



## KEY CONTRACT TERMS

### For Master Agreement WEST-08-2024-2025-12

<b><u>Contract Between:</u></b>	Westwood Community School District and Maner Costerisan
<b><u>Contract Purpose:</u></b>	Master Agreement for Financial Auditing Services for Westwood Community School District authorized CoPro+ Members
<b><u>Contract Number:</u></b>	WEST-08-2024-2025-12
<b><u>RFP Number:</u></b>	WEST-08-2024-2025-12
<b><u>Contractor Name:</u></b>	Maner Costerisan
<b><u>Contractor Address:</u></b>	2425 E Grand River Ave., Suite 1 Lansing, MI 48912
<b><u>Contractor Telephone:</u></b>	517.999.5808
<b><u>Contract Administrator:</u></b>	Westwood Community School District /CoPro+
<b><u>Contract Period:</u></b>	May 1, 2025 – April 30, 2028
<b><u>Option Years:</u></b>	May 1, 2028 – April 30, 2029 (Option Year 1) May 1, 2029 – April 30, 2030 (Option Year 2)
<b><u>Delivery/Shipment:</u></b>	Refer to Section 1.6
<b><u>Pricing:</u></b>	Refer to Section 2.1 and Attachment A
<b><u>Administrative Fee:</u></b>	2.0%
<b><u>Terms &amp; Conditions:</u></b>	Refer to Section 3
<b><u>F.O.B.:</u></b>	N/A
<b><u>Ordering Options:</u></b>	<a href="mailto:btucker@manercpa.com">btucker@manercpa.com</a>
<b><u>Payment Options:</u></b>	Purchase Order or Direct Voucher
<b><u>Miscellaneous Information:</u></b>	THIS AGREEMENT IS EXTENDED TO AUTHORIZED COPRO+ MEMBERS



Signature of Contractor’s Duly Authorized Representative

THIS CONTRACT MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR AND WESTWOOD; ANY ALTERATIONS OR ERASURES TO THE OFFER MUST BE INITIALED BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

The undersigned acknowledges, attests and certifies individually and on behalf of the Contractor that:

- (1) He/she is an Authorized Representative of the Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract, if any, issued, and to execute this Contract on behalf of Contractor;
- (2) Contractor is bound by and will comply with all requirements, specifications, and terms and conditions contained in this Contract (including all listed attachments and Addenda, if any, issued);
- (3) Contractor will furnish the designated Services in accordance with the Contract specifications and requirements, and will comply in all respects with the terms of the resulting Contract upon award; and
- (4) All affirmations contained in this Contract are true and correct.

CONTRACTOR:

WESTWOOD COMMUNITY SCHOOL DISTRICT:

Maner Costerisan

Stiles X Simmons/ Superintendent

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Name/Title

/s/WILLIAM TUCKER IV/

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Authorized Signature

William I Tucker IV

5/16/2025

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Date

5/16/2025

\_\_\_\_\_  
Date



## **SECTION 1.0 – CONTRACT REQUIREMENTS**

### **1.1 Scope of Work**

Westwood Community School District (“Westwood” or the “District”), through the Michigan Association of Counties (“MAC”) CoPro+ Program, has awarded this Master Agreement for Financial Auditing Services.

The Request for Proposals, WEST-08-2024-2025-12, and accepted portions of the Contractor’s response (“Response”) (collectively, the “Contract Documents”) are incorporated herein by reference as if fully restated herein. In the event of any inconsistency between or among the Contract Documents, the provision that is more beneficial to Westwood (as determined in Westwood’s sole discretion) shall control.

### **1.2 Requirements and Specifications**

The Contractor must provide Financial Auditing Services beginning the fiscal year ending June 30, 2025.

#### **1.2.1 Audit Schedule**

The Contractor is required to:

- a. Establish an annual audit schedule with Westwood by May 1.
- b. Conduct preliminary audit fieldwork before June 30.
- c. Begin final fieldwork on or around September 10 and complete by September 25.
- d. Deliver draft audit reports by October 15 to meet Michigan Department of Education deadlines.

#### **1.2.2 Firm/Auditor Qualifications**

The Contractor is required to:

- a. Maintain adequate staff to ensure technical expertise and supervision.
- b. Assign auditors experienced in K-12 public school district audits within Michigan.
- c. Demonstrate familiarity with school district policies, procedures, and financial reporting requirements.
- d. Provide evidence of expertise in related fields, such as federal and state tax consulting.

