

Attachment No. 2

**CONTRACT**

Between

The City of Pomona and  
Fidelity Builders, Inc.

For

Rehabilitation of 252 E. 4<sup>th</sup> Street Project No. 428-71210

**IFB NO: 2025-24**

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**Rehabilitation of 252 E. 4<sup>th</sup> Street**  
**Project No. 428-71210**  
**IFB NO: 2025-24**

THIS CONTRACT ("Contract") is made and entered into on December 1, 2025, in the County of Los Angeles, State of California, by and between the City of Pomona, hereinafter called City, and **Fidelity Builders, Inc.**, hereinafter called Contractor. The City and the Contractor for the considerations stated herein agree as follows:

**ARTICLE 1. SCOPE OF WORK.**

The Contractor shall perform all Work within the time stipulated in the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 4 below for the following Project:

**Rehabilitation of 252 E. 4<sup>th</sup> Street, Project No. 428-71210**  
**IFB NO: 2025-24**

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

**ARTICLE 2. TIME FOR COMPLETION.**

The Work shall commence on the date stated in the City's Full Notice to Proceed. All work to be done under this contract shall be completed within **90 working days for all the base bid work; and 15 working days for all the additive alternate work (if awarded)**, and if only a portion of the additive alternate work is awarded the allowed additive alternate working days will be prorated based on the dollar amount) beginning on the date stipulated in the written "Full Notice to Proceed" issued by the City's Construction Manager or Rehabilitation Specialist.

The Full Notice to Proceed shall be issued within 30 days from the issuance of the Administrative Notice, during which time all Contractor plan submittals must be submitted and approved by the City.

**ARTICLE 3. CONTRACT PRICE.**

**Sec. 3.1**      Contract Price

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Five Million, Two Hundred Sixty-Four Thousand, Three Hundred Fifty-Five Dollars and Zero Cents (\$5,264,355.00)**.

The price includes a 15% contingency amount of **Six Hundred Eighty-Six Thousand, Six Hundred Fifty-Five Dollars and Zero Cents (\$686,655.00)**. The contingency amount is for unforeseen expenses and use is subject to a change order proposal to be submitted by the contractor, and approval by the City's Construction Manager and Rehabilitation Specialist.

**Sec. 3.2** Payment Terms

Payment shall be made as set forth in the Section 7 of Special Provisions.

**Sec. 3.3** Method of Payment

Contractor may request three (3) progress payments for the project. Once a milestone has been reached, the Contractor shall submit to the City an invoice with original signature identifying the portion of the work that was completed matching the Scope of Work Specification, the amount for each work line item broken down according to materials and labor, and permit and general administration fees, less 10% retention. In addition, the invoice must include the following documentation:

- (a) Receipts for all materials and major component items utilized for the project including sundries, incidental items and small tools. Material receipts must be arranged to correspond with the specific line items indicated in the Scope of Work. Funds cannot pay for work in the executed Contract for material costs without receipts or supporting documentation;
- (b) Conditional release(s) of lien in conformance with California Civil Code Section 3.262 and unconditional release(s) of lien for every subcontractor providing services or materials for the project; and
- (c) Additional documentation as may be requested by *City*.

The progress payment shall not constitute acceptance of defective Work or improper material, nor a waiver of the warranties of any other remedies to which the Owner may be entitled under the terms of this Agreement.

Contractor shall further request the City-designated Project Manager to inspect the work in progress to ensure that the work were completed in a journeyman-like fashion and all permits have been completed, including sign-off as necessary by the City's Building and Safety Division.

The City shall retain ten percent (10%) retention from each payment. Release of the 10% retention is conditional upon receipt or verification of the following:

- (a) Final approval from the City of Pomona's Building Division;
- (b) Issuance of Notice of Completion recorded with the County Recorder's Office
- (c) Completed inspection by the City;
- (d) Lead clearance report, if applicable; and,

- (e) Submission of Section 3 Compliance Report and forms by contractor;
- (f) Submission of all Completed Certified Payrolls.

Within five (5) calendar days from receipt of Final Payment to Contractor, Contractor shall submit the unconditional release(s) of lien to the City.

### **Sec. 3.4 Time of Payment**

The City shall pay the Contractor in accordance with the CITY's regular billing cycle after submittal of original invoice, completion and submission of required supporting documentation described in 3.2.

