

Participating Addendum Number 2024-BUS-0122
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
State of Iowa Department of Management
and
Dell Marketing L.P.

This Participating Addendum is entered into by State of Iowa Department of Management ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 23026, executed by Contractor and the State of Minnesota for Computer Equipment, Peripherals & Related Services ("Master Agreement"):

Dell Marketing L.P. ("Contractor")
One Dell Way
Round Rock, TX 78682

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Mike Vita
Contract Program Manager
Michael_Vita@dell.com

Participating Entity's contact for this Participating Addendum is:

Bryan Dreiling
IT Vendor Manager
ocioprocurement@iowa.gov

II. TERM. This Participating Addendum is effective as of the date of the last signature below and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

III. PARTICIPATION AND USAGE. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.

IV. GOVERNING LAW. The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.

V. SCOPE. Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities.

- a. **Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
- b. **Leasing.** Leasing via this Participating Addendum is not permitted without (1) an accompanying amendment to this Participating Addendum allowing leasing, and (2) an accompanying amendment incorporating agreed upon leasing terms.
- c. **Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum

unless the amendment is rejected by the Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto. **Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.**

VI. **ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

VII. **PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Contractor shall provide a 1.00% administrative fee on all sales made through this Participating Addendum without affecting authorized prices/rates. This 1.00% administrative fee shall be paid quarterly to the Department of Management, 200 E. Grand Ave, Des Moines, IA 50309, Attn: Business Services Division Administrator. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

In addition, Contractor shall submit a report with each quarterly payment detailing the quantities and dollar volume of purchases by each of the State's Participating Entities. The report shall be submitted in the format as required under the Master Agreement.

VIII. **FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds have additional certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify the use of federal funds and a link to the federal certifications in the Order. To the extent applicable to Contractor's performance under this Participating Addendum, Contractor agrees to comply with the certifications set forth in Attachment B.

IX. **ATTACHMENTS.** This Participating Addendum includes the following attachments:

- a. Attachment A: State of Iowa General Terms and Conditions for Goods Contracts
- b. Attachment B: Federal Certifications

X. **NOTICE.** Any notice required herein shall be sent to the following:

For Contractor:

Dell Marketing L.P.
One Dell Way
Round Rock, Texas 78682
Dell_Legal_Notices@Dell.com

For Participating Entity:

Iowa Department of Management
Division of Information Technology
200 E. Grand Avenue
Des Moines, Iowa 5030
ocioprocurement@iowa.gov

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- XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR: Dell Marketing L.P.

**PARTICIPATING ENTITY: State of Iowa Department of
Management**

Katherine Castillo

Kraig Paulsen

Signature

Signature

Katherine Castillo

Kraig Paulsen

Printed Name

Printed Name

Paralegal Advisor

Director

Title

Title

01/30/2024

1-30-24

Date

Date

ATTACHMENT A: State of Iowa General Terms and Conditions for Goods Contracts

1.1 Definitions

The following words shall be defined as set forth below:

“**Contract**” means the collective documentation memorializing the terms of the agreement between the State and the Contractor in the Participating Addendum, these General Terms for Goods Contracts, any signed certifications, and all other attachments hereto.

“**Contractor**” means the provider of the goods under the Contract.

“**Purchasing Instrument**” or “**Order**” means the documentation issued by the State to the Contractor and accepted by Contractor for a purchase of goods in accordance with the terms and conditions of the Contract. It may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the State. Any pre-printed contract terms and conditions included on Contractor’s or the State’s forms or invoices shall be null and void.

“**State**” means the State of Iowa and all state agencies, boards, and commissions, and any political subdivisions making purchases off of this Contract as permitted by the Participating Addendum.

1.2 Availability of Contract to Other Entities

All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Contract as permitted by the Participating Addendum.

1.3 Description of Goods

1.3.1 Specifications in Competitive Bidding Documents

The Contractor shall provide goods that comply with the specifications contained in the Master Agreement.

1.3.2 Non-Exclusive Rights

The Contract is not exclusive. The State reserves the right to select other contractors to provide goods similar or identical to goods described in the Contract during the term of the Contract.

1.3.3 No Minimums Guaranteed

The Contract does not guarantee any minimum level of purchases.

1.4 Submitting Orders and Compensation

1.4.1 Pricing

The Contractor will be compensated in accordance with the payment terms outlined in the Quote, Participating Addendum, and these terms. Contractor shall invoice the State in the currency agreed in the Order. Contractor may invoice parts of an Order separately or together in 1 invoice. All invoice terms will be deemed accurate unless the State advises Contractor in writing of a material error within 10 days following receipt.

The Agency shall pay all undisputed invoices in arrears and in conformance with [Iowa Code](#)

8A.514. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514. In case of the State's default in payment Contractor shall, until arrangements as to payment or credit have been established, be entitled to: (i) cancel or suspend its performance of such Order and/or (ii) withhold performance under this Contract.