#### **1.2.3 Audit Deliverables**



The Contractor is required to:

- a. Prepare annual financial reports in compliance with Generally Accepted Governmental Auditing Standards (GAGAS) and the Michigan School Accounting Manual.
- b. Complete a Single Audit Report in compliance with federal and state standards.
- c. Provide required audit disclosures/management letters and electronically file them with the Michigan Department of Education (MDE).
- d. Present findings to the Board of Education and attend review meetings.

#### **1.2.4 Westwood Responsibilities**

Westwood will:

- a. Provide reasonable workspace, resources, and staff support during the audit.
- b. Provide information, documentation, and explanations.

#### **1.2.5 District Information**

- a. For information regarding the district, its funds, revenue, expenditures and other relevant information, you can review the district's Annual Financial Report and Federal Awards Report available online under the district transparency page.

### **1.3 Statewide Cooperative Contract**

All pricing submitted to Westwood and its participating entities shall include a **2%** **administrative** fee to be remitted to CoPro+ by the Contractor on a quarterly basis. Administrative fees will be paid against actual sales volume for each quarter. It is the Contractor's responsibility to keep all pricing up to date and on file with Westwood /CoPro+. All price changes shall be presented to Westwood /CoPro+ for acceptance, using the same format as was accepted in the original contract.

### **1.4 Service Capabilities**

#### **1.4.1 Communication Plan/Contract Management**

Contractor has identified their company standards of communication as they relate to contract performance, issue management, and change management. An issue is an identified event that, if not addressed, may affect schedule, scope,



service, delivery, quality, or budget. A change is identified as a change in corporate leadership, structure, merger or acquisition.

#### **1.4.2 Primary Account Representative**

Contractor has identified their primary account representatives who will be responsible for the performance of a resulting contract, as well as contact persons for reports and bid documents.

Bill Tucker, CPA  
[btucker@manercpa.com](mailto:btucker@manercpa.com)  
P:517.323.7500, C:517.999.5808

### **1.5 Purchase Orders**

Requests for quotes will be initiated by participating agencies as specific needs arise. Participating agencies will issue individual detailed specifications to the pre-qualified vendor pool along with specific response information required, deliverables, and any special terms and conditions. The vendors will respond directly to the requesting agency within the timeframe specified in the request for quote. The participating agency will evaluate the responses and determine the vendor that will be awarded a purchase order (PO). Resulting orders are to be shipped and billed directly to these institutions.

### **1.6 Delivery and Acceptance**

Contractor has addressed the following items and costs in their proposal and other items/costs that they are aware of that may not have been requested in the proposal.

- All pricing must reflect net 30 day payment terms.
- Ordering/customer service capabilities and procedures.

#### **1.6.1 Invoicing**

Invoices to include (a) Westwood Purchase Order (PO) number, (b) dates of services, (c) times, and (d) services provided. Invoices are to be submitted as an attachment via email to the Westwood Community School District's Superintendent ([simmonss@wvschools.net](mailto:simmonss@wvschools.net)) and the Director of Finance and Operations ([jiangj@wvschools.net](mailto:jiangj@wvschools.net)).

### **1.7 Management and Staff**

Please see Contractor's proposal for a description of the following:



- Project Management of the contract, staffing and responsibilities.
- Background checks process, depending on the facility ordering the product/services a more restrictive background check may be required.



## **SECTION 2.0 – PRICING REQUIREMENTS & SCHEDULE**

### **2.1 Pricing Schedule**

#### **2.1.1 Pricing Schedule Worksheets**

See Pricing Attachment A.

#### **2.1.2 Tax Excluded from Price**

(a) Sales Tax: Westwood and local units of government are exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax.

(b) Federal Excise Tax: Governmental entities may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the entity's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the contractor's prices must not include the Federal Excise Tax.

2.1.3 The contractor agrees to provide pricing to Westwood and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. The Contractor agrees to promptly lower the cost of any product purchased through Westwood and its participating entities following a reduction in the manufacturer or publisher's direct cost. Price increases must be approved by Westwood. However, the Contractor must honor previous prices for thirty (30) days after approval and written notification from Westwood if requested. If Contractor has existing cooperative contracts in place, Westwood requests equal or better than pricing to be submitted.

### **2.2 Administrative Fee**

All pricing submitted to Westwood and its participating entities must include 2.0% remittance fee to be remitted to CoPro+ by the contractor on a quarterly basis. Administrative fees will be paid against actual sales volume for each quarter. It is the contractor's responsibility to keep all pricing up to date and on file with Westwood/CoPro+. All price changes must be presented to Westwood for acceptance, using the same format as was accepted in the original contract.