## **ARTICLE 4. COMPONENT PARTS OF THE CONTRACT.**

The "Contract Documents" include the following:

- Special Provisions Contractor's Bid Forms
- City of Pomona Minority Questionnaire
- Contractor's Certificate Regarding Workers' Compensation
- Bid Bond
- Statement of Non-Collusion by Contractor
- Agreement for Indemnification by Contractor and Acceptance and Acknowledgment of Procurement Practices of the City of Pomona
- Performance Bond
- Payment (Labor and Materials) Bond
- Worker's Compensation/Employers Liability Endorsement
- General Liability Endorsement
- Automobile Liability Endorsement
- Special Provisions (or Special Conditions)
- Technical Specifications and Drawings/Plans
- Asbestos and Lead Based Paint Hazards Test Results
- Federal Labor Standards Provision or HUD 4010
- Applicable Federal Wage Decision
- Section 3 Requirements and Reporting
- All other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents. All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

## **ARTICLE 5. PROVISIONS REQUIRED BY LAW.**

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which

are applicable to this Project. Such laws, rules and regulations shall include, but not be limited to the following.

**Sec. 5.1 Contractors License.**

The Contractor shall possess a Type "B" California Contractor's license at the time of award of the Contract. Include HazMat certifications as stated in HAZ Specification and Lead Worker and Supervisor certifications as stated in Lead Based Paint Inspection/Risk Assessment Report. All Sub-Contractors shall possess appropriate Contractor State License Board Licenses classifications for their respective trades, and Contractor shall sub-contract or possess themselves all hazardous materials certifications and fire proofing certs and licenses required per this contract.

**Sec. 5.2 Ineligible Contractor Prohibited.**

Any contractor or subcontractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code is prohibited from performing work under this Contract.

**Sec. 5.3 Unfair Business Practices Claims.**

The Contractor or subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the City renders final payment to the Contractor without further acknowledgment by the parties. (California Public Contract Code Section 7103.5.).

**Sec. 5.4 Trenches, Excavations and Unknown Conditions.**

Pursuant to California Public Contract Code Section 7104, in the event the work included in this Contract requires excavations more than four (4) feet in depth, the following shall apply.

(a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of all: (1) material that Contractor believes is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site different from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 3 of the Special Provisions.

(c) That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

**Sec. 5.5      Trench and Pipeline Safety.**

If this Contract is for more than \$25,000 and involves excavation of any trench five feet or more in depth, the Contractor shall submit a detailed plan of shoring, bracing, sloping or other provisions to be made for worker protection in accordance with Labor Code Section 6705. Such plan shall be reviewed by the City, and if no exceptions are taken by the City the plan shall be deemed accepted by the City. In addition, the Contractor, in accordance with California Labor Code Sections 6500, 6501 and 6502, shall submit a Permit Application Form (see Appendix, Part 7 for sample of this document) to State of California, Department of Industrial Relation, Division of Occupational Safety & Health for a permit.

**Sec. 5.6      Utility Relocation.**

City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse contractor for any costs incurred in locating, repairing damage not caused by Contractor and removing or relocating such unidentified utility facilities, including equipment idled during such work. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

**Sec. 5.7      Third Party Claims Notification.**

The City shall timely notify the Contractor in writing of any third party claims relating to the contract.

**Sec. 5.8      State License Board and SAM.gov Notice.**

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

Contractor must submit proof that it is registered with SAM.gov and that it is not suspended or barred from federally funded programs.

## **ARTICLE 6. INSURANCE, BONDS AND INDEMNIFICATION.**

**Insurance.** All insurance issued in compliance with this section shall be issued in the form, and by an insurer or insurers, satisfactory to and first approved by the City in writing. Certificates of insurance in the amounts required shall be furnished by the Contractor to the City prior to the commencement of work.

The Contractor shall maintain adequate workman's compensation insurance under the laws of the State of California for all labor employed by him or by any Subcontractor under him who may come within the protection of such workman's compensation insurance laws. At the time of execution of the Contract, the Contractor shall provide the certificate in substantially the following form: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." (California Labor Code 1860-1861).

