

AGREEMENT
BETWEEN
CITY OF YAKIMA, WASHINGTON
AND
MEDSTAR, LLC
FOR PARATRANSIT SERVICES

THIS CONTRACT is made between the CITY OF YAKIMA, WASHINGTON, a municipal corporation of the State of Washington, as "City" and Medstar, LLC as "Contractor". In consideration of these mutual terms and conditions, the parties covenant and agree as follows:

1. PERFORMANCE

The Contractor agrees, with the execution of this Contract, to perform all work, furnish all labor, necessary supplies, equipment, facilities, supervision, organization, and other items of work and cost necessary for the safe, reliable, efficient, and effective operation of a curb-to-curb and door-to-door ADA paratransit service for persons with disabilities within the parameters described in the specification criteria entitled, "City of Yakima Request for Proposals No. 12020P Provision of Americans with Disabilities Act Paratransit Transportation Services for ADA Qualified Individuals" dated September 14, 2020 and the schedules therein selected by the City, consistent with established industry practices, regardless of whether those services, equipment, facilities, and functions are specifically mentioned in the RFP or not.

All performance must be completed in strict accord with the Contract Documents, as defined below.

2. DEFINITIONS/INTERPRETATION

For the purposes of this Contract and any additional instruments that may become a part of this Contract, the terms "contractor", "supplier", "seller", and "vendor" shall be interchangeable. The terms "buyer", "purchaser", "procuring agency", "Yakima Transit", "City of Yakima", "Owner", and "City" shall be interchangeable.

3. CONTRACT DOCUMENTS

The City of Yakima Request for Proposals No. 12020P and the Contractor's proposal (to the extent consistent with the City's documents) are hereby incorporated herein by this reference. Specific federal and state laws and the terms of this Contract, in that order respectively, supersede other inconsistent provisions. This Contract is on file in the Office of the Procurement Manager, 129 No. 2nd St., Yakima, Washington, 98901.

4. COMPENSATION

The City will pay Contractor in accordance with the Contractor's Cost Proposal Form, [SUBMITTAL FORM D] of the RFP, as full compensation for all work performed under this Contract, subject to allowable additions and deductions.

Contractor shall send its itemized invoice/billing to: City of Yakima, Accounts Payable, 129 North 2nd St., Yakima, WA. 98901.

Payment will be made within thirty (30) calendar days after approval of the Contractor's application. Interest on payments made after thirty (30) calendar days shall be at a rate of one half percent per month. All payments are expressly conditioned upon Contractor providing services hereunder that are satisfactory to the City. Any charges disputed by the City shall be separated from the invoice and the undisputed portion shall be paid. Retainage may also be kept by the City pursuant to the terms of the RFP.

A. Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

B. Payment Does Not Imply Acceptance of Work

The granting of any progress payment or payments by City, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work or of any portion thereof, and shall in no way lessen the liability of the Contractor to comply with this Contract.

C. Prompt Payment of Subcontractors

The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work within thirty (30) days after the Contractor's receipt of payment for that work from the City. The Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.

5. TIME OF PERFORMANCE

The Contractor shall commence work under this Contract effective November __, 2020, and shall continue in good faith and effort until expiration on November __, 2023. The City reserves the right to extend this Contract for seven (7) additional one (1) year periods.

6. CHARTER SERVICE (FTA A.6) (49 U.S.C. 5323(d) and (r)) (49 C.F.R. part 604)

A. The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- 1) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- 2) FTA regulations, "Charter Service," 49 C.F.R. part 604;
- 3) Any other federal Charter Service regulations; or
- 4) Federal guidance, except as FTA determines otherwise in writing.

- B. The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:
 - 1) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
 - 2) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
 - 3) Any other appropriate remedy that may apply.
- C. The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

7. **ENERGY CONSERVATION REQUIREMENTS (FTA A.11) (42 U.S.C 6321 et seq.) (49 CFR Part 622, subpart C)**

- A. 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.
- B. These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

8. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (FTA A.7) (42 U.S.C. §§ 7401 – 7671q) (33 U.S.C. §§ 1251-1387) (2 C.F.R. part 200, Appendix II (G))**

- A. The Contractor agrees:
 - 1) It will not use any violating facilities;
 - 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
 - 3) It will report violations of use of prohibited facilities to FTA; and
 - 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).
- B. The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

9. **RECYCLED PRODUCTS (FTA A.20) (42 U.S.C. § 6962) 40 C.F.R. part 247) (2 C.F.R. part § 200.322)**

- A. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.
- B. These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. The Contractor agrees to include these requirements in each subcontract exceeding \$10,000 financed in whole or in part with Federal assistance provided by FTA.

10. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (CWHSSA) (40 U.S.C. 3701 et seq.)**

- A. **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.
- B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (A) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 (A) 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 (A) of this section.
- C. **Withholding for unpaid wages and liquidated damages** – Yakima Transit 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 monies 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 (B) of this section.
- D. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

11. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES (FTA A.15)**

- A. The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- B. The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

12. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (FTA A.18)**
(49 U.S.C. § 5323(l) (1)) (31 U.S.C. §§ 3801-3812) (18 U.S.C. § 1001) (49 C.F.R. part 31)

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

13. **TERMINATION (FTA A.25) (2 C.F.R. § 200.339) (2 C.F.R. part 200, Appendix II (B))**

A. **Termination for Convenience.** The City, by written 30-day notice, may terminate this contract, in whole or in part, when it is in the City's interest. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

B. **Termination for Default [Breach or Cause].** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a 30-day Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of City goods, the Contractor shall, upon direction of the City, protect and preserve the goods until surrendered to the City or its agent. The Contractor and City shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

C. **Opportunity to Cure.** The City, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from City setting forth the nature of said breach or default, City shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

D. **Waiver of Remedies for any Breach.** In the event that City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by City shall not limit City's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

E. **Contractor's Right to Terminate.** The Contractor may terminate this Contract, in whole, for any reason upon one-hundred and twenty (120) calendar days written notice to the City.

F. For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA.

14. **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (FTA A.13) (2 C.F.R. part 180) (2 C.F.R part 1200) (2 C.F.R. § 200.213) (2 C.F.R. part 200 Appendix II (I)) (Executive Order 12549) (Executive Order 12689)**

A. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- 1) Debarred from participation in any federally assisted Award;
- 2) Suspended from participation in any federally assisted Award;
- 3) Proposed for debarment from participation in any federally assisted Award;
- 4) Declared ineligible to participate in any federally assisted Award;
- 5) Voluntarily excluded from participation in any federally assisted Award; or
- 6) Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

B. The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

C. Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier. The Contractor agrees to include these requirements in each subcontract exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

15. **PRIVACY ACT (5 U.S.C. § 552a)**

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC § 552a. Among other

things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

16. **CIVIL RIGHTS REQUIREMENTS (FTA A.8) (42 USC § 2000e and Executive Order 11246) (49 USC § 5332) (20 U.S.C. §1681 et seq.) (40 C.F.R. Part 25) (42 U.S.C. § 6101 et seq.) (45 C.F.R. Part 90) (29 U.S.C. § 621 et seq.) (29 C.F.R. Part 1625) (42 U.S.C. §12101 et seq.) (49 C.F.R. Part 25)**

The following requirements apply to the underlying contract:

- A. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for
- B. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- D. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 § U.S.C. 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

E. **Federal Financing (grants, loans, etc.):** The Civil Rights requirements flow down to all third party contractors and their contracts at every tier. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

17. **VIOLATION AND BREACH OF CONTRACT (DISPUTE RESOLUTION) (FTA A.26) (2 C.F.R. § 200.326)**
(2 C.F.R. part 200, Appendix II (A))

A. **Disputes** - Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Transit Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

B. **Performance During Dispute** - Unless otherwise directed by Yakima Transit Contractor shall continue performance under this Contract while matters in dispute are being resolved.

C. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

D. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

E. **Rights and Remedies** – The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

F. All contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier. The Contractor agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with Federal assistance provided by FTA.

G. **Liquidated Damages -**

1) **GENERAL PROVISIONS**

The Contractor agrees to pay the City liquidated damages for the specific events identified below. These liquidated damages are not a penalty for nonperformance but an estimate of the damages to

the City caused by virtue of such nonperformance. The City and the Contractor agree that such damages are very difficult to accurately estimate because of numerous factors, including delay, inconvenience to the City and to City customers, staff time, and damage to the public service; further, the parties agree that the liquidated damages stated below are reasonable forecasts of all factors now known and available for consideration relating to the damages caused.

The rights of the City to liquidated damages are in addition to all of the other rights and remedies the City has pursuant to the contract and by law. The City may elect to waive its right to liquidated damages.