## SECTION 3.0 - TERMS AND CONDITIONS

### 1. Reserved

### 2. Conflict of Interest

No Westwood employee or agent whose position in Westwood enables him/her to influence the selection of a Contractor, or any competing solicitation, nor any spouse or economic dependent of such employees, shall be employed in any capacity by a Contractor or have any other direct or indirect financial interest in the selection of a Contractor.

### 3. Gratuities

It is improper for any Westwood officer, employee or agent to solicit consideration, in any form, from a Proposer with the implication, suggestion or statement that the Proposer's provision of the consideration may secure more favorable treatment for the Proposer in the award of the Master Agreement or that the Proposer's failure to provide such consideration may negatively affect Westwood's consideration of the Proposer's submission.

A Proposer shall not offer or give either directly or through an intermediary consideration, in any form, to a Westwood officer, employee or agent for the purpose of securing favorable treatment with respect to the award of the Master Agreement.

### 4. Laws

#### 4.1 *General Authority*

This Contract is governed by, and construed according to, the laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

#### 4.2 *Compliance with Laws*

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the products and services, as well as Westwood's Board Policies.

#### 4.3 *Jurisdiction*

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Wayne County, Michigan, and irrevocably waives any objections to this venue that



it may have, such as lack of personal jurisdiction or forum non-conveniens. The Contractor must appoint agents in the State of Michigan to receive service of process.

#### *4.4 Nondiscrimination*

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity or expression, height, weight, marital status, or physical or mental disability. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

#### *4.5 Unfair Labor Practices*

Under 1980 PA 278, MCL 423.321, et seq., Westwood must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of Westwood, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, Westwood may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

#### *4.6 Reserved.*

#### *4.7 Freedom of Information*

This Contract and all information submitted to Westwood by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, et seq., and may be required to be disclosed pursuant to the requirements of FOIA.

#### *4.8 Abusive Labor Practices*

The Contractor may not furnish any deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself



voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

## 5. General Provisions

### 5.1 *Bankruptcy and Insolvency*

Westwood may, without prejudice to any other right or remedy, fully or partially terminate this contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method Westwood deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the deliverable(s) under this contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by Westwood. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating Westwood ownership.

### 5.2 *Media Releases*

News releases (including promotional literature and commercial advertisements) pertaining to the solicitation and this Contract will not be made without prior approval by Westwood, and only in accordance with the instructions from Westwood.

### 5.3 *Reserved*

### 5.4 *Legal Effect*

Westwood is not liable for costs incurred by the Contractor or for payment(s) under this contract until the Contractor is authorized to perform under Section 1.6, Delivery and Acceptance.

### 5.5 *Entire Agreement*

This Contract constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes all prior agreements, whether written or oral, except those specifically incorporated herein by reference. All attachments and exhibits specifically referenced and attached to this contract are hereby



incorporated by reference in their entirety and form an integral part of this contract.

#### *5.6 Order of Precedence*

In the event of any inconsistency or conflict between the documents forming this contract, such inconsistency shall be resolved by giving precedence in the following descending order:

- (a) Attachment B – COVID & ARPA Federal Requirements (if WESTWOOD funding source requires);
- (b) Mandatory sections (Contract Term, Legal Effect, Insurance, Indemnification, Termination, Governing Law, Limitation of Liability);
- (c) The most recent Statement of Work expressly made part of this Contract;
- (d) The Terms and Conditions as set forth in Section 3.0 of this Contract, excluding the sections listed in subsection (a);
- (e) Attachment A – Pricing
- (f) Any Purchase Order, Direct Voucher, or Procurement Card Order issued pursuant to this Contract;
- (g) Contractor's Proposal – RFP Requirements and Proposer's responses to the RFP;
- (h) Any other document expressly incorporated by reference into this Contract.

Future amendments or additional Statements of Work, once duly executed, shall take precedence over the corresponding sections of this Contract.

#### *5.7 Headings*

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

#### *5.8 Reformation and Severability*

Each provision of the Contract is severable from all other provisions of the contract. If any provision of this contract is held unenforceable, then the contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

#### *5.9 Approval*

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

#### *5.10 No Waiver of Default*

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.



#### *5.11 Survival*

The provisions of this Contract that impose continuing obligations, including indemnification and confidentiality, will survive the expiration or termination of this Contract.