The Contractor shall maintain during the life of this Contract public liability and property damage insurance in which the City shall be named as an additional insured, and which shall protect the Contractor or any subcontractor performing work covered by the contract from claims for personal injury, including accidental death as well as for claims for personal damages and property damages which may arise from the operations under any contract entered into whether such operations shall be performed by the Contractor or any subcontractor, or by anyone directly or indirectly employed by any one of them. The City of Pomona and its elected or appointed officials, directors, officers, agents, employees, volunteers, or contractors shall be named as an "Additional Insured" under public liability and property damage insurance. The issuing insurance company must have A.M. Best rating no less than A-:VII. All said insurance policies, as described in this section, shall provide that the same is non-cancelable except upon thirty (30) calendar days written notice to the City.

The limit of liability for such insurance shall be as follows:

1. General Liability:

	<b>Each Person</b>	<b>Each Occurrence</b>	<b>Aggregate</b>
<b>Bodily Injury</b>	\$500,000	\$1,000,000	\$2,000,000
<b>Property Damage</b>	---	\$1,000,000	\$2,000,000

A combined single limit policy with aggregate limits in the amount of \$2,000,000 will be considered equivalent to the above minimum limits.

2. Automobile Liability

Any vehicle, combined single limit \$1,000,000

**Bonds.** The Contractor shall secure with a responsible corporate surety or corporate sureties, satisfactory bonds conditioned upon faithful performance by the Contractor of all requirements under the contract and upon the payment of claims of material, men and laborers there-under. The Faithful Performance Bond shall be in the sum of not less than one hundred percent (100%) of the estimated aggregate amount of the payments to be made under the contract computed on the basis of the prices stated in the bid. The Faithful Performance Bond shall convert to a Warranty Bond in the amount of Fifty (50%) percent of the amount of the contract price plus all change orders, and shall cover warranty of the work and materials for a period of one year after the recordation of the Notice of Completion. The Labor and Material Bond shall be in the sum of not less than one hundred percent (100%) of the estimated aggregate amount of the payments to be made under the contract computed on the basis of the prices stated in the bid. Both bonds shall be on forms provided by the City. At the time of submitting the Faithful Performance Bond and the Labor and Material bond the insurer shall submit to the City the following:

(a) the original, or certified copy of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond; or

(b) a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner; or

(c) a certificate from the Los Angeles County Clerk stating that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; or

(d) copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

**Indemnity.** Contractor hereby agrees to indemnify, including the cost to defend the City, and its officers, officials, agents, employees, and volunteers, from any and all losses, claims, liens, demands, liability, and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and other all expenses incurred by the City to the maximum extent allowed by law arising in favor of any party, that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its agents, subcontractor's or subcontractor's agents, in the performance of services under this contract, but this indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or defects in design by City or the agents, servants, or independent contractors who are directly responsible to City, or arising from the active negligence of City.

## ARTICLE 7. FEDERAL PROVISIONS

During the performance of this Agreement Contractor agrees to follow the required federal provisions hereby incorporated as Exhibit "A".

## ARTICLE 8. COORDINATION OF WORK

### Sec. 8.1 Representative of Contractor.

The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

Name *I* Title: Narek Halablian, Vice-President

Company *I* Firm: Fidelity Builders, Inc.

Address: 1824 Oakwood Avenue

City/State/Zip: Glendale, CA 91208

Phone/Email: (818) 468-7601

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Contract. Therefore, the foregoing principals shall be responsible during the term of this Contract for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Contract, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

### Sec. 8.2 Contracting Officer.

The Contracting Officer shall be such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contracting Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contracting Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contracting Officer. The Contracting Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Contract.

### Sec. 8.3 Prohibition Against Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Contract. Neither this Contract nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Contract shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

**Sec. 8.4      Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its subcontractors, agents or employees, performs the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, subcontractors, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its subcontractors, agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor.

**Sec. 8.5      Identity of Persons Performing Work.**

Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Contractor represents that the tasks and services required herein will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

**ARTICLE 9. ENFORCEMENT OF CONTRACT****Sec. 9.1      California Law.**

This Contract shall be construed and interpreted both as to validity and as to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Contract shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

**Sec. 9.2      Disputes.**

In the event either party fails to perform its obligations hereunder, the non-defaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting party commences to cure such default within ten (10) days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the non-defaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the non-defaulting party shall have the right, in addition to any other rights the non-defaulting party may have at law or in equity, to terminate this Contract. Compliance

with the provisions of this Section 9.2 shall be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

**Sec. 9.3        Waiver.**

No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Contract.

**Sec. 9.4        Rights and Remedies are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Contract, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**Sec. 9.5        Legal Action.**

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Contract, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Contract.

