

RESOLUTION NO. 22-160

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH,
FLORIDA, APPROVING THE FORM OF A FIRST AMENDMENT TO
THE CITY'S STANDARD FORM MASTER SERVICES
AGREEMENT.**

WHEREAS, in September 2021, the City requested qualifications from professionals in eleven separate disciplines to provide continuing architectural, engineering and surveying services for City departments on an as-needed basis (PCB 22-02); and

WHEREAS, since that time, the City has also approved grant agreements with various state and federal agencies, and has adopted a Procurement Manual setting forth required contract provisions; and

WHEREAS, the City desires to amend the Master Services Agreements to incorporate required contract provisions (the "First Amendment"), and to authorize but not require the City Manager to execute this First Amendment where he deems appropriate based on the work undertaken by the professional for the City.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City, in substantially the form **attached** and presented to the Council today, that certain First Amendment to the Master Services Agreement previously authorized in the following Resolutions: 21-31 (PD and FD Architectural); 22-28 (Geotech); 22-49 (Architectural); 22-57 (Engineering I); 22-58 (Engineering II); 22-59 (Surveying); 22-60 (General Stormwater); 22-61 (Major Water); 22-62 (Major Wastewater & Reclaimed); 22-63 (Minor Water, Wastewater & Reclaimed); 22-64 (Stormwater basins); 22-65 (Major Stormwater); 22-66 (Minor Roadway).

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 26th day of May, 2022.

CITY OF PANAMA CITY BEACH

By: 

Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

**FIRST AMENDMENT TO
MASTER SERVICES AGREEMENT
BETWEEN
CITY OF PANAMA CITY BEACH
AND
[]
RELATING TO
PROFESSIONAL [] SERVICES**

THIS FIRST AMENDMENT (the "First Amendment") is made and entered into this _____ day of _____ 2022, by and between the City of Panama City Beach, ("City") and [] ("Architect" or "Engineer").

WHEREAS, on [], the City approved an Master Services Agreement (the "Agreement") with [Architect/Engineer] for professional [] services [] for ; and

WHEREAS, in the past several months the City has since been awarded state or federal funds which may affect the projects for which [[Architect/Engineer] has or may be engaged to provide services in connection with, and as such wishes to generally modify the Agreement to incorporate standard Federal contracting provisions; and

[WHEREAS, the City has specifically been awarded [program] funds from the [agency] for a [project] by virtue of an agreement approved by the Council on [] (the "Grant Agreement" a copy of which is attached as Attachment A to this First Amendment), and as such wishes to modify the Agreement to conform and comply with the requirements of that Grant Agreement].

NOW THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments set forth, the parties agree to amend the Agreement as follows:

1. The [Architect/Engineer] shall be bound by terms of the Grant Agreement and shall hold the City and the [agency] harmless against all claims of whatever nature arising out of the [Architect/Engineer]'s performance of work under the Grant Agreement, to the extent allowed and required by law.
2. The City and [Architect/Engineer] wish to amend Section 2 of the Agreement to read as follows (new text **bold and underlined**; deleted text ~~struckthrough~~):

2. COMPENSATION AND PAYMENT:

A. [Architect/Engineer]'s compensation for the services described in each scope of work shall be stated or incorporated in the Task Order related to that scope. Hourly compensation shall be determined in increments of one-tenth (1/10) of an hour.

B. **Reserved.** ~~In addition, with prior, written authorization by City, the [Architect/Engineer] shall be reimbursed for reasonable out-of-pocket expenses upon submission of adequate documentation. The [Architect/Engineer] shall invoice the City at actual costs times a factor of 1.10 for all out-of-pocket costs including sub-consultants (if required). Records of costs incurred under the terms of this Agreement shall be maintained by the [Architect/Engineer] and made available to the City during the period of this Agreement, and for one (1) year after the final payment is made. Copies of these documents and records shall be furnished to the City without cost.~~