#### *5.12 Reserved*

#### *5.13 Cooperation with Third Parties*

The Contractor and its Subcontractors must cooperate with Westwood and its agents and other contractors, including Westwood's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

#### *5.14 Relationship of the Parties*

The relationship between Westwood and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of Westwood. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

#### *5.15 Time of Performance*

(a) The Contractor must immediately notify Westwood upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest Westwood-approved delivery schedule and must inform Westwood of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by Westwood has caused or will cause the Contractor to be unable to perform its obligations according to specified contract time periods, the Contractor must immediately notify Westwood and, to the extent practicable, continue to perform its obligations according to the contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by Westwood

#### *5.16 Excusable Failure*

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by factors outside the party's control, including changes in government regulations or requirements unanticipated or unknown at the time of signing this Agreement, continued power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, fire, riots, civil disorders, labor disputes, embargoes, or injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay



excused); provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the deliverable(s) for more than 10 days, and Westwood reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to Westwood, Westwood may: (a) procure the affected deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those deliverable(s) that are terminated. Westwood must pay for all deliverable(s) for which Final Acceptance has been granted in writing before the termination date.

The Contractor will not have the right to any additional payments from Westwood as a result of any Excusable Failure or to payments for deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

#### *5.17 Retention of Records*

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

#### *5.18 Examination of Records*

Westwood, upon ten (10) days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this contract. This requirement also



applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this contract.

#### *5.19 Audit Resolution*

If necessary, the Contractor and Westwood will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within thirty (30) days after receiving the report, unless the report specifies a shorter response time. The Contractor and Westwood must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

#### *5.20 Errors*

(a) If an audit reveals any financial errors in the records provided to Westwood, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within forty-five (45) days of the last invoice on which the balance appeared or upon termination of the contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between Westwood's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

#### *5.21 Disclosure of Litigation*

(a) Within thirty (30) days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation proceeding;
- (iii) A proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.



(b) Information provided to Westwood from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any proceeding that is disclosed to Westwood or of which Westwood otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about:

(i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or

(ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide Westwood all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this contract.

#### *5.22 Other Disclosures*

The Contractor must notify Westwood Administrator within 30 days of:

(a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or

(b) any changes to company affiliations.

#### *5.23 CoPro+ Requirements*

(a) The Contractor will work with CoPro+ to ensure that all purchasers are members before extending the Contract pricing.

(b) To the extent that CoPro+ Members purchase Deliverable(s) under this contract, the quantities of Deliverable(s) purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

(c) The Contractor must submit invoices to and receive payment from CoPro+ Members, Participating Entities, on a direct and individual basis.

#### *5.24 Reserved*

## **6. Insurance**

### *6.1 Liability Insurance*

For the purpose of this Section, "Westwood" includes its departments, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) Westwood, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.



(ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, Westwood is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without Westwood's approval, Westwood may, after giving the Contractor at least 30-days notice, pay the premium or procure similar insurance coverage from another company or companies. Westwood may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(b) The Contractor must:

(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater, before performing the services. The insurance must protect Westwood from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(ii) waive all rights against Westwood for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by Westwood.

(iv) obtain insurance, unless Westwood approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by Westwood. All policies of insurance must be issued by companies that have been approved to do business in Michigan.

(v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.

(vi) pay all deductibles.

<b>Commercial General Liability Insurance</b>
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<u>Minimum Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy endorsed to add: “Westwood, its departments, offices, officers, employees, and agents” as additional insureds.
<b>Workers’ Compensation Insurance</b>	
<u>Minimum Limits:</u> Applicable laws governing work activities	
<b>Employers Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Each occurrence	
<b>Automobile Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Combined single limit each occurrence	Contractor must have their policy endorsed to add: “Westwood, its departments, offices, officers, employees, and agents” as additional insureds.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimum Limits:</u> \$4,000,000 Each occurrence excess of underlying; \$4,000,000 Products/Completed operations aggregate excess of underlying	
<b>Privacy &amp; Security Liability (Cyber Liability) Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000	

**6.2 Subcontractor Insurance Coverage**

Except where Westwood has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 6.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

**6.3 Certificates of Insurance and Other Requirements**

Before the Contract is signed, and not less than twenty (20) days before the insurance expiration date every year thereafter, the Contractor must provide



evidence that Westwood and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide Westwood Administrator with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 6.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without thirty (30) days prior notice, except for ten (10) days for nonpayment of premium, to Westwood Administrator.