**Sec. 9.6        Termination for Default of Contractor.**

If termination is due to the failure of the Contractor to fulfill its obligations under this Contract, Contractor shall vacate any City owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 9.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed the City as previously stated.

**Sec. 9.7        Termination for Convenience.**

The City may terminate this Contract without cause for the convenience of the City upon giving contractor thirty (30) days prior written notice of termination of the Contract. Upon receipt of the notice of termination, the Contractor shall cease all further work pursuant to the Contract unless otherwise indicated in the notice. Upon such termination by the City, the Contractor shall not be entitled to any other remedies, claims, actions, profits, or damages except as provided in this paragraph. Upon the receipt of such notice of termination, Contractor shall be entitled to the following compensation:

(a) The contract value of the work completed to the City's satisfaction as solely determined by the City up to and including the termination date indicated in the notice of termination, less the amount of progress payments received by contractor.

(b) Actual move-off costs including labor, rental fees, equipment transportation costs, the costs of maintaining on-site construction office for supervising the mover-off.

(c) The cost of materials custom-made for this Contract which cannot be used by the Contractor in the normal course of his business, and which have not been paid for by City in progress payments.

(d) All costs shall not include any markups as might otherwise be allowed by any plans or specifications which were a part of the Contract.

The provisions of this paragraph shall supersede any other provision of the Contract or any provision of any plans, specification, addendums or other documents which are or may become a part of this Contract. City and Contractor agree that the provisions of this paragraph are a substantive part of the consideration for this Contract.

### **Sec. 9.8 Attorneys' Fees.**

If either party to this Contract is required to initiate or defend or made a party to any action or proceeding in any way connected with this Contract, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **Sec. 9.9 Legal Actions Against the City**

In the event litigation is brought against the City concerning compliance by the City with State or Federal laws, rules or regulations applicable to highway work, the provisions of this section shall apply.

(a) If, pursuant to court order, the City prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Subsection 6-6 of the Standard Specification unless the contract is terminated as hereinafter provided, in which event compensation payable to the Contractor shall be determined in accordance with said termination provisions.

(b) If, pursuant to court order (other than an order to show cause) the City is prohibited from requiring the Contractor to perform all or any portion of the work, the City may, if it so elects, eliminate the enjoined work pursuant to Section 3 of the Standard Specifications or terminate the contract in accordance with Subsections 6-3 and 6-5 of the Standard Specifications.

(c) If the final judgment in the action prohibits the City from requiring the Contractor to perform all or any portion of the work, the City will either eliminate the enjoined work

pursuant to Sections 3 of the Standard Specifications or terminate the contract in accordance with Subsections 6-3 and 6-5 of the Standard Specifications.

(d) Termination of the contract and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

- (1) The City Engineer will issue the Contractor a written notice specifying that the contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the City Engineer, the Contractor shall:
  - a. Stop all work under the contract, except that specifically directed to be completed prior to acceptance.
  - b. Perform work the City Engineer deems necessary to secure the project for termination.
  - c. Remove equipment and plan from the site of the work.
  - d. Take such action as is necessary to protect materials from damage.
  - e. Notify all Subcontractors and suppliers that the contract is being terminated and that their contracts of orders are not to be further performed unless otherwise authorized in writing by the City Engineer.
  - f. Provide the City Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location and such other information as the City Engineer may request.
  - g. Dispose of materials not yet used in the work as directed by City Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including materials for which partial payment has been made as provided in Subsection 9-3.2 of the Standard Specifications, and with bills of sale or other documents of title for such materials.
  - h. Subject to the prior written approval of the City Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the City Engineer, the Contractor shall assign to the City all the right title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
  - i. Furnish the City Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the contract.
  - j. Take such other actions as the City Engineer may direct.

(2) Acceptance of the contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials except as follows:

- a. The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Subsection 9-3.2 of the Standard Specifications, and for materials furnished by the City for use in the work and unused, shall terminate when the City Engineer certifies that such materials have been stored in the manner and at the locations he has directed.
- b. The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of the materials has been taken by the City.
- c. When the City Engineer determines that the Contractor has completed the work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, he will recommend that the City Engineer formally accept the contract, and immediately upon and after such acceptance by the City Engineer, the Contractor will not be required to perform any further work thereon and shall be relieved of his contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the City Engineer.