C. Upon written instruction by the City, the [Architect/Engineer] shall perform additional work necessary or convenient to complete the services for which a Task Order is entered, and which are mentioned or referenced in this Agreement. The [Architect/Engineer] shall be entitled to additional compensation unless such work is required as a result of error, omission, or negligence by the [Architect/Engineer]. The additional compensation shall be computed by the [Architect/Engineer] on a revised fee quotation proposal and submitted to the City for written approval. If the parties cannot agree, [Architect/Engineer]'s initial compensation will be such amount as the City shall determine in good faith to be the fair value of such services, and such amounts shall be paid to [Architect/Engineer] in monthly installments as set forth elsewhere in this Agreement. In the event the City shall unilaterally determine the amount to be paid for such services, [Architect/Engineer] shall have the right, to be exercised by written notice delivered to the City within twenty (20) days after the City Council shall unilaterally determine such amount, to have the value of such services determined by binding arbitration pursuant to the Florida Arbitration Code and in accordance with the rules of the American Arbitration Association. The [Architect/Engineer] and the City each shall select one arbitrator and those two shall select a third. Each arbitrator shall be familiar by trade or occupation with [Architecture/Engineering]. The decision of any two (2) arbitrators shall be conclusive and may be enforced in any court of competent jurisdiction in the State of Florida. Each party shall promptly pay when billed, including in advance, one-half of all arbitration fees and costs. The prevailing party shall recover from the other its reasonable attorney's fees and costs, including fees and costs incurred in arbitration and in any action in any court of competent jurisdiction in the State of Florida to enforce the arbitration award, including appeal. Should the arbitrators award [Architect/Engineer] an amount equal to or less than the amount that the City has unilaterally determined, [Architect/Engineer] shall nonetheless be paid the amount unilaterally determined by the City but the City shall be deemed the prevailing party and [Architect/Engineer] shall pay the City's reasonable attorney's fees.

D. In the event that additional outside services are required due to unknown or unforeseen conditions, the [Architect/Engineer] shall:

1. Obtain a written proposal from the firm designated to render the required services, and submit such proposal to the City for written approval.

2. If the services are such that registration is required to perform them, the [Architect/Engineer] shall select a firm that is registered in the State of Florida.

3. If the proposal is approved in writing by the City, the [Architect/Engineer] shall enter into a contract with the firm for the furnishing of such services in accordance with the proposal.

4. The [Architect/Engineer] shall submit a minimum of five (5) printed copies and one (1) digital copy of deliverables for all required services to the City, unless otherwise directed by the City.

5. Upon approval by the City of such reports, the City shall reimburse the [Architect/Engineer] for the actual cost of such services, ~~which cost shall not exceed 1.10 times the amount of the proposal.~~

6. Services rendered by the [Architect/Engineer] in connection with the coordination of these additional services shall be considered within the scope of the basic contract, and no additional fee shall be due the [Architect/Engineer] except as ~~part of the multiplier~~ stated in immediately preceding subsection 2.D.5.

E. At the end of each month during which a Task Order shall be outstanding, the [Architect/Engineer] shall submit a separate invoice for services rendered during that month with respect to each Task Order, as follows:

1. Where a stipulated sum is specified, the City shall pay [Architect/Engineer] in monthly installments based upon the percentage of satisfactory completion. In support of payment, [Architect/Engineer] shall monthly submit a request for payment describing the work done, percentage of completion and amount requested to be paid, all by reference to line items in the scope of services where available.

2. Where fees are computed on a time-involved basis, the City shall pay [Architect/Engineer] monthly in arrears upon receipt of an itemized statement in form and detail reasonably acceptable to City.

F. The acceptance by the Consultant, its successors, or assigns, of any Final Payment due upon the termination of this Agreement, shall constitute a full and complete release of the City from any and all claims or demands regarding further compensation for authorized Services rendered prior to such Final Payment that the Consultant, its successors, or assigns have or may have against the City under the provisions of this Agreement. This Section does not affect any other portion of this Agreement that extends obligations of the parties beyond Final Payment.

3. The City and [Architect/Engineer] wish to amend Section 15 of the Agreement to read as follows (new text **bold and underlined**; deleted text ~~struckthrough~~):

15. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:

A. The [Architect/Engineer] shall comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

B.

C. **Where applicable, the [Architect/Engineer] shall comply with Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards"), as more specifically set forth in attached Exhibit C.**

4. The City and [Architect/Engineer] wish to amend Exhibit B of the Agreement, the Combined Task Order and Notice to Proceed, in the form attached as Attachment B to this First Amendment.
5. The City and [Architect/Engineer] wish to amend the Agreement to include and incorporate into the Agreement newly created Exhibit C, in the form attached as Attachment C to this First Amendment.
6. Except as expressly modified by this First Amendment, the Agreement remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have hereto caused the execution of these documents as of the year and date first above written.

**THE CITY OF PANAMA CITY BEACH,
FLORIDA,**
a municipal corporation

By: _____
Drew Whitman, City Manager

ATTEST:

Lynne Fasone, City Clerk

[ARCHITECT/ENGINEER]

By: _____

WITNESS
PRINT NAME:

WITNESS
PRINT NAME:

ATTACHMENT A
(GRANT AGREEMENT, if applicable)

ATTACHMENT B—REVISED EXHIBIT B
EXHIBIT B

COMBINED-TASK ORDER AND NOTICE TO PROCEED

TASK ORDER NO. 1

DATE

Reference is made to that certain MASTER SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND [ARCHITECT/ENGINEER] RELATING TO [] dated [], (the "Agreement"), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

Pursuant to the Agreement, [Architect/Engineer] agrees to perform the specific tasks set forth upon incorporated Attachment A, Scope of Services, relating to

[Architect/Engineer]'s total compensation shall be (check one):
a stipulated sum of \$ _____; or
~~a stipulated sum of \$ plus one or more specified allowances listed below which may be authorized in writing by the City Manager or his designee:~~
~~Allowance of \$ _____ for _____; or~~
a fee determined on a time-involved basis with a maximum cost of \$.

as set forth upon incorporated Attachment B, Fee Breakdown, and shall be paid in monthly installments as specified in the Agreement.