2) PROCEDURE FOR ASSESSMENT

- a. Before assessing liquidated damages, Yakima Transit shall determine whether the failure to meet the contract standard could reasonably have been prevented by the Contractor. Failures caused by inaccurate or untimely communication by Yakima Transit, natural disasters, or extreme and unusual weather, or unusual traffic conditions shall not be considered preventable by the Contractor.
- b. If Yakima Transit determines that the failure could have been prevented by the Contractor, Yakima Transit will notify the Contractor of the incident and of its intent to assess liquidated damages. If the Contractor requests a meeting, Yakima Transit will meet with the Contractor to discuss the incident prior to assessing liquidated damages.
- c. The Contractor authorizes the City, any time after such meeting and to the fullest extent permitted by law, to set off and apply any liquidated damages assessed by the City to any and all sums due and owing the Contractor held by the City and/or accrued under the contract.

3) ASSESSMENTS

- a. **Vehicle Accident/Serious Incident and Untimely Reports Thereof** - \$1,000 per vehicle accident or serious incident (e.g., wheelchair tip-over, lost customers, claims of abuse, customer injuries requiring medical attention, etc.) or report of vehicle accident or serious incident not filed in writing with Yakima Transit within 24 hours.
- b. **Passenger complaints** - \$100 per failure to respond to a customer complaint or inquiry within 3 days, additional \$50 per day after that up to a maximum of \$1,000 per complaint or inquiry.
- c. **Missed trip** - \$300 per missed trip due to factors within the control of the Contractor.
- d. **Late Trips** - \$50 per trip that is 16 - 30 minutes late due to factors within the control of the Contractor. \$100 for trips 31 minutes or more late.
- e. **Fraudulent Data** - \$1,000 for each incident of fraudulent data reported, i.e., indicating arrival while still en route to avoid being late.
- f. **Ineligible Transports** - \$50 per trip for transporting inactive or ineligible DAR clients.
- g. **Mobile Data Terminals (MDT's)** – For vehicles with active MDTs installed on them, if the MDT is tampered with or is not functioning as a result of the Contractor's or their agent's acts or omissions to prevent the device from working as it was intended, Contractor shall pay \$1,000 for

each incident/day the device was not functioning. Contractor shall also be responsible for replacement costs of a device and repair/installation costs when, as a result of the tampering, the unit is destroyed or dysfunctional.

- h. **Failed Vehicle Inspections** – \$500 for each vehicle failing to pass an inspection if the City judges there was gross inattention, negligence, or failure to report vehicles needing additional maintenance or repair in a timely manner.
- i. **Late Submission of Financial Reporting** – In addition to the 5% retainage on page 16, \$1,000 for failing to submit required Annual Financial Reports. Additional \$50 per day until submitted.
- j. **Late Submission of Drug & Alcohol Reports** - \$500 for failure to submit required Drug and Alcohol Reports. Additional \$50 per day until submitted.

18. **TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (FTA A.19)(49 U.S.C. § 5333(b) (“13(c)”) (29 C.F.R. Part 215)**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification**. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- B. **Special Warranty**. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- C. **Special Arrangements**. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.
- D. The employee protective arrangements clause flows down to all third party contractors and their contracts at every tier. The Contractor agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

19. **EMPLOYEE PROTECTIONS (FTA A.10) (49 U.S.C. § 5333(a)) (40 U.S.C. §§ 3141 – 3148) (29 C.F.R. Part 5) (18 U.S.C. § 874) (29 C.F.R. Part 3) (40 U.S.C. §§3701-3708) (29 C.F.R. Part 1926)**

Contract Work Hours and Safety Standards for Awards Not Involving Construction

- A. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S.DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and

Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

- B. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- C. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
- D. These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

20. DISADVANTAGED BUSINESS ENTERPRISE (DBE) (FTA A.9) (49 C.F.R. Part 26)

- A. For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
 - 2) Assessing sanctions;
 - 3) Liquidated damages; and/or
 - 4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
- B. Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient’s written consent; and that, unless the recipient’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

C. **Overview**

It is the policy of the City and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the City to:

- 1) Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- 2) Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
- 3) Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- 4) Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE’s;
- 5) Help remove barriers to the participation of DBEs in DOT assisted contracts;
- 6) To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
- 7) Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The CITY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the CITY may consider during its review of the Bidder/Offeror’s submission package, the Bidder/Offeror’s documented history of non-compliance with DBE requirements on previous contracts with the CITY.