(3) The total compensation to be paid to the Contractor shall be determined by the City Engineer on the basis of the following:

- a. The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for termination. Reasonable cost will include a reasonable allowance for project overhead and general administrative overhead not to exceed a total of seven percent (7%) of direct costs of such work.

When in the opinion of the City Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

- b. A reasonable allowance for profit on the cost of the work performed as determined under Subsection (a), provided the Contractor establishes to the satisfaction of the City Engineer that it is reasonably probable that he would have made a profit had the

contract been completed and provided further that the profit allowed shall in no event exceed four percent (4%) of said cost.

- c. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the City Engineer
- d. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.
- e. All records of the Contractor and his Subcontractors, necessary to determine compensation in accordance with the provisions of this section, shall be open to inspection or audit by representatives of the City at all times after issuance of the notice that the contract is to be terminated and for a period of three years, and such records shall be retained for that period.
- f. After acceptance of the work by the City Engineer, the City Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate when in his opinion the amount thus paid, together with all amounts previously paid allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

## **ARTICLE 10. CITY OFFICERS AND EMPLOYEES, NONDISCRIMINATION.**

### **Sec. 10.1      Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

### **Sec. 10.2      Conflict of Interest.**

The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

### **Sec. 10.3      Covenant Against Discrimination.**

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. To the extent required by law, Contractor shall take affirmative action to insure that applicants are employed and that employees

are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

Any Contractor who shall be found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of Federal law or executive order in the performance of any contract with the City, thereby shall be found in material breach of such contract and thereupon the City shall have power to cancel or suspend the contractor, in whole or in part, or to deduct from the amount payable to such Contractor the sum of twenty-five dollars (\$25.00) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract; or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent Federal agency or officer shall constitute evidence of a violation of contract under this section.

## **ARTICLE 11. MISCELLANEOUS PROVISIONS.**

### **Sec. 11.1      Notice.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and shall be deemed to be given when served personally or deposited in the U.S. Mail, prepaid, first-class mail, return receipt requested, addressed as follows:

To City:                    City of Pomona  
                                  Neighborhood Housing Services Department  
                                  City Hall, 505 S. Garey Ave., P.O. BOX 660  
                                  Pomona, CA 91767  
                                  Attention: Housing Services Manager

To Contractor:            Narek Halablian, Vice-President  
                                  Fidelity Builders, Inc.  
                                  1824 Oakwood Avenue  
                                  Glendale, CA 91208

The above address of Contractor is designated as the place to which all notices, letters and other communications to the Contractor shall be mailed or delivered. The mailing to or delivering at the above named place of any notice, letter or other communication to the Contractor, shall be deemed sufficient service thereof upon the Contractor. The date of said service shall be the date of such mailing or delivery. Such address may be changed at any time by a written notice signed by the Contractor and delivered to the City Engineer.

**Sec. 11.2 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

**Sec. 11.3 Integration; Amendment.**

It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

**Sec. 11.4 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

**Sec. 11.5 Hiring of Undocumented Workers Prohibited**

Contractor shall not hire or employ any person to perform work within the City of Pomona or allow any person to perform work required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States.

**Sec. 11.6 Corporate Authority**

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

**Sec. 11.7 Independent Contractor.**

The Contractor is and shall at all times remain as to the City, a wholly independent contractor. Neither the City, nor any of its officers, employees or agents shall have control over the conduct of the Contractor or any of the Contractors' officers, employees or agents, except as herein set forth. The Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City, nor shall City officers, employees or agents be deemed the officers, employees, or agents of Contractor as a result of this Agreement.

**Sec. 11.8 Legal Responsibilities.**

The Contractor shall keep itself informed of City, State, and Federal laws, ordinances and regulations, which may in any manner affect the performance of its services pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws, ordinances and regulations. Neither the City, nor its officers, agents, or employees shall be liable at law or in equity as a result of the Contractor's failure to comply with this section.

**Sec. 11.9 Sales And/Or Taxes:**

Except as may be otherwise specifically provided herein, all sales and/or use taxes assessed by Federal, State or local authorities on materials used or furnished by the Contractor in performing the work hereunder shall be paid by the Contractor.

This Contract is executed by the **CITY** pursuant to the approval by its Governing Body in session on \_\_\_\_\_ authorizing the same, and **CONTRACTOR** has caused this Contract to be duly executed.

