	Acceptance Criteria
Concrete Compressive Strength	One set of four 6"x12" or five 4"x8" concrete cylinders plus slump, air, and temperature tests on a sample of concrete for each 600 SY of pavement, 800 LF or curb and gutter, 5000 SF of structural slab or wall less than 9.75" thick, or 150 CF of other concrete, or fraction thereof, for each class of concrete produced, but not less than one set per day for each class of concrete produced on that day	ASTM C172, C31, C39, and C1231 or C617; or AASHTO R60, T22, T23, and T231 or ASTM C1231	<p>Test two specimens at 7-days for information only -- no pass/fail to be indicated.</p> <p>Test two specimens for 6"x12" or three specimens for 4"x8" at 28-days and use the average as the test result for acceptance evaluation, rounded per test method requirements, using the following two criteria:</p> <ol style="list-style-type: none"> 1. No individual test result (average of two specimens) shall be less than minimum class strength (3000 psi for class A or AP; 4000 psi for class AA, or 2400 psi for class C). 2. The average of any three consecutive tests on the same class of concrete, from the same supplier, on the same project, must be at least 500 psi <u>more</u> than the minimum class strength. <p>Criterion #2 generally requires that three different averages of five test results be considered. Two of those averages utilize test results, which may not yet be complete at the time the test result in question is first available.</p>
Concrete Slump		ASTM C143 or AASHTO T119	<p>Range of test results reported in 0.25 inch increments:</p> <p>4" to 6" for drilled shaft concrete</p> <p>3" to 5" for an approved concrete mix design using mid range water reducer</p> <p>4" to 8" for an approved concrete mix design using high range water reducer</p> <p>1" to 4" for all other concrete</p>

Test	Frequency	Method	Acceptance Criteria
Concrete Air Content		ASTM C231 or AASHTO T152	Range of test results reported in 0.1% increments to 6.0% and in 0.2% increments over 6.0%: 4.5% to 7.6% for all concrete unless specified otherwise in the project plans or directed otherwise by the City's Engineer
Concrete Temperature		ASTM C1064 or AASHTO T309	50 deg. F or more in all cases No more than 85 deg. F for concrete used in bridge superstructures other than for diaphragms, parapets, railing, curbs, and sidewalks.
Ambient Temperature			More than 40 deg. F, or greater than 35 deg. F and rising.
Concrete Pavement Thickness	As directed by City's Engineer	ASTM C174	Tolerance from specified pavement thickness, rounded to nearest 0.1 inch: Up to 0.3 inch deficiency in thickness
Soil Moisture-Density Relationship Test (standard Proctor)	As necessary to adequately define materials used	ASTM D698 or AASHTO T99	None - used in other density and moisture evaluations
Soil Compacted Density	One test per 1200 SY of subgrade under planned structures, pavement, or fill; one test per 2400 SY per lift of embankment or backfill;	ASTM D6938 or AASHTO T310	Percent of referenced maximum dry density (standard Proctor) value, rounded to nearest whole number: 95% or more under planned structures or pavement 90% or more outside of planned structure and pavement areas

Test	Frequency	Method	Acceptance Criteria
Soil Compacted Moisture Content	one test per 400 LF per lift of trench backfill (see above for additional "Frequency" information)		Deviation of percent moisture from referenced optimum moisture content (standard Proctor) value, rounded to nearest whole number: -4% to +1% for AASHTO A-4, A-5, A-6 with group index of 5 or less, and A7-5 classification soils -4% to +2% for AASHTO A-1, A-2, and A-3 classification soils -2% to +2% for AASHTO A-6 classification soils with group index of 6 or more. -0% to +4% for AASHTO A7-6 classification soils.
Stabilized Subgrade Moisture-Density Relationship Test (standard Proctor)	As necessary to adequately define materials used	ASTM D698 or AASHTO T99	None - used in other density and moisture evaluations obtain sample(s) from mixed material on roadway when compaction starts
Stabilized Subgrade Compacted Density	One test per 350 LF of roadway	ASTM D6938 or AASHTO T310	Percent of referenced maximum dry density (standard Proctor) value, rounded to nearest whole number: 95% or more
Stabilized Subgrade Compacted Moisture Content			Deviation of percent moisture from referenced optimum moisture content (standard Proctor) value, rounded to nearest whole number: -2% to +2%
Aggregate Moisture-Density Relationship Test (modified Proctor)	As necessary to adequately define materials used	AASHTO T180 Method D	None - used in other density and moisture evaluations
Aggregate Base Compacted Density	One test per 250 LF of roadway, taken under the extent of the proposed pavement	ASTM D6938 or AASHTO T310	Percent of referenced maximum dry density (modified Proctor) value, rounded to nearest whole number: 98% or more
Aggregate Base Compacted Moisture Content			None – utilize moisture as required to achieve density requirement