D. **Contract Assurance**

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the CITY deems appropriate.

E. **DBE Participation**

For the purpose of this Contract, the CITY will accept only DBE’s who are:

- 1) Certified, at the time of bid opening or proposal evaluation, by the City; or an out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or a City whose DBE certification process has received FTA approval; or

- 2) Certified by another Agency approved by the CITY.

F. **DBE Participation Goal**

The DBE participation goal for this Contract is currently set at 0%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 0**% of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

G. **Proposed Submission**

Each Bidder/Offeror, as part of its submission, shall supply the following information:

- 1) A completed **DBE Utilization Form** that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
- 2) A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule**. No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the CITY.
- 3) An original **DBE Letter of Intent** from each DBE listed in the **DBE Participation Schedule**.
- 4) An original **DBE Affidavit** from each DBE stating that there has not been any change in its status since the date of its last certification.

H. **Good Faith Efforts**

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the CITY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the CITY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

- 1) Documented communication with the CITY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
- 2) Pre-bid meeting attendance. At the pre-bid meeting, the CITY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
- 3) The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;

- 4) Written notification to DBE's encouraging participation in the proposed Contract; and
 - 5) Efforts made to identify specific portions of the work that might be performed by DBE's.
- I. The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:
- 1) The names, addresses, and telephone numbers of DBE's that were contacted;
 - 2) A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
 - 3) Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

J. **Administrative Reconsideration**

Within five (5) business days of being informed by the CITY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the CITY's Procurement Manager. The Procurement Manager will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The CITY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

K. **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** without the CITY's prior written consent. The CITY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason

for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the CITY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with the Sanctions for Violations below.

L. Continued Compliance

The CITY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the CITY that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- 1) DBE utilization established for the Contract;
- 2) Total value of expenditures with DBE firms for the quarter;
- 3) The value of expenditures with each DBE firm for the quarter by race and gender;
- 4) Total value of expenditures with DBE firms from inception of the Contract; and
- 5) The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

M. Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the CITY. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

- 1) The successful Bidder/Offeror shall permit:
- 2) The CITY to have access to necessary records to examine information as the CITY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- 3) The authorized representative(s) of the CITY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- 4) All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.

N. Sanctions for Violations

If at any time the CITY has reason to believe that the Contractor is in violation of its obligations under

this Agreement or has otherwise failed to comply with terms of this Section, the CITY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- 1) Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- 2) Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

20. SUBSTANCE ABUSE REQUIREMENTS (FTA A.24) (49 U.S.C. § 5331) (49 C.F.R. part 655) (49 C.F.R. part 40)

The Substance Abuse requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

- A. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Washington, or City, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before March 15 and to submit the Management Information System (MIS) reports before March 15 to the City of Yakima Transit Manager, 2301 Fruitvale Blvd, Yakima, WA 98902. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.
- B. **Contractor Drug and Alcohol Policy:** Contractor shall develop, maintain, and communicate the policy and its requirements to all affected employees, which includes all safety-sensitive positions (supervisors, mechanics, drivers, and dispatchers). If the employer chooses, they may model their policy after the City of Yakima's Substance Abuse Policy. This policy shall require the contractor to remove safety-sensitive employees from safety-sensitive duties when the Medical Review Officer (MRO) notifies the contractor that there may be issues with the test results until the results are received from the MRO. The policy shall also have discipline procedures for positive drug or alcohol test results.
- C. **Training Requirements:** Contractor shall provide training for all affected employees and all supervisors, including:
 - 1) A minimum of one hour training per year for all employees performing safety-sensitive functions and supervisors on the effects and consequences of drug and alcohol use on personal health, safety, and the work environment and the signs and symptoms that may indicate prohibited drug use or alcohol misuse.
 - 2) A minimum of 120 minutes per year for all supervisors in determining reasonable suspicion, which must consist of a minimum of one hour on the physical, behavioral, and performance indicators of

probable drug use and at least one hours training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

- 3) Reasonable Suspicion training for Managers, Supervisors, Dispatchers, or any other front-line employees responsible for making reasonable suspicion drug/alcohol testing referrals of employees who perform safety-sensitive job functions.
- 4) Training on the risks associated with the use of prescription and over-the-counter drugs.

These training requirements should be considered minimums and, under their own authority, the Contractor is urged to exceed these requirements and provide additional training to educate their employees.