CITY OF POMONA, CALIFORNIA	Contractor: <u>Fidelity Builders, Inc.</u>
By: _____ City Manager	By: _____ <u>Narek Halablian</u> Name
ATTEST: _____ City Clerk	Vice-President Title _____ Date: _____
APPROVED AS TO FORM: _____ City Attorney	

(Attach acknowledgment for Authorized Representative of Contractor.)

**EXHIBIT “A”****FEDERAL PROVISIONS**

This Agreement is funded with federal funding and Contractor agrees to comply with the following federal provisions.

**DAVIS BACON RELATED ACTS AND SECTION 3 PROVISIONS.****Sec. 7.1        Davis Bacon and Related Acts.**

This is a federally assisted housing project. Federal Labor Standard Provisions, including the prevailing wage requirement of the Davis-Bacon and related Acts, will be enforced. This requires all workers be paid prevailing wages, as predetermined by the Secretary of Labor. All workers must be paid overtime, as applicable to the Contract Work Hours and Safety Act. In the event of labor dispute, when Federal and State wage rates are in conflict, the higher of the two will prevail,

The Federal Labor Standard Provisions or HUD 4010 and Applicable Federal Wage Decision are incorporated herein by this reference.

**Sec. 7.2        Section 3 Provisions.**

Section 3 of the Housing and Urban Development Act of 1868 requires that employment and economic opportunities generated by Community Development financial assistance from one or more Housing and Urban Development (HUD) programs exceeding \$200,000 shall be directed towards low- and very low-income persons. The contractor agrees to comply with the Section 3 requirements indicated below and to include the following language in subcontracts executed under this Contract. Should the contractor require additional information, they should contact the City of Pomona Housing Division at City Hall.

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of this Section is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons (Section 3 workers or targeted Section 3 Workers) and to eligible businesses (Section 3 Businesses).

(b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR Part 75, which implements Section 3. As evidenced by the execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with part 75 regulations.

(c) Prior to the beginning of the work, the Contractor and subcontractor(s) agree to certify that they will follow the required prioritization of effort for Section 3 workers, targeted Section 3 workers, and Section 3 business concern for employment, training and contracting.

(d) The contractor and subcontractor(s) agree to certify that they met or exceeded the safe harbor requirements of Section 3. It is the responsibility of contractors to implement efforts to achieve Section 3 requirements. If the contractor and subcontractor(s) do not meet safe harbor requirements, they must provide evidence that they have made qualitative efforts to assist low- and very low-income persons with employment and training opportunities.

The contractor/subcontractor(s) understand that the intention of Section 3 is not to terminate existing employees; but to make every effort feasible to meet Section 3 benchmark goals by utilizing existing qualified workforce by considering qualified Section 3 workers before any person, when hiring additional employees is needed to complete proposed work to be performed with HUD assistance.

(e) The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's representative of the Contractor's commitments under Section 3. The contractor and subcontractor(s) will post notifications at all Section 3 eligible job sites clearly indicating Section 3 job opportunities by including the following statement, "This job is a Section 3 eligible job opportunity. We encourage applications from individuals that are low-income and/or live in Public Housing and/or receive Section 8 voucher". The job postings will include the Section 3 and Targeted Section 3 Self-Certification forms.

(f) At the time of bid, the contractor and subcontractor(s) agree to present a list of the total number of labor hours, Section 3 worker labor hours, and targeted Section 3 worker labor hours expected to be generated from the initial contract, and a list and number of available positions, to include job description and wage rates. In addition, at the time of bid award, the contractor and subcontractor agree to submit a list of core employees, including administrative, clerical, planning and other positions filled pertinent to the construction trade.

(g) The contractor agree to include this Section 3 provisions in every contract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in all applicable provision of the subcontract or in this Section provisions upon finding that the subcontractor is in violation of regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

(h) The contractor will certify that any vacant employment positions, including training positions that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other

than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 75.

- (i) The City may disqualify contractors and subcontractor(s) from future contract awards for willful! and/or continuous non-compliance with regulations in 24 CFR Part 75.

The Section 3 Reporting Forms are included in the contract documents

**Sec. 12.1 Required Contract Provisions in Accordance with Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts under Federal Awards (2 C.F.R. § 200.327)**

(a) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. If the contract is in excess of \$ 10,000 and the contract does not include provisions for both termination for cause and termination for convenience by the Agency, including the manner by which it will be effected and the basis for settlement, then the following termination clauses shall apply. If the contract is for more than the simplified acquisition threshold (see 2 C.F.R. § 200.88) and does not provide for administrative, contractual, or legal remedies in instances where Contractor violates or breaches the terms of the contract, then the following termination clauses shall apply and have precedence over the contract. Otherwise, the following termination clauses shall not be applicable to the contract.