EXHIBIT F
REQUIRED FEDERAL PROVISIONS
PROJECT NO. MC-0742
ENGINEERING AND TESTING SERVICES

Engineer will comply with the following federal requirements and clauses and all applicable laws including but not limited to applicable federal regulations and executive orders. In the event of conflict between the following federal provisions and the terms of the Contract, these federal provisions shall prevail.

A. Remedies

Any violation or breach of terms of this Contract on the part of the Engineer or its subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this Contract. The duties and obligations imposed by the Contract and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

B. Termination for Cause and for Convenience

1. The City/Trust may, by written notice, terminate this Contract in whole or in part at any time, either for the City/Trust's convenience or because of failure to fulfill the Contract obligations. Upon receipt of such notice, work and services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to the City/Trust.
2. If the termination is for the convenience of the City/Trust, an equitable adjustment in the Contract price will be made for performed work and services, but no amount will be allowed for anticipated profit on unperformed work or services.
3. If the termination is due to failure to fulfill the Engineer's obligations, the City/Trust may take over the work and services and prosecute the same to completion by Contract or otherwise. In such case, the Engineer shall be liable to the City/Trust for any additional cost occasioned to the City/Trust thereby.
4. If, after notice of termination for failure to fulfill Contract obligations, it is determined that the Engineer had not so failed, the termination will be deemed to have been effected for the convenience of the City/Trust. In such event, adjustment in the Contract price will be made as provided in paragraph (2) of this clause "B".
5. The rights and remedies of the City/Trust provided in this clause "B" are in addition to any other rights and remedies provided by law or under this Contract.

C. Equal Employment Opportunity

During the performance of this Contract, the Engineer agrees as follows:

1. The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Engineer 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 Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this clause "C".
2. The Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Engineer will send to each labor union or representative of workers with which the Engineer has a collective bargaining Contract or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Engineer's commitments under this clause "C", and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Engineer'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 Engineer may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other 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.
7. The Engineer will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) of this clause "C" 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 Engineer will take such action with respect to any subcontract or purchase

order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event an Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

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

1. Engineer.

The Engineer 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 Engineer and subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Engineer 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 an Engineer or subcontractor as provided in 29 C.F.R. § 5.12.

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

(This clause “E” only applies to construction contracts over \$100,000.)

1. Overtime requirements.

No Engineer or subcontractor contracting for any part of the Contract work or services, 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 Contract to work in excess of forty (40) 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 those hours worked in excess of forty (40) hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of paragraph (1) of this clause “E”, the Engineer and any subcontractor responsible therefor shall be liable for the unpaid wages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of paragraph (1) of this clause “E”, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forth hours without payment of the overtime wages required by paragraph (1) of this clause “E”.

3. Withholding for unpaid wages and liquidated damages.

The City/Trust 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 or services performed by the Engineer or subcontractor under any such Contract or any other federal contract with the same Engineer, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Engineer, such sums as may be determined to be necessary to satisfy any liabilities of such Engineer or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause "E".

4. Subcontracts.

The Engineer or subcontractor shall insert in any subcontracts paragraphs (1) through (4) of this clause "E" and also a clause requiring the subcontractors to include these paragraphs in any lower tier subcontracts. The Engineer shall be responsible for compliance by any subcontractor or lower tier subcontractor with paragraphs (1) through (4) of this clause "E".

F. Patent Rights

The Engineer acknowledges the existence of requirements and regulations of the City/Trust relating to patent rights with respect to any discovery or invention which arises or is developed in the course or under this Contract, including, but not limited to those regulations and requirements set forth in 48 CFR Part 27. Any discovery or invention that arises during the course of this Contract shall be immediately (within two months of discovery) reported to the City/Trust. The City/Trust shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and 37 CFR Part 401.