- D. **Testing Requirements:** The Contractor shall complete pre-employment, reasonable suspicion, post-accident, random, return to duty, and follow-up drug and alcohol testing, as well as conducting previous employer record checks for all applicants seeking safety-sensitive positions. Random testing rates for drugs and alcohol shall be in compliance with rates established annually by the Federal Transit Administration. The Contractor shall follow all rules related to "direct observation" as it relates to return to duty and follow up testing. The Contractor should consider these testing requirements as minimums and may, under their own authority, establish additional criteria for drug and/or alcohol testing their employees.
- E. **Recordkeeping:** The Contractor shall maintain documentation that includes: a breakout of all pre-employment, random, post-accident, return to duty, and reasonable suspicion drug and alcohol tests; and, a year-end report listing all employees and documentation of each employee who has completed drug and alcohol training during the last year.

The Contractor further agrees to certify annually its compliance with 49 CFR Parts 40 and 655 before December 31 every year and submit DOT required Management Information System (MIS) reports before March 1 to the City of Yakima's Designated Employee Representative or Human Resource Manager. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," published annually in the Federal Register.

Recordkeeping and reporting shall include, but not be limited to: test results, the testing process, return-to-duty process, employee training, annual reports (DAMIS), policy statement, training records, credentials of service agents, contractor oversight documents, random selection process, individual testing records, previous employer consent forms, post-accident records, reasonable suspicion test records, test results, and test refusals. This applies to the Contractor, their sub-contractors and service agents.

Drug and alcohol records must be maintained separate from all other employee records and the Contractor must maintain confidentiality of all drug and alcohol program records and limit access to these testing records.

- F. **Program Monitoring:** The Contractor is subject to monitoring by the City of Yakima. If the contractor uses different drug and alcohol facilities than the one the City of Yakima uses, the Contractor shall complete program monitoring to ensure the testing facility, medical review officer, breath alcohol technician, and substance abuse professional follow the requirements set forth in 49 CFR Part 40.

G. **Other:** In addition to the information above, the following applies to this agreement:

- 1) Contractor shall not use drug and alcohol service agents or subcontractors except under prior written consent by the City of Yakima. All requirements for the Contractor shall apply to city approved subcontractors with the exception that subcontractors must deliver submittals to the Contractor.
- 2) Contractor shall comply with the Drug-Free Workplace Act of 1988, which includes on-going training and awareness to all employees.
- 3) Contractor shall be responsible for the costs of establishing and maintaining the required drug and alcohol program and for all costs related to defending drug and alcohol program's claims and actions and fees or penalties.
- 4) Contractor shall not allow an employee or prospective employee related to this contract to operate a vehicle, supervise vehicle operators, or dispatch operators until a negative pre-employment drug and alcohol test result are received from the testing facility or medical review officer.

22. **INDEPENDENT CONTRACTOR STATUS**

The Contractor and the City understand and expressly agree that the Contractor is an independent contractor in the performance of each and every part of this Agreement. The Contractor, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. Additionally, and as an independent contractor, the Contractor and its employees shall make no claim of City employment nor shall claim against the City any related employment benefits, social security, and/or retirement benefits. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency between the Contractor or any officer, employee or agent of the Contractor and the City.

23. **INDEMNIFICATION AND HOLD HARMLESS**

- A. Contractor shall take all necessary precautions in performing the Services to prevent injury to persons or property. Contractor agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, employees, attorneys, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable costs and attorney fees) which result or arise out of the sole negligent acts or omissions of Contractor, its officials, officers, employees or agents.
- B. If any suit, judgment, action, claim or demand arises out of, or occurs in conjunction with, the negligent acts and/or omissions of both the Contractor and the City, or their elected or appointed officials, officers, employees, agents, attorneys or volunteers, pursuant to this Contract, each party shall be liable for its proportionate share of negligence for any resulting suit, judgment, action, claim, demand, damages or costs and expenses, including reasonable attorneys' fees.
- C. Contractor's Waiver of Employer's Immunity under Title 51 RCW. If any design or engineering work is done pursuant to this Contract, Contractor intends that its indemnification, defense, and hold harmless obligations set forth above in Section A shall operate with full effect regardless of any provision to the contrary in Title 51 RCW, Washington's Industrial Insurance Act. Accordingly, to the extent necessary to fully satisfy the Contractor's indemnification, defense, and hold harmless obligations set forth above in section A, Contractor specifically waives any immunity granted under Title 51 RCW, and specifically

assumes all potential liability for actions brought by employees of the Contractor against the City and its elected and appointed officials, officers, employees, attorneys, agents, and volunteers. The parties have mutually negotiated this waiver. Contractor shall similarly require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this Agreement, shall comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The provisions of this section shall survive the expiration or termination of this Agreement.