Work shall begin on __, 20__, and shall be completed within _____ calendar days. The date of completion of all work is therefore __, 20__. Liquidated delay damages, if any, are set at the rate of \$ _____ per _____ day. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

Upon execution of this task order by both [Architect/Engineer] and City, [Architect/Engineer] is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

[ARCHITECT/ENGINEER]

By:

_____ Date:
e: Its:

CITY OF PANAMA CITY BEACH,
FLA.

ATTEST:

By: _____

Date:

City Manager

City Clerk

ATTACHMENT C—NEWLY CREATED EXHIBIT C

EXHIBIT C

APPENDIX II TO 2 C.F.R. PART 200 **(CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS** **UNDER FEDERAL AWARDS)**

1. **Conflict of Interest** - This Contract/Work Order is subject to chapter 112, F.S. The vendor shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in the Contractor's company or its affiliates.
2. **Discriminatory Vendors** – (1) No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance during the term of the contract. (2) Contractor shall disclose if they appear on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134, F.S. may not: 1) Submit a bid on an agreement to provide any goods or services to a public entity; 2) Submit a bid on an agreement with a public entity for the construction or repair of a public building or public work; 3) Submit bids on **leases** of real property to a public entity; or 4) Be awarded or perform work as a consultant under an agreement with any public entity; or transact business with any public entity.
3. **Lobbying** - No funds received pursuant to this Agreement may be expended for lobbying the Federal or State Legislature, the judicial branch, or a federal or state agency. The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed

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

4. **Record Retention** – A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is made and shall allow the City, the State, or its authorized representatives access to such records for audit purposes upon request. B. In the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the City, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims
5. **Diversity** – All contracting and subcontracting opportunities afforded by this solicitation/contract embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. Firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a Minority Business vendor. A list of minority owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
6. **Applicable Laws** - The contractor shall comply with all applicable federal, state and local rules and regulations in providing services to the Consortium. The contractor acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state and local health and safety rules and regulations and that FEMA financial assistance may be used to fund the contract. As such, the contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
7. **Administrative, Contractual, or Legal Remedies** - Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.
8. **Patents and Data** - No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the contractor. The grantor agency and the grantee shall possess all rights to invention or discovery, as well as rights in data which may arise as a result of the contractor's services.
9. **Clean Air Act and Federal Water Pollution Control Act** - (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* (2) The contractor agrees to 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.* (3) The contractor agrees to report each violation to the Consortium member and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. (4) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

- 10. Suspension and Debarment** (1) This contract is a covered transaction for purposes of 2 C.F.R.pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, 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 contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Florida Department of Emergency Management, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions." (5) The Contractor's debarment and suspension status will be validated by the City at the System for Award Management at www.sam.gov and the State of Florida at: https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/c_onvicted_suspended_discriminatory_complaints_vendor_lists
- 11. Reporting** - The contractor will provide any information required to comply with the grantor agency requirements and regulations pertaining to reporting. It is important that the contractor is aware of the reporting requirements of the City, as the Federal or State granting agency may require the contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the granting agency.
- 12. Access to Records** – (1) The contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract."
- 13. Energy Efficiency Standards** - The contractor agrees to comply with 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.

- 14. DHS Seal, Logo, and Flags** - "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval."
- 15. No Obligation by Federal Government** - The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- 16. Program Fraud and False or Fraudulent Statements or Related Acts** - The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."
- 17. Recovered Materials** –
- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired (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 is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.
- 18. Discriminatory Vendors List:** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- 19. Contracting With Small And Minority Businesses, Women's Business Enterprises, And Labor Surplus Area Firms**
- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(c) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

20. **Equal Opportunity Clauses**

Compliance with Regulations: The contractor shall comply with the Acts and the Regulations relative to Nondiscrimination in federally-assisted programs, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

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

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

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and

remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**21. Contract Work Hours And Safety Standards Act 40 U.S.C. 3702 And 3704, As
Supplemented By
Department Of Labor Regulations (29 CFR Part 5)
Compliance with the Contract Work Hours and Safety Standards Act.**

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, 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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

22. Rights To Inventions Made Under A Contract Or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

23. Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (As Amended)

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

24. Duplication of Efforts.

The contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the contractor, whose responsibility it will be to account for it accordingly.