G. Copyright

The Engineer acknowledges the existence of requirements and regulations of the City/Trust relating to copyrights and right in data, including, but not limited to those set forth in 28 CFR Part 66.34, which states: "The federal awarding agency reserves royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support."

H. Compliance with Clean Air Act

(This clause "H" only applies to Contracts in excess of \$150,000.)

1. The Engineer 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 Engineer agrees to report each violation to the City/Trust and understands and agrees that the City/Trust will, in turn, report each violation as required to assure notification to the State of Oklahoma, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Engineer agrees to include these requirements in each subcontract exceeding

\$100,000 financed in whole or in part with federal assistance provided by the City/Trust.

I. Compliance with Federal Water Pollution Control Act

(This clause "I" only applies to Contracts in excess of \$150,000.)

1. The Engineer 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. Any violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency (EPA).
2. The Engineer agrees to report each violation to the City/Trust and understands and agrees that the City/Trust will, in turn, report each violation as required to assure notification to the State of Oklahoma, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Engineer agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by the City/Trust.

J. Energy and Conservation Provision

Engineer agrees to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

K. Excluded Parties based upon 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 Engineer is required to verify that none of the Engineer, its 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 Engineer 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 the Engineer enters into.
3. This certification is a material representation of fact relied upon by City/Trust. If it is later determined that the Engineer 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 the State of Oklahoma and the City/Trust, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Engineer 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 Contract is valid and throughout the period of any contract that may arise from this Contract. The Engineer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

L. Byrd Anti-Lobbying Act, 31 U.S.C. § 1352 (as amended)

Engineers who apply or bid for an award of \$100,000 or more shall 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 funded contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient. Example of Certification attached hereto.

M. Solid Waste Disposal Act

1. In the performance of this Contract, the Engineer shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - (i) Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - (ii) Meeting Contract performance requirements; or
 - (iii) At a reasonable price.
2. Information about this requirement, including the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

N. Access to Records.

The following access to records requirements apply to this Contract:

1. The Engineer agrees to provide the State of Oklahoma, the City/Trust, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Engineer which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Engineer agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Engineer agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work or services being completed under the Contract.

O. DHS Seal, Logo, and Flags

Engineer shall not use the seal(s), logos, crests, or reproductions or likenesses of the Department of Homeland Security or likenesses of Department of Homeland Security officials without specific FEMA pre-approval.

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

Engineer acknowledges that federal financial assistance will be used to fund the Contract and

Engineer agrees to comply with all applicable federal law, regulations, executive orders, and federal policies, procedures, and directives.

Q. No Obligation by Federal Government

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

R. Program Fraud and False or Fraudulent Statements or Related Acts

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

S. Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

In compliance with 2 CFR § 200.321, if Engineer utilizes subcontracts for this Contract, Engineer agrees that it shall:

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establish delivery schedules, where the requirements permits, which encourage participation by small and minority businesses, and women's business enterprises; and
5. Use 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.

T. Small and Disadvantaged Local Business Subcontracting Program

The Engineer must also comply with the City/Trust's Small and Disadvantaged Local Business Subcontracting Program.

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned, _____ of _____ (the “Architect/Engineer”) hereby certifies, to the best of his or her knowledge, 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 contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative Contract.
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 Contract, 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 Contracts) 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 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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 Architect/Engineer certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Architect/Engineer understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Architect/Engineer’s Authorized Official

Name and Title of Architect/Engineer’s Authorized Official

Date

**EXHIBIT G
FEDERAL CONTRACT CLAUSES
PROJECT NO. MC-0742
ENGINEERING AND TESTING SERVICES**

See next Page

EXHIBIT G - FEDERAL CONTRACT CLAUSES

SECTION I

Contract Clauses

In the event of any inconsistencies between non-mandatory FAR and DFARS clauses incorporated by reference herein or elsewhere and any clauses set forth in full text in this Contract, the full text clauses shall control.