D. Nothing contained in this Section or this Contract shall be construed to create a liability or a right of indemnification in any third party.

E. The terms of this section shall survive any expiration or termination of this Contract.

24. **INSURANCE FOR PARATRANSIT SERVICE VEHICLES – ACCIDENTS – DAMAGES**

The City shall provide General Liability and Automobile Liability ONLY for paratransit service vehicles operated by the Contractor pursuant to this Contract with limits of up to \$12,000,000.00 per occurrence through the City's participation in the Washington State Transit Insurance Pool (WSTIP). Coverage is subject to WSTIP's approval and coverage is limited to those perils covered by WSTIP. For vehicles leased from the City, the contractor will be solely responsible for the first \$5,000 per occurrence for repairs to the vehicle, whether caused by comprehensive or collision-type perils.

Because the City is paying for the insurance for the vehicles the Contractor is using, accidents where the Contractor's employees are at fault shall not exceed 1.0 accident for every 100,000 miles driven in a given year; nor exceed an average of 0.65 accidents for every 100,000 miles driven over a three-year period. Contractor also shall maintain accident losses below \$0.10 per mile driven averaged over a three-year period. Loss rates above \$0.10 averaged over a three-year period are considered a breach of contract and City may terminate the contract upon such an event. Anticipated payouts may be considered in determining whether or not the Contractor has breached the agreement.

As an additional remedy, and without limiting the City's rights to declare a breach of contract as set forth above, the City may assess liquidated damages against Contractor for any vehicle accident deemed by the City to be preventable by the Contractor's employee in the amount of \$1,000 per accident pursuant to Section 18 of this Contract. Any election by the City to assess actual damages or liquidated damages pursuant to this paragraph shall not be construed as a waiver or limitation on the City's right to declare a breach of contract and terminate the contract as set forth in this section.

25. **INSURANCE FOR ADMINISTRATIVE VEHICLES**

Automobile Liability for Contractor's administrative vehicles in the amount of \$1,000,000 combined single limit will still be required. The City of Yakima, its agents, elected and appointed officials, volunteers and employees are to be listed as additional insureds under the policies.

The contractor will provide a Certificate of Insurance to the City as evidence of coverage. A copy of the additional insured endorsement attached to the policy will be included with the certificate.

The contractor shall also maintain workers compensation through the State of Washington.

If at any time during the life of the contract or any extension, the contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City to terminate the contract.

Contractor shall not use a Yakima Transit vehicle for a purpose other than transporting Dial-a-Ride passengers or maintenance of the vehicle.

This certificate of insurance shall be provided to the Purchasing Manager, prior to commencement of this work.

26. PERFORMANCE BOND

Within 30 days of execution of contract, Contractor will be required to submit a performance bond or an Irrevocable Letter of Credit, in an amount of One Hundred Thousand Dollars (\$100,000), which bond shall be provided by a firm licensed to do business in Washington or a Letter of Credit issued by a commercial bank located within the State of Washington and acceptable to City.

The performance bond or letter of credit will be renewed for each year during the term of the contract.

In the event that the bonding company or bank requires an executed contract prior to insurance of the required performance Bond or Letter of Credit, Contractors will be required to:

- A. Show evidence in the term of a letter from the bonding company of the capacity of the Proposer to be bonded or from the bank of the capacity of the Proposer to issue a Letter of Credit.
- B. The contract will be subject to receipt of a performance bond or letter of credit within 30 days of execution of contract.

27. TAXES

If applicable, sales tax on this Contract as determined by the Washington State Department of Revenue will be added to the amounts due and the Contractor will be responsible for making payment of the tax to the State of Washington. All other taxes are the sole responsibility of the Contractor.

28. DELEGATION AND ASSIGNMENT

Neither party to this Contract may delegate the performance of any obligation to a third party unless mutually agreed in writing. This Contract cannot be assigned without the written consent of the other party.