## **7. Indemnification**

### *7.1 General Indemnification*

To the extent permitted by law, the Contractor must indemnify, defend, and hold Westwood harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of or breach of Agreement by the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

### *7.2 Employee Indemnification*

In any claims against Westwood, its departments, offices, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

### *7.3 Patent/Copyright Infringement Indemnification*

(a) To the extent permitted by law, the Contractor must indemnify and hold Westwood harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against Westwood to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its



subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in Westwood's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for Westwood the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to Westwood's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by Westwood with appropriate credits to Westwood against the Contractor's charges and reimburse Westwood for any losses or costs incurred as a consequence of Westwood ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend Westwood for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of Westwood; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by Westwood; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

#### *7.4 Continuing Obligation*

The Contractor's duty to indemnify continues in full force and effect, notwithstanding the expiration or early cancellation of the contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

#### *7.5 Reserved*

### **8. Warranties**

#### *8.1 Warranties and Representations*

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this contract. The performance of all obligations under this contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this contract.



- (b) The contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the contract's requirements.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to Westwood by Contractor or developed by the Contractor for this contract, and Contractor has all of the rights necessary to convey to Westwood the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to Westwood, nor their use by Westwood, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.
- (d) If the Contractor procures any equipment, software, or other Deliverable(s) for Westwood (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to Westwood or its designees, or afford Westwood the benefits of, any manufacturer's warranty for the Deliverable(s).
- (e) The contract signatory has the authority to enter into this contract on behalf of the Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to Westwood or otherwise create an appearance of impropriety with respect to the award or performance of this contract. The Contractor must notify Westwood about the nature of any conflict or appearance of impropriety within two days of learning about it.
- (h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of Westwood would be influenced. The Contractor must not attempt to influence any Westwood employee by the direct or indirect offer of anything of value.
- (i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other Proposer for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this contract to any other Proposer before the award of the contract. The Contractor made no attempt to induce any other person or



entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to Westwood in connection with the award of this contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to Westwood by or for the Contractor in connection with the award of this contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify Westwood Administrator if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the contract is awarded.

#### *8.2 Warranty of Merchantability*

The Deliverable(s) provided by the Contractor must be merchantable.

#### *8.3 Warranty of Fitness for a Particular Purpose*

*The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this contract.*

#### *8.4 Warranty of Title*

The Contractor must convey good title to any Deliverable(s) provided to Westwood. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which Westwood, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

#### *8.5 Consequences for Breach*

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 8, Warranties, the breach may be considered a material default.

### **9. Contract Administration**

#### *9.1 Issuing Office*

This Contract is issued by Westwood. Westwood Administrator or designee is the only entity authorized to modify the terms and conditions of this contract, including the prices and specifications. The Contract Administrator will be designated at the time of the contract award.



#### 9.2 *Contract Administrator*

The Contract Administrator will monitor and coordinate contract activities on a reasonable basis.

#### 9.3 *Contract Changes*

(a) If Westwood requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the contract, the Contractor must notify Westwood before performing the requested activities. If the Contractor fails to notify Westwood, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the contract and then ceases performing that work, the Contractor must, at the request of Westwood, retract any out-of-scope work that would adversely affect the contract.

(b) Westwood or the Contractor may propose changes to the contract. If the Contractor or Westwood requests a change to the Deliverable(s) or if Westwood requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, Westwood Administrator will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the contract (Contract Change Notice).

(c) No proposed change may be performed until Westwood issues a duly executed Contract Change Notice for the proposed change.

#### 9.4 *Reserved*

#### 9.5 *Covenant of Good Faith*

Each party must act reasonably and in good faith. Unless otherwise provided in this contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the contract.

#### 9.6 *Assignments*

(a) Neither party may assign this contract, or assign or delegate any of its duties or obligations under the contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. Westwood may, however, assign this contract to any other local unit of government without the prior approval of the Contractor.

(b) If the Contractor intends to assign this contract or any of the Contractor's rights or duties under the contract, the Contractor must notify



Westwood and provide adequate information about the assignee at least ninety (90) days before the proposed assignment or as otherwise provided by law or court order. Westwood may withhold approval from proposed assignments, subcontracts, or novations if Westwood determines, in its sole discretion, that the transfer of responsibility would decrease Westwood's likelihood of receiving performance on the contract or Westwood's ability to recover damages.

(c) If Westwood permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

#### *9.7 Criminal Background Checks*

Contractor hereby certifies that any employees, subcontractors and volunteers of the Contractor who will have duties related to the contracted services; have passed a Westwood criminal history background check.