I.1 FAR 52.252-2 Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<https://www.ecfr.gov/>
 (End of Clause)

I.2 FAR Clauses

The following FAR clauses are incorporated by reference:

FAR Paragraph	Clause Title	IAW	Date
52.202-1	Definitions	FAR 2.201	Jun 2020
52.203-3	Gratuities	FAR 3.202	Apr 1984
52.203-5	Covenant Against Contingent Fees	FAR 3.404	May 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	FAR 3.503-2	Jun 2020
52.203-7	Anti-Kickback Procedures	FAR 3.502-3	Jun 2020
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	FAR 3.104-9(a)	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	FAR 3.104-9(b)	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	FAR 3.808(b)	Jun 2020
52.203-13	Contractor Code of Business Ethics and Conduct	FAR 3.1004(a)	Jun 2020
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights	FAR 3.908-9	Jun 2020
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	FAR 3.909-3(b)	Jan 2017
52.204-4	Printed or Copied Double-sided on Postconsumer Fiber Content Paper	FAR 4.303	May 2011
52.204-9	Personal Identity Verification of Contractor Personnel	FAR 4.1303	Jan 2011

FAR Paragraph	Clause Title	IAW	Date
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	FAR 4.1403(a)	Jun 2020
52.204-13	System for Award Management Maintenance	FAR 4.1105(b)	Oct 2018
52.204-19	Incorporation by Reference of Representations and Certifications	FAR 4.1202(b)	Dec 2014
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	FAR 4.2004	Jul 2018
52.207-3	Right of First Refusal of Employment	FAR 7.305(c)	May 2006
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	FAR 9.409	Jun 2020
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	FAR 9.104-7(c)	Oct 2018
52.215-2	Audit and Records – Negotiation	FAR 15.209(b)	Jun 2020
52.215-8	Order of Precedence – Uniform Contract Format See Section C.1 of contract	FAR 15.209(h)	Oct 1997
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data—Modifications	FAR 15.408(c)	Jun 2020
52.215-13	Subcontractor Certified Cost or Pricing Data—Modifications <i>DEVIATION 2018-00015</i>	FAR 15.408(e)	Jun 2020 May 2018
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications	FAR 15.408(m)	Jun 2020
52.219-8	Utilization of Small Business Concerns	FAR 19.708(a)	Oct 2018
52.219-9	Small Business Subcontracting Plan <i>Alternate II</i>	FAR 19.708(b)	Jun 2020 Alt II Nov 2016
52.219-16	Liquidated Damages—Subcontracting Plan	FAR 19.708(b)(2)	Jan 1999
52.219-28	Post-Award Small Business Program Representation	FAR 19.309(c)	May 2020
52.222-1	Notice to the Government of Labor Disputes	FAR 22.103-5(a)	Feb 1997
52.222-3	Convict Labor	FAR 22.202	Jun 2003
52.222-4	Contract Work Hours and Safety Standards—Overtime Compensation	FAR 22.305	Mar 2018
52.222-21	Prohibition of Segregated Facilities	FAR 22.810(a)(1)	Apr 2015
52.222-26	Equal Opportunity	FAR 22.810(e)	Sep 2016

FAR Paragraph	Clause Title	IAW	Date
52.222-37	Employment Reports on Veterans	FAR 22.1310(b)	Jun 2020
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	FAR 22.1605	Dec 2010
52.222-50	Combating Trafficking in Persons	FAR 22.1705(a)(1)	Jan 2019
52.222-54	Employment Eligibility Verification	FAR 22.1803	Oct 2015
52.223-3	Hazardous Material Identification and Material Safety Data	FAR 23.303	Jan 1997
52.223-5	Pollution Prevention and Right-to-Know Information <i>Alternate I</i>	FAR 23.1005(b)	May 2011 Alt I May 2011
52.223-6	Drug-Free Workplace	FAR 23.505	May 2001
52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners	FAR 23.804(a)(2)	Jun 2016
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	FAR 23.1105	Jun 2020
52.225-13	Restrictions on Certain Foreign Purchases	FAR 25.1103(a)	Jun 2008
52.227-1	Authorization and Consent	FAR 27.201-2(a)(1)	Jun 2020
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	FAR 27.201-2(b)	Jun 2020
52.228-5	Insurance-Work on a Government Installation	FAR 28.310	Jan 1997
52.232-1	Payments	FAR 32.111(a)(1)	Apr 1984
52.232-8	Discounts for Prompt Payment	FAR 32.111(b)(1)	Feb 2002
52.232-11	Extras	FAR 32.111(c)(2)	Apr 1984
52.232-17	Interest	FAR 32.611(a) and (b)	May 2014
52.232-18	Availability of Funds	FAR 32.706-1(a)	Apr 1984
52.232-23	Assignment of Claims <i>Alternate I</i>	FAR 32.806(a)(1)	May 2014 Alt I Apr 1984
52.232-25	Prompt Payment	FAR 32.908(c)	Jan 2017
52.232-33	Payment by Electronic Funds Transfer - System for Award Management	FAR 32.1110(a)(1)	Oct 2018
52.232-39	Unenforceability of Unauthorized Obligations	FAR 32.706-3	Jun 2013