(i) Termination for Convenience. The Agency may, by written notice to Contractor, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Contractor of such termination, and specifying the effective date thereof ("Notice of Termination for Convenience"). If the termination is for the convenience of the Agency, the Agency shall compensate Contractor for work fully and adequately provided through the effective date of termination. No amount shall be paid for unperformed work including anticipated profit. Contractor shall provide documentation deemed adequate by the Agency to show the work actually completed by Contractor prior to the effective date of termination. This contract shall terminate on the effective date of the Notice of Termination.

(ii) Termination for Cause. If Contractor fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Contractor specifying the default ("Notice of Default"). If Contractor does not cure such default within ten (10) calendar days of receipt of Notice of Default, the Agency may terminate this contract for cause, or may, in its sole discretion, make a demand on Contractor's performance bond surety. If Contractor fails to cure a default as set forth above, the Agency may, by written notice to Contractor, terminate this contract for cause, in whole or in part, and specifying the effective date thereof ("Notice of Termination for Cause"). If the termination is for cause, Contractor shall be compensated for that portion of the work which has been fully and adequately completed and accepted by the Agency as of the date the Agency provides the Notice of Termination. In such case, the Agency shall have the right to take whatever steps it deems necessary to complete the project and correct Contractor's deficiencies and charge the cost thereof to Contractor, who shall be liable for the full cost of the Agency's corrective action, including reasonable overhead, profit and attorneys' fees.

(iii) Reimbursement; Damages. The Agency shall be entitled to reimbursement for any compensation paid in excess of work rendered and shall be entitled to withhold compensation for defective work or other damages caused by Contractor's performance of the work.

(iv) Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Contractor shall promptly discontinue the work unless the Notice directs to the contrary. Contractor shall deliver to the Agency and transfer title (if necessary) to all completed work, and work in progress including drafts, documents, plans, forms, maps, products, graphics, computer programs and reports. Contractor acknowledges the Agency's right to terminate this contract with or without cause as provided in this Section, and hereby waives any and all claims for damages that might arise from the Agency's termination of this contract. The Agency shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed work, and shall not be entitled to damages or compensation for termination of work. If Agency terminates this contract for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The rights and remedies of the Agency provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

(b) Appendix II to Part 200 (C) - Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a "federally assisted construction contract" in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:

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

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

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

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

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

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Appendix II to Part 200 (F) - Rights to Inventions Made Under a Contract or Agreement:

(i) If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity must comply with the requirements of 37 C.F.R. 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 Federal awarding agency.

(ii) The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling

Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households - Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

(d) Appendix II to Part 200 (G) - Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements 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).

(i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

(ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

(e) Appendix II to Part 200 (H) - Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. 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) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified,

or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.

(f) Appendix II to Part 200 (I) - Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti- Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with the Agency the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying." 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 recipient who in turn will forward the certification(s) to the awarding agency.

(g) Appendix II to Part 200 (J) - §200.323 Procurement of Recovered Materials:

(i) Contractor shall 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 C.F.R. 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.

(ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.

(iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

(h) Appendix II to Part 200 (K) - §200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:

(i) Contractor shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Contract. As described in Public Law 115-232, section 889, covered

telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

(2) Telecommunications or video surveillance services provided by such entities or using such equipment.

(3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(ii) See Public Law 115-232, section 889 for additional information.

(i) Appendix II to Part 200 (L) - §200.322 Domestic Preferences for Procurement:

(i) Contractor shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts

(ii) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **Sec. 12.2 Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms (2 C.F.R. § 200.321)**

(a) Contractor shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.

(b) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(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 business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

(v) Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

Contractor shall submit evidence of compliance with the foregoing affirmative steps when requested by Agency.

### **Sec.12.3 Access to Records & Record Retention**

(a) Access to Records. The following access to records requirements apply to this contract:

(i) The Contractor agrees to provide the State, Agency, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(ii) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(iii) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(iv) In compliance with the Disaster Recovery Act of 2018, the Agency and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**Sec. 12.4        Miscellaneous**

(a) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

(b) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(c) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.

(d) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.