29. REGULATIONS PURSUANT TO THE COPELAND "ANTI-KICKBACK ACT"

The Contractor shall comply with the applicable regulations of the Secretary of Labor, U.S. Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 for any public works contracts related to this Contract; Title 18 USC Section 874; and Title 40 USC Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to ensure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

30. **ACCESS TO RECORDS AND REPORTS (FTA A.1) (49 U.S.C. § 5325(g)) (2 C.F.R. § 200.333) (49 C.F.R. part 633)**

- A. The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.
- B. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- C. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- D. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- E. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

31. **FEDERAL CHANGES (49 CFR Part 18)**

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

32. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS (FTA Circular 4220.1E)**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

33. **OWNERSHIP RIGHTS**

Vendor recognizes that the information and data that it will be storing could contain confidential client information. As such, Vendor shall take all reasonable steps to protect the confidentiality of the information that it stores for the City and shall not disseminate such information (a) to any third party without a confidentiality agreement in place with such third party and/or (b) unless appropriate to comply with the law or with legal process or authorities. Vendor recognizes that the information transmitted to it by the City shall

remain the property of the City. At the expiration of this Agreement, Vendor does hereby agree that it shall return all data to the City in a readable format from the date of last save by the Vendor.

34. COMMUNICATIONS

In cases where communication is required between the Contractor and City, such as further information, furnishing of specifications, providing notice of termination or renewal, or obtaining approval of proposed work, such communications from the Contractor to the City and from City to the Contractor shall be forwarded directly to:

To City:

Maria Mayhue, CPPO
Acting Procurement Manager
129 No. 2nd St.
Yakima, WA 98901
Email: Maria.Mayhue@yakimawa.gov

To Contractor: Medstar, LLC

Justin Bergener
CEO
1904 Fruitvale Blvd
Yakima, WA 98902
Justin@gomedstar.com

35. MERGER

This Contract sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties as to the subject matter therein. There are no terms, conditions, or agreements with respect thereto, except as provided herein and no amendment or modification of this Contract shall be effective unless reduced to writing and executed by the parties.

36. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Washington and any action to enforce the Contract shall be brought in Yakima County, Washington.

37. SEVERABILITY

If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision shall be deemed modified to conform to such statutory provision.

38. COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

39. INTERPRETATION

As a further condition of this Contract, City and the Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party.

40. **EMPLOYEE SOLICITATION**

Vendor, without the consent of City, shall not directly or indirectly solicit, influence, entice or hire or attempt to solicit, influence, entice or hire any employee of City to: (a) cease employment with City; or (b) do business related to a business connected with the Vendor's business during this Contract and for a period of three (3) years from the date on which this Contract terminates, or the work is accepted by City, whichever is earlier. City's employee shall be deemed to be related to or connected with a Vendor if such City employee becomes (a) a partner in a general or limited partnership or employee of a partnership, (b) a shareholder, officer, employee or director of a corporation, member, consultant or agent for the Vendor or any of Vendor's affiliates, subsidiaries or connected business. This subparagraph shall survive the termination of this Contract. This Contract is not restricted to any geographical area.

Vendor recognizes and acknowledges that City's employees may receive training and other benefits from the contractual relationship with City because of City's assignment of employees to work in connection with Vendor's Contract. Vendor agrees the restrictions on soliciting, influencing, enticing or hiring City employees are reasonable.

41. **SURVIVAL**

Any provision of this Contract that imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.

42. **CONTRACT EXECUTION**

CITY OF YAKIMA

By: _____

City Manager

Dated: _____

MEDSTAR, LLC

By:  _____

Justin Bergener

Title: CEO

Dated: 10-22-2020

ATTEST:

By: _____

City Clerk

Date: _____

City Contract No. _____

Resolution No. _____

Disadvantaged Business Enterprise
Review and Approval:



Maria Mayhue DBE Liaison Officer

Date: 11/02/20

EXHIBIT A: 2 CFR 200 Procurement Standards for when utilizing Federal Funds

(Adapted for City of Yakima use to comply with 200.318 through 200.326. Incorporated where applicable.)