FAR Paragraph	Clause Title	IAW	Date
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	FAR 32.009-2	Dec 2013
52.233-1	Disputes <i>Alternate I</i>	FAR 33.215	May 2014 Alt I Dec 1991
52.233-3	Protest after Award	FAR 33.106(b)	Aug 1996
52.233-4	Applicable Law for Breach of Contract Claim	FAR 32.215(b)	Oct 2004
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	FAR 37.110(b)	Apr 1984
52.237-3	Continuity of Services	FAR 37.110(c)	Jan 1991
52.242-13	Bankruptcy	FAR 42.903	Jul 1995
52.243-1	Changes – Fixed-Price <i>Alternate I</i>	FAR 43.205(a)(1)(2)	Aug 1987 Alt I Apr 1984
52.244-6	Subcontracts for Commercial Items	FAR 44.403	Jun 2020
52.246-25	Limitation of Liability – Services	FAR 46.805(a)(4)	Feb 1997
52.248-1	Value Engineering	FAR 48.201	Jun 2020
52.249-2	Termination for Convenience of the Government (Fixed-Price)	FAR 49.502(b)(1)(i)	Apr 2012
52.249-8	Default (Fixed-Price Supply and Service)	FAR 49.504(a)(1)	Apr 1984
52.252-6	Authorized Deviations in Clauses	FAR 52.107(f)	Apr 1984
52.253-1	Computer Generated Forms	FAR 53.111	Jan 1991

I.2.1 Disputes

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that in regard to the interpretation of retail rates, rate schedules and items directly related to rates and rate schedules provided under this contract, the parties agree to accept as authoritative the interpretation of any statewide public utility regulatory authority with jurisdiction over the contractor. The Government shall not be bound to accept as authoritative interpretations that conflict with Federal law or regulation or that are found by any administrative or judicial forum to: 1) result in discrimination against the Installation; 2) have resulted from abuse of discretion; or 3) have directly or indirectly resulted from any failure on the part of the regulatory authority or its members to comply with applicable laws and regulations.

I.3 DFARS Clauses Incorporated by Reference

The use in this contract of any Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

The following DFARS clauses are incorporated by reference:

DFARS Paragraph	Clause Title	IAW	Date
252.203-7000	Requirements Relating to Compensation of Former DoD Officials	DFARS 203.171-4(a)	Sep 2011
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	DFARS 203.570-3	Dec 2008
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	DFARS 203.970	Sep 2013
252.203-7003	Agency Office of the Inspector General	DFARS 203.1004(a)	Aug 2019
252.203-7004	Display of Hotline Posters	DFARS 203.1004(b)(2)(ii)	Aug 2019
252.204-7000	Disclosure of Information	DFARS 204.404-70(a)	Oct 2016
252.204-7003	Control of Government Personnel Work Product	DFARS 204.404-70(b)	Apr 1992
252.204-7004	Level I Antiterrorism Awareness Training for Contractors	DFARS 204.7203	Feb 2019
252.205-7000	Provision of Information to Cooperative Agreement Holders	DFARS 205.470	Dec 1991
252.209-7004	Subcontracting with Firms that Are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism	DFARS 209.409	May 2019
252.219-7003	Small Business Subcontracting Plan (DoD Contracts)—Basic	DFARS 219.708(b)(1)(A) and (b)(1)(A)(1)	Dec 2019
252.223-7001	Hazard Warning Labels	DFARS 223.303	Dec 1991
252.223-7004	Drug-Free Work Force	DFARS 223.570-2	Sep 1988
252.223-7006	Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials--Basic	DFARS 223.7106 and 223.7106(a)	Sep 2014
252.223-7008	Prohibition of Hexavalent Chromium	DFARS 223.7306	Jun 2013
252.225-7012	Preference for Certain Domestic Commodities	DFARS 225.7002-3(a)	Dec 2017
252.225-7048	Export Controlled Items	DFARS 225.7901-4	Jun 2013
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	DFARS 226.104	Apr 2019
252.231-7000	Supplemental Cost Principles	DFARS 231.100-70	Dec 1991
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports	DFARS 232.7004(a)	Dec 2018
252.232-7010	Levies on Contract Payments	DFARS 232.7102	Dec 2006