### **10. Acceptance of Deliverables**

#### *10.1 Delivery Responsibilities*

Unless otherwise specified by Westwood, the following are applicable to all deliveries:

(a) The Contractor is responsible for delivering the deliverable(s) by the applicable delivery date.

#### *10.2 Process for Acceptance of Deliverable(s)*

Westwood's review period for acceptance of the deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify Westwood's review period, it is by default thirty (30) days for a deliverable (Westwood Review Period). Westwood will notify the Contractor by the end of Westwood Review Period that either:

- (a) the deliverable is accepted in the form delivered by the Contractor;
- (b) the deliverable is accepted, but noted deficiencies must be corrected; or
- (c) the deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the deliverable.

If Westwood delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within thirty (30) Days resubmit the deliverable(s) with an explanation that demonstrates all corrections have been made to the original deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected deliverable from the Contractor, Westwood will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected deliverable.



### 10.3 *Acceptance of Deliverable(s)*

(a) Westwood's obligation to comply with any Westwood Review Period is conditioned on the timely delivery of the deliverable(s). Westwood Review Period will begin on the first business day following Westwood's receipt of the deliverable(s).

(b) Westwood may inspect the deliverable to confirm that all components have been delivered without material deficiencies. If Westwood determines that the deliverable or one of its components has material deficiencies, Westwood may reject the deliverable without performing any further inspection or testing.

(c) Westwood will only approve a deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. Westwood may, in its discretion, conditionally approve a deliverable that contains material deficiencies if Westwood elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct within a reasonable time at the Contractor's expense, all deficiencies in the deliverable that remain outstanding at the time of Westwood approval.

## 11. **Stop Work Order & Termination**

### 11.1 *Stop Work Order*

Westwood may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to ninety (90) calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, Westwood must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order.

### 11.2 *Termination of Stop Work Order*

The Contractor must resume work if Westwood terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within twenty (20) days after the end of the Stop Work Order by submission of a request for adjustment to Westwood; provided that, Westwood may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 9.3, Contract Changes.



### *11.3 Allowance of the Contractor's Costs*

If Westwood fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 11.6, Termination by Westwood, and Westwood will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. Westwood is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 11.1, Stop Work.

### *11.4 Notice and Right to Cure*

If the Contractor breaches the Contract, and Westwood, in its sole discretion, determines that the breach is curable, Westwood will provide the Contractor notice of the breach and a period of at least thirty (30) days to cure the breach. Westwood does not need to provide notice or an opportunity to cure for successive or repeated breaches or if Westwood determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

### *11.5 Termination for Cause*

(a) Westwood may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by Westwood

(b) The Contractor must pay all reasonable costs incurred by Westwood in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs Westwood incurs to procure the deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If Westwood partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those deliverable(s) that are terminated. Westwood must pay for all deliverable(s) for which final acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If Westwood terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 11.6, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.



#### *11.6 Termination for Convenience*

Westwood may fully or partially terminate this Contract for its convenience if Westwood determines that a termination is in Westwood's best interest. Reasons for the termination are within the sole discretion of Westwood and may include but are not limited to: (a) Westwood no longer needs the deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for Westwood; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any solicitation issued by Westwood. Westwood may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If Westwood chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those deliverable(s) that are terminated.

#### *11.7 Termination for Criminal Conviction*

Westwood may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a Westwood, public, or private Contract or subcontract.

#### *11.8 Rights and Obligations upon Termination*

(a) If Westwood terminates this Contract for any reason, the Contractor must:

- (i) stop all work as specified in the notice of termination;
- (ii) take any action that may be necessary, or that Westwood may direct, to preserve and protect deliverable(s) or other Westwood property in the Contractor's possession;
- (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of Westwood;
- (iv) transfer title in and deliver to Westwood, unless otherwise directed, all deliverable(s) intended to be transferred to Westwood at the termination of the Contract (which will be provided to Westwood on an "As-Is" basis except to the extent Westwood compensated the Contractor for warranty services related to the materials);
- (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
- (vi) take all appropriate action to secure and maintain Westwood information confidentially.

(b) If Westwood terminates this Contract under Section 11.6, Termination for Convenience, Westwood must pay the Contractor all charges due for



deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by Westwood. All completed or partially completed deliverable(s) prepared by the Contractor, at the option of Westwood, become Westwood's property, and the Contractor is entitled to receive equitable compensation for those deliverable(s). Regardless of the basis for the termination, Westwood is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to deliverable(s) not actually completed.