200.318 General procurement standards.

200.319 Competition.

200.320 Methods of procurement to be followed.

200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

200.322 Procurement of recovered materials.

200.323 Contract cost and price.

200.324 Federal awarding agency or pass-through entity review.

200.325 Bonding requirements.

200.326 Contract provisions.

1. **General procurement standards.** (Adapted from §200.318)

- A. **Conform to Federal Law:** The City uses its own documented procurement procedures which reflect applicable State, local, laws and regulations, providing for procurements that conform to applicable Federal law and the standards identified in these Procurement Standards.
- B. **Oversight:** City Attorney shall maintain oversight when procuring Equipment, Materials, Services and Limited Public Works, to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- C. **Conflict of Interest:** City maintains written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts in the City. In addition, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the City may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

- D. **Organizational Conflicts of Interest:** If the City has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the City maintains written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships

with a parent company, affiliate, or subsidiary organization, the City entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

- E. Most Economical Approach: The City must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- F. Intergovernmental Procurements: To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the City is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- G. Federal Surplus: The City is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- H. Value Engineering: The City is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- I. Responsible Contractor: The City must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.213 Suspension and debarment.
- J. Records: The City must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- K. Time and Materials Contracts: The City entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a City is the sum of:
 - i. The actual cost of materials; and
 - ii. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- L. Ceiling Price: Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the City awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

M. Issues: The City alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the City of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the City unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

2. **Competition.** (Adapted from § 200.319)

- A. Full and Open Competition: All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
- B. Unreasonable Requirements: Placing unreasonable requirements on firms in order for them to qualify to do business;
- C. Unnecessary Experience and Bonding: Requiring unnecessary experience and excessive bonding;
- D. Noncompetitive Pricing: Noncompetitive pricing practices between firms or between affiliated companies;
- E. Noncompetitive Contracts: Noncompetitive contracts to consultants that are on retainer contracts;
- F. Organizational conflicts of interest:
- G. Brand Name: Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- H. Arbitrary Actions: Any arbitrary action in the procurement process.
- I. Geographical Preferences: The City will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

J. The City ensures that all solicitations:

- i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- iii. The City ensures that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the City must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

3. Methods of procurement to be followed. (Adapted from § 200.320)

The City must use one of the following methods of procurement.

- A. Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§ 200.67 Micro-purchase). To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the City considers the price to be reasonable.
- B. Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- C. Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (C)(i) of this section apply.

- i. In order for sealed bidding to be feasible, the following conditions should be present:

- 1) A complete, adequate, and realistic specification or purchase description is available;
- 2) Two or more responsible bidders are willing and able to compete effectively for the business;
and
- 3) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- 4) If sealed bids are used, the following requirements apply:
 - a) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids (11 days for the City in 2 issues and 13 days for the County in 2 issues). The invitation for bids must be publicly advertised;
 - b) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - c) All bids will be opened at the time and place prescribed in the invitation for bids, and opened publicly;
 - d) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - e) Any or all bids may be rejected if there is a sound documented reason.

D. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- i. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- ii. Proposals must be solicited from an adequate number of qualified sources;
- iii. The City must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- iv. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

- v. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- vi. Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - 1) The item is available only from a single source;
 - 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - 3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
 - 4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

4. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (Adapted from § 200.321)

A. The City 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:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists (forward requests to Purchasing);
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- v. 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 Montana Department of Transportation <https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>.; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (ii) of this section.

5. Procurement of recovered materials. (Adapted from § 200.322)

The City must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

6. Contract cost and price. (Adapted from § 200.323)

- A. The City must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the City must make independent estimates before receiving bids or proposals.
- B. The City must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- C. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City. The City may reference its own cost principles that comply with the Federal cost principles.
- D. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

7. Federal awarding agency or pass-through entity review. (Adapted from § 200.324)

- A. The City must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed

for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the City desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- B. The City must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - i. The City's procurement procedures or operation fails to comply with the procurement standards in this part;
 - ii. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - iii. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - iv. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - v. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- C. The City is exempt from the pre-procurement review in paragraph (ii) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- D. The City may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
- E. The City may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the City that it is complying with these standards. The City must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

8. Bonding requirements. (Adapted from § 200.325)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the City provided that the Federal awarding agency or pass-through entity has made a determination that the

Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

9. Federal Contract provisions. (Adapted from § 200.326)

The City's contracts utilizing Federal Funding must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for City Contracts Under Federal Awards, which can be viewed and copied at:

<http://federal.elaws.us/cfr/title2.chapterii.part200.appii>

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

- A. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319](#), 12935, [3 CFR Part](#), 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and 3146-3148) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must

be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- E. Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and 3704, as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 ([3 CFR part 1986](#) Comp., p. 189) and 12689 ([3 CFR part 1989](#) Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies,

as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- I. Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#))—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. (J) See §200.322 Procurement of recovered materials. [[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014]