1.4.2 Billings

The Contractor shall submit, on a regular basis an invoice for Products and/or Services supplied to the State under the Contract at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The State shall pay all invoices in arrears and in accordance with the Master Agreement and applicable provisions of Iowa law.

1.4.3 Setoff Against Sums Owed by the Contractor

In the event that the Contractor owes the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

1.5 Termination Due to Lack of Funds or Change in Law

The State shall have the right to terminate its Contract without penalty by giving 30 days' written notice to the Contractor as a result of any of the following:

1.5.1 Adequate funds are not appropriated or granted to allow the State to operate as required and to fulfill its obligations under the Contract;

1.5.2 Funds are de-appropriated or not allocated or if funds needed by the State, at the State's sole discretion, are insufficient for any reason;

1.5.3 The State's authorization to operate is withdrawn or there is a material alteration in the programs administered by the State;

1.5.4 The State's duties are substantially modified.

1.6 Remedies of the Contractor in Event of Termination by the State In the event of termination of the Contract for any reason by the State, the State shall pay only those amounts, if any, due and owing to the Contractor for products, services, and deliverables rendered up to and including the date of termination of the Contract. Payment will be made only upon submission of invoices and federal or state law to the extent allowed by applicable federal or state law including proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Contract in the event of termination. The State shall not be liable for any of the following costs:

1.6.1 The payment of unemployment compensation to the Contractor's employees;

1.6.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

1.6.3 Unless otherwise agreed to in writing, any costs incurred by the Contractor in its performance

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of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

1.6.4 To the extent such taxes do not apply to the State because of the State's tax-exempt status, any taxes that may be owed by the Contractor in connection with the performance of the Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

1.6.5 The Contractor's Termination Duties

Upon receipt of notice of termination or upon request of the State, the Contractor shall:

1.6.5.1 Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report promptly after the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State may require.

1.6.5.2 Promptly cease using and return to the State, any personal property or materials provided by the State to the Contractor.

1.6.5.3 Comply with the State's instructions for the timely transfer of any deliverables owed by the Contractor under the Contract.

1.6.5.4 Cooperate in good faith with the State, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Contractor. The Contractor reserves the right to charge the State for such transition assistance.

1.7 Insurance

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

1.8 Contract Administration

1.8.1 Compliance with the Law; Nondiscrimination in Employment

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers.

Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all applicable federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract, Contractor shall inform such third parties of the requirements contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

1.8.2 Amendments

The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by the parties.

1.8.3 Third-Party Beneficiaries

There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State and the Contractor.

1.8.4 Choice of Law and Forum

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall solely be brought in the District Court for the State of Iowa in the county where venue is appropriate. Alternatively, if venue is proper in federal court, suit shall solely be brought in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity, which may be available to the State.

1.8.5 Assignment and Delegation

The Contract, any Order, or any right or obligations may not be assigned, transferred or novated in whole or in part without the prior written consent of the of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing either party may assign rights to payments arising under any Order without consent of the other party.

1.8.6 Use of Third Parties

The State acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor obligations under the Contract. The Contractor may enter into these contracts with Affiliates or other qualified subcontractors to complete the project provided that the Contractor remains responsible for all goods delivered under the Contract and for the acts and omissions of all subcontractors, agents, and employees during their performance hereunder. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. The State shall have the right to request the removal of a subcontractor from the Contract for good cause.

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1.8.7 Integration

The Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.

1.8.8 Headings or Captions

The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

1.8.9 Not a Joint Venture

Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and acting toward the mutual benefits expected to be derived herefrom. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

1.8.10 Supersedes Former Contracts or Agreements

Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the State and the Contractor for the goods provided in connection with the Contract.

1.8.11 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of the State and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

1.8.12 Notice

Any and all notices, designations, consents, offers, or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified below. Each such notice shall be deemed to have been provided:

1.8.12.1 At the time it is sent via email; or,

1.8.12.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

1.8.12.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

1.8.12.4 Notices to Contractor:

Dell Marketing L.P.
Attn. Contracts Manager
Dell Legal Department
One Dell Way, Round Rock, Texas 78682

Dell_Legal_Notices@dell.com

1.8.12.5 Notices to State:

Department of Management
Division of Information Technology
Attention: Matt Behrens, CIO
200 East Grand Ave.
Des Moines, IA 50309
Matt.behrens@iowa.gov; ocioprocurement@iowa.gov

1.8.13 Cumulative Rights

The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

1.8.14 Severability

If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

1.8.15 Time is of the Essence

Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing goods to the State are reasonably responsive to the State's requirements and requests within designated business hours.

1.8.16 Authorization

Contractor represents and warrants that:

1.8.16.1 It has the right, power and authority to enter into and perform its obligations under the Contract.

1.8.16.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

1.8.17 Successors in Interest

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns and legal representatives.

1.8.18 Solicitation

The Contractor warrants that no person or selling agency (except bona fide employees or

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selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.