DFARS Paragraph	Clause Title	IAW	Date
252.235-7003	Frequency Authorization – Basic	DFARS 235.072(b)(1)	Mar 2014
252.236-7005	Airfield Safety Precautions	DFARS 236.570(b)(3)	Dec 1991
252.243-7001	Pricing of Contract Modifications	DFARS 243.205-70	Dec 1991
252.243-7002	Requests for Equitable Adjustment	DFARS 243.205-71	Dec 2012
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DOD Contracts)	DFARS 244.403	Jun 2013
252.247-7023	Transportation of Supplies by Sea—Basic	DFARS 247.574(b)(1)	Feb 2019

I.4 Utility Services Clauses Incorporated by Reference

The following Utility Services FAR and DFARS clauses are incorporated herein by reference.

Paragraph	Clause Title	IAW	Date
52.241-4	Change in Class of Service (Applicable to Tariff Priced Contracts Only)	FAR 41.501(c)(3)	Feb 1995
52.241-5	Contractor's Facilities	FAR 41.501(c)(4)	Feb 1995
52.241-11	Multiple Service Locations	FAR 41.501(d)(5)	Feb 1995
252.241-7001	Government Access	DFARS 241.501-70(b)	Dec 1991

I.5 Clauses Incorporated by Reference: Construction Wage Rates Requirements

The following FAR clauses are incorporated by reference and apply to Initial System Deficiency Corrections, subsequent System Deficiency Corrections, and new connections that involve construction, alteration, or repair (including painting or decorating).

Paragraph	Clause Title	IAW	Date
52.222-6	Construction Wage Rate Requirements	FAR 22.407(a)	Aug 2018
52.222-7	Withholding of Funds	FAR 22.407(a)	May 2014
52.222-8	Payrolls and Basic Records	FAR 22.407(a)	Aug 2018
52.222-9	Apprentices and Trainees	FAR 22.407(a)	Jul 2005
52.222-10	Compliance with Copeland Act Requirements	FAR 22.407(a)	Feb 1988
52.222-11	Subcontracts (Labor Standards)	FAR 22.407(a)	May 2014
52.222-12	Contract Termination – Debarment	FAR 22.407(a)	May 2014
52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations	FAR 22.407(a)	May 2014
52.222-14	Disputes Concerning Labor Standards	FAR 22.407(a)	Feb 1988
52.222-15	Certification of Eligibility	FAR 22.407(a)	May 2014

I.6 Other Clauses and Contract Texts

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)

(a) *Definitions.* As used in this clause--

“Covered contractor information system” means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

“Federal contract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

- (1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:
- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
 - (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
 - (iii) Verify and control/limit connections to and use of external information systems.
 - (iv) Control information posted or processed on publicly accessible information systems.
 - (v) Identify information system users, processes acting on behalf of users, or devices.
 - (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
 - (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
 - (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
 - (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
 - (x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
 - (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
 - (xii) Identify, report, and correct information and information system flaws in a timely manner.
 - (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
 - (xiv) Update malicious code protection mechanisms when new releases are available.
 - (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of clause)

FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)

(a) *Definitions.* As used in this clause--

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means--

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of 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.

Critical technology means--

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled--
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817). Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

(b) Prohibition. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing 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 as part of any system. The Contractor is prohibited from providing to the Government 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, unless an

exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses 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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) Exceptions. This clause does not prohibit contractors from providing--

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) 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.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

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

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

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts

it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

FAR 52.222-35: Equal Opportunity for Veterans (Jun 2020)

(a) *Definitions.* As used in this clause--

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of Clause)

FAR 52.222-36: Equal Opportunity for Workers with Disabilities (Jun 2020)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of Clause)

FAR 52.241-2: Order of Precedence—Utilities (FEB 1995)

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, Section C.1, Precedence, of this contract shall control.

(End of clause)

FAR 52.241-3: Scope and Duration of Contract (FEB 1995)

(a) For the period identified in F.2, Commencement of Service, the Contractor agrees to furnish and the Government agrees to purchase the utility services as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(End of clause)

FAR 52.241-6: Service Provisions (FEB 1995)

(a) Measurement of service.