(c) If Westwood terminates this contract for any reason, Westwood may assume, at its option, any subcontracts and agreements for deliverable(s), and may pursue completion of the deliverable(s) by replacement contract or as Westwood deems expedient.

#### *11.9 Reservation of Rights*

In the event of any full or partial termination of this contract, each party reserves all rights or remedies otherwise available to the party.

#### *11.10 Contractor Transition Responsibilities*

If this Contract terminates under, Termination by Westwood, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to Westwood or a third party designated by Westwood within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

#### *11.11 Termination by Contractor*

If Westwood breaches the contract and the Contractor, in its sole discretion, determines that the breach is curable, the Contractor will then provide Westwood with notice of the breach and a time period (not less than thirty (30) days) to cure the breach.

The Contractor may terminate this Contract if Westwood: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach.

## **12. Additional Contract Terms**

### *12.1 COVID and ARPA Federal Requirements*

Westwood has sought to obtain federal funding to augment its response to the COVID-19 pandemic. Attachment B includes regulatory provisions and clauses as



required under 2 C.F.R. 200 and other federal regulations associated with the federal funding being provided under this Contract and is attached and incorporated by reference herein to the Master Agreement/Contract (the “Contract”).



## Attachment A – Pricing Schedule

Service Category	Description	Estimated Hours	Hourly Rate	Total Cost
<b>Planning and Risk Assessment</b>	Initial planning, risk identification, and strategy development.	26	\$250	\$6,500
<b>Internal Control Testing</b>	Evaluation and testing of internal controls	18	\$200	\$3,600
<b>Fieldwork and Data Analysis</b>	On-site examination of financial records and interviews	40	\$225	\$9,000
<b>Compliance Testing</b>	Testing for compliance with applicable laws and regulations	25	\$275	\$6,875
<b>Audit Report Preparation</b>	Drafting and finalizing the audit report	20	\$325	\$6,500
<b>Presentation and Consultation</b>	Presentation of findings to the board and consultations	5	\$420	\$2,100
<b>Additional Services</b>	Any additional services requested outside the standard scope	-	-	-

**Total cost for 2025 = \$34,575**

**Total cost for 2026 = \$36,000**

**Total cost for 2027 = \$37,500**



## ATTACHMENT B - COVID & ARPA FEDERAL REQUIREMENTS

### I. Procurement Policy

Procurement for Westwood has provided a transparent, open, and fair opportunity for all eligible Contractors to participate. This bid has been made without collusion with any other person, firm or corporation making any bid or proposal, or who otherwise makes a bid or proposal. The Contractor must have available Contract or purchase order with the required approvals to receive payment for goods or services rendered. If the Contractor performs any work without a valid Contract or purchase order, the Contractor will not be paid.

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

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council as authorized by 41 U.S.C. § 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

### II. Bonds and Insurance Requirements

Receipt of bonds and/or insurance is part of the process of determining which Contractor may be recommended for award to the Board. If cause is found to change the recommendation that a Contractor be awarded the contract, or if the Board does not approve the recommendation, Westwood shall not be liable for any costs incurred by the Contractor in the bid process, including the cost of acquiring bonds and/or insurance. This Section is applicable only to Contracts pertaining to construction or facility improvement.

### III. Equal Employment Opportunity

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 C.F.R. 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”.

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.



The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (a) through (g) 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.

- (h) Westwood 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 Westwood 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. Westwood 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. Westwood 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, Westwood 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 contract; refrain from extending any further assistance to Westwood under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Westwood; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **IV. Federal Compliance**

- (a) Consistent with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148), the parties agree all transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141- 3144, and §§ 3146-3148) and the requirements of 29 C.F.R. Part 5 as may be applicable. The Contractor shall comply with 40 U.S.C. §§ 3141-3144, and §§ 3146-3148 and the requirements of 29 C.F.R. Part 5 as applicable.
- i. Davis-Bacon Act, as amended (40 U.S.C. §§3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§ 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").



- ii. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- iii. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.
- iv. The Act provides that the contractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- v. This subsection (a) is applicable only to the extent the Contract pertains to construction work.