1.8.19 Public Records

The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

1.8.20 Clean Air and Water Certification

Contractor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will promptly notify the State of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities

1.8.21 Debarred, Suspended, and Ineligible Status

Contractor certifies that the Contractor has not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will promptly notify the State if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

1.8.22 Use of Name or Intellectual Property

Contractor agrees it will not use the name or any intellectual property, including but not limited to, any State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the specific State agency involved.

1.8.23 Taxes

The charges due hereunder are exclusive of all value added (VAT), sales, use, excise, withholding, personal property, goods and services and other similar taxes, governmental fees, levies, customs and duties resulting from the State's purchase. The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables: https://das.iowa.gov/sites/default/files/acct_sae/man_for_ref/forms/sales_tax_exempt_letter.pdf.

1.8.24 Certification Regarding Sales and Use Tax

By executing the Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(47) & (48). The Contractor also acknowledges that the State may declare the Contract void if the above certification is false.

1.8.25 Obligations Beyond Contract Term

The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the parties incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive

the termination, expiration or conclusion of the Contract.

1.8.26 Counterparts and Electronic Signatures

The parties agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument. It may be executed by a party's physical or electronic signature and delivered also by electronic means, and any copies so executed and delivered shall have the same force and effect as copies executed and delivered with original physical signatures.

1.8.27 Further Assurances and Corrective Instruments

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.

Attachment B: Federal Certifications

Federal Requirements. To the extent applicable to Vendor's performance under this Participating Addendum, Vendor agrees to comply with the following federal obligations:

1. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** In accordance with 2 CFR 200.216 and 2 CFR Pt. 200, App. II, Section K, Vendor is prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a 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.

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).

- a. 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).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. 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.

2. **Domestic Preferences for Procurements.** As appropriate and to the extent consistent with law, and consistent with 2 CFR 200.317 and 2 C.F.R. Pt. 200, App. II, Sec. L, the Vendor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of 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 subawards including all contracts and purchase orders for work or products under this award. 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 non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. **Procurement of recovered materials.** To the extent applicable, and in accordance with 2 CFR Pt. 200, App. II, Section J, the Vendor 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.

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4. **Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701-3708).** In accordance with 2 CFR Pt. 200, App. II, Sec. E., to the extent that Vendor's contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Vendor must act in compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). To the extent applicable, Vendor must 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.

5. **Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.** In accordance with 2 CFR Pt. 200, App. II, Section G, Vendor agrees 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). Vendor agrees to comply with these Applicable Laws, violations of which must be reported to the State and federal awarding agency and the regional office of the Environmental Protection Agency (EPA).

6. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** To the extent required by Federal program legislation, and in accordance with 2 CFR Pt. 200 App. II, Section D, 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, and to the extent mandated under federal law, Vendor must 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, Vendor must pay wages not less than once a week. Vendor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The Agreement is conditioned upon the acceptance of the wage determination. Vendor must report all suspected or reported violations to the Federal awarding agency. Vendor must also comply 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"). Vendor is 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. Vendor must report all suspected or reported violations to the Federal awarding agency.

7. **Rights to Inventions Made Under a Contract or Agreement.** To the extent applicable and in accordance with 2 C.F.R. Pt. 200 App. II, Section F, the Vendor 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.

8. **Suspension and Debarment.** This certification is required by the provisions of Executive Orders 12549 and 12689 and 31 C.F.R. part 19 regarding Debarment, Suspension, and Other Responsibility. In accordance with 2 C.F.R. Pt. 200, App. II, Section H, Vendor certifies that it is not listed on the government-wide exclusions in the System of 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.

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9. Lobbying. This certification is required by the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. § 1352. These regulations require certification by Vendor (and its subcontractors) that they have not engaged in prohibited lobbying activities and/or have filed any required disclosures in accordance with these Applicable Laws. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code; any person who fails to file the required certification may be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. In accordance with 2 C.F.R. Pt. 200, App. II, Section I, Vendor certifies the following:

- a. No federal funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of the Customer, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of the Customer, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, Vendor must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

10. Assurance of Compliance Nondiscrimination in Federally Assisted Programs & Equal Opportunity.

This certification requires Vendor to comply with any applicable federal nondiscrimination requirements or laws providing for or requiring equal opportunity in employment, in compliance with 2 CFR Pt. 200, Appendix II, Section C. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. 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 C.F.R. 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 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." To the extent required by these Applicable Laws, Vendor certifies during the performance of this Agreement that:

- a. Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Vendor 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. Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. Vendor will, in all solicitations or advertisements for employees placed by or on behalf of Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Vendor 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

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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 Vendor's legal duty to furnish information.

d. Vendor 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 Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. Vendor 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.

f. Vendor 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 Vendor's books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of Vendor'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 Vendor 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.

h. Vendor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Vendor 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 Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Vendor may request the United States to enter into such litigation to protect the interests of the United States.

i. Vendor 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 Vendor 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.

j. Vendor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendor 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.

k. Vendor 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

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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, Vendor 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.