(1) If required under the terms of the contract, the Contractor shall provide suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense.

(2) When applicable, the Contractor shall read all meters at periodic intervals of approximately 30 days unless otherwise identified in this contract.

(b) Meter test.

(1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters, if any, at intervals identified in this contract. The Government has the right to have representation during the inspection and test.

(2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests may be grounds for a request for equitable adjustment.

(c) Change in volume or character. Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) Continuity of service and consumption. The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, and, unless otherwise stated in this contract, shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods,

earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities.

(End of clause)

FAR 52.241-7: Change in Rates or Terms and Conditions of Service for Regulated Services (FEB 1995)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give the Contracting Officer written notice of

(1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and

(2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service, if in accordance with the terms of this contract, will become effective upon the issuance of a contract modification (unless otherwise specified in the contract). The effective date of the change shall be the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

(End of Clause)

FAR 52.243-7: Notification of Changes (Jan 2017)

(a) Definitions. "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically Authorized Representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within 15 calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state --

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including --
 - (i) What line items have been or may be affected by the alleged change;
 - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- (6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) Government response. The Contracting Officer shall promptly, within 60 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either --

- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

- (2) Countermand any communication regarded as a change;
- (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
- (4) In the event the Contractor's notice information is inadequate to make a decision under subparagraphs (d)(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments.

(1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made --

- (i) In the contract price or delivery schedule or both; and
- (ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

NOTE: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of Clause)

DFARS 252.204-7012: Safeguarding Covered Defense Information and Cyber Incident Reporting (Dec 2019)

(a) *Definitions.* As used in this clause—

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Contractor attributional/proprietary information means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

Covered contractor information system means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

Covered defense information means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

- (1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or
- (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Forensic analysis means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Malicious software means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

Operationally critical support means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

Rapidly report means within 72 hours of discovery of any cyber incident.

Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security*. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (*i.e.*, other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative

of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) *Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <https://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <https://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-

approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <https://public.cyber.mil/eca/>.

(d) *Malicious software.* When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

DFARS 252.232-7007: Limitation of Government’s Obligation (APR 2014)

(a) Contract line item(s) 0001 through 0050 are incrementally funded. For these item(s), the sum of \$ 0.00 of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled “Termination for Convenience of the Government.”

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

The parties contemplate that the Government will allot funds to this contract in accordance with B.3 Schedule.

(End of clause)

I-0001 I.I28.01 FEDERAL, STATE, AND LOCAL TAXES (DLA Energy NOV 2011) (DEVIATION)

(a) As used in this contract provision—

(1) **After-imposed tax** means any new or increased Federal, State, or local tax that the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the contract date.

(2) **After-relieved tax** means any amount of Federal, State, or local tax that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(3) **All applicable Federal and State taxes** means all excise taxes that the taxing authority is imposing and collecting on the transactions or property covered by this contract pursuant to written ruling or regulation in effect on the contract date.

(4) **Contract date** means the date set for bid opening or, if this is a negotiated contract or a modification, the date set for final revised prices.

(5) **Local taxes** means taxes levied by the political subdivisions of the States, District of Columbia, or outlying areas of the United States, e.g., cities and counties.

(6) **Outlying areas** means—

(i) **Commonwealths.** Puerto Rico and the Northern Mariana Islands;

(ii) **Territories.** American Samoa, Guam, and the U.S. Virgin Islands;
and

(iii) Minor outlying islands. Baker Island; Howland Island, Jarvis Island; Johnston Atoll; Kingman Reef; Midway Islands; Navassa Island; Palmyra Atoll; and Wake Atoll.

(7) **State taxes** means taxes levied by the States, the District of Columbia, or outlying areas of the United States.

(8) **Tax** means taxes, duties and environmental or inspection fees, except social security or other employment taxes.

- (b) The contract price includes all applicable Federal, State, and local taxes, except as otherwise provided.
- (c) The contract price shall be increased by the amount of any after-imposed tax if the Contractor states in writing that the contract price does not include any contingency for such tax.
- (d) The contract price shall be decreased by the amount of any after-relieved tax.
- (e) The contract price shall also be decreased by the amount of any tax that the Contractor is required to pay or bear the burden of, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) The Contractor shall promptly notify the Contracting Officer of all matters relating to any tax that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (g) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

(End of Section)