(b) Consistent with the Copeland Anti-Kickback Act, the parties agree as follows:

- a. The Contractor must report all suspected or reported violations to Westwood and Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. 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”).
- b. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
- c. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.
- d. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.
- e. The Act provides that the contractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- f. This subsection (b) is applicable only to the extent the Contract pertains to construction work,

(c) Consistent with the **Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708)**, the parties agree as follows:



1. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).
2. Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
3. 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.
  - a. No Contractor or subcontractor Contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

- b. Westwood shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
    - c. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be



responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

- d. This subsection (c) is applicable only to the extent the Contract is for a sum greater than One Hundred Thousand and 00/100 Dollars (\$100,000.00),

(d) Consistent with the **Clean Air Act (42 U.S.C. §§ 7401-7671q.)** and the **Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387)**, the parties agree as follows:

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The Contractor agrees to report each violation to Westwood and understands and agrees that the Contractor will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract in excess of \$150,000. Contract shall ensure each subcontract include provisions that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- d. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- e. The Contractor agrees to report each violation to Westwood and understands and agrees that Westwood will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- f. This subsection (d) is applicable only to the extent the Contract is for a sum greater than One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00),

(e) Consistent with the **Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended)**, the parties agree as follows:

Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- a. Contractors who apply or bid for an award exceeding \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal



appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352.

- b. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. (J) See §200.323., (K) See §200.216., (L) See §200.322. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]
- c. This subsection (e) is applicable only to the extent the Contract is for a sum greater than One Hundred Thousand and 00/100 Dollars (\$100,000.00),

(f) Debarment and Suspension.

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 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.

- a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s 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).
- b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

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

- c. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(g) Procurement and Recovered Materials.



- a. In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (i) competitively within a timeframe providing for compliance with the Contract performance schedule; (ii) meeting Contract performance requirements; or (iii) at a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(h) Prohibition of Certain Telecommunication Services and Equipment.

- a. Recipients, subrecipients or contractor are prohibited from obligating or expending loan or grant funds to (i) procure or obtain; (ii) extend or renew a contract to procure or obtain; or (iii) 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).
  - i. 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).
  - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - iii. 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.
- b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.



c. See Public Law 115-232, section 889 for additional information. See also §200.471.

(i) Records Requirements.

- a. The Contractor agrees to provide Westwood, the FEMA Administrator, and the Comptroller General of the United States, and any other authorized representative 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 transactions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, or to copy excerpts and transcriptions as reasonably required.
- c. The Contractor agrees to provide the FEMA Administrator, Westwood and the Federal awarding agency or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Act of 2018, Westwood 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.
- e. This subsection (i) is applicable only to Contracts pertaining to construction or facility improvement.

(j) Domestic Preferences for Procurements.

- a. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, 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 this award.
  - i. For purposes of this section: (i) “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; and (ii) “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.

(k) Federal Acquisitions Regulation Compliance.

- a. All transactions regarding this Contract and subject to the applicable law shall be done in compliance with the Federal Acquisitions Regulations guidance 6.302-2 (unusual and compelling urgency). The Contractor shall comply with 10 U.S.C. § 2304(c)(2) or 41 U.S.C. §



3304(a)(2), as well as Title 2 C.F.R. 200(e) as applicable, which are incorporated by reference into this Contract and quoted in full below:

(a) Authority.

- (1) Citations: 10 U.S.C. § 2304(c)(2) or 41 U.S.C. § 3304(a)(2).
- (2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) Application. This authority applies in those situations where-

- (1) An unusual and compelling urgency precludes full and open competition; and
- (2) Delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) Limitations.

- (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.
- (2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

(d) Period of Performance.

- (1) The total period of performance of a contract awarded or modified using this authority-
  - (i) May not exceed the time necessary:
    - (A) To meet the unusual and compelling requirements of the work to be performed under the contract; and
    - (B) For the agency to enter into another contract for the required goods and services through the use of competitive procedures; and
  - (ii) May not exceed one year, including all options, unless the head of the agency determines that exceptional circumstances apply. This determination must be documented in the contract file.
- (2) (i) Any subsequent modification using this authority, which will extend the period of performance beyond one year under this same authority, requires a separate determination. This determination is only required if the cumulative period of performance using this authority exceeds one year. This requirement does not apply to the exercise of options previously addressed in the determination required at paragraph (d)(1)(ii) of this section. (ii) The



determination shall be approved at the same level as the level to which the agency head authority in paragraph (d)(1)(ii) of this section is delegated.

- (3) The requirements in paragraphs (d)(1) and (2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.
- (4) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.
- (5) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

b. This subsection (i) is applicable only to Contracts involving the receipt of Federal Transit Administration funding.

(l) Rights to Inventions Made Under a Contract or Agreement.

If the Federal award meets the definition of “funding agreement” under 37 C.F.R. §401.2 (a) and the recipient, subrecipient or contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient 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 awarding agency.