

Attachment C

The selected vendor will be required to sign an affidavit, and be required to have its subcontractors sign affidavits, that no subcontractor refund or kickbacks to the vendor will occur on this project. Such affidavits will be substantially in the form indicated in the following:

Attachment C-1: Contractor Fair and Ethical Business Practice Affidavit

Attachment C-2: Subcontractor Fair and Ethical Business Practice Affidavit

Attachment C-3: Monthly Certification

Attachment C-1

Contractor Fair and Ethical Business Practice Affidavit

To induce _____ (“Owner”) to enter into a contract with the contractor identified below (“Contractor”) in connection with the construction of the _____ (the “Work”), and as partial consideration for Owner’s agreement to do so, if Owner has entered into such a contract, the undersigned, individually and as authorized representative of Contractor, hereby represent and warrant, under penalty of perjury, and covenant, in favor of Owner, as follows

(a) (i) the prices in Subcontractor’s bids for their respective portions of the Work as delivered to Contractor and used in determining the contract sum or guaranteed maximum price were, or will be, arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any other competitor; (ii) unless otherwise required by law, the prices which have been or will be quoted in any bid or price given by a Subcontractor and delivered to Owner or used to determine the contract sum or guaranteed maximum price have not been knowingly disclosed by Contractor, directly or indirectly, to any other subcontractor or to any competitor of such subcontractor or of Contractor; (iii) no attempt has been made by Contractor to induce any other person or entity to submit or not to submit a bid for the purpose of restricting competition; (iv) to Contractor’s knowledge, after reasonable inquiry, all Subcontractors proposed or retained by Contractor are licensed, reputable, experienced in similar projects, and have adequate financial resources for the performance of all portions of the Work to be provided by such Subcontractors; and (v) Contractor has not requested and no Subcontractor has paid or agreed to pay to Contractor any share of the payments to be received by Subcontractor under its subcontract (i.e., a “kick-back”) or any other consideration, fee, payment or other compensation. Prior to commencement of a Subcontractor’s applicable portion of the Work, at Owner’s request, Contractor shall cause each Subcontractor to provide evidence reasonably satisfactory to Owner that it is licensed, reputable, experienced in similar projects, and has adequate financial resources.

(b) Fair, legal and ethical business practices shall be strictly adhered to by Contractor in the performance of the Work. In furtherance thereof, neither Contractor nor any Subcontractor, nor any of their respective directors, partners, principals, officers or employees shall, in connection with the Work or any other contract which Contractor has with any other party: (i) file with a government office or employee, a written instrument which intentionally contains a false statement or false information; (ii) falsify business records; (iii) give, or offer to give, money or any other benefit with intent to influence the award of the Work or pricing of the Work; (iv) otherwise violate any laws.

(c) Neither Contractor nor any Subcontractor shall cause an increase in the cost of the Work payable by Owner by adjusting its bid for the Work or the cost to Owner based on information other than the documents prepared by design professionals and other consultants retained by Owner; and

(e) Contractor shall not attempt in any fashion to have Subcontractors perform tasks or any portion of the Work that are described as general conditions items to be provided directly by Contractor under its contract with Owner unless written authorization is provided from Owner.

(f) No Subcontractor has included in its bid or the amount payable by Contractor under its subcontract with Subcontractor additional cost for items that are described as general conditions items under Contractors agreement with Owner or amounts that are earmarked for return to Contractor in the form of a rebate at or after the conclusion of the Work.

(g) Both Contractor and all Subcontractor shall maintain and make available to Owner and its representatives for inspection and copying full and complete copies of all invoices and evidence of payment pertaining to the Work for a period of at least three (3) years following final completion of the Work.

CONTRACTOR ACKNOWLEDGES THAT IF IT BREACHES ANY OF THE REPRESENTATION, WARRANTIES OR COVENANTS SET FORTH IN THIS AFFIDAVIT, THE DIRECT DAMAGES INCURRED BY OWNER SHALL NOT BE ADEQUATE COMPENSATION FOR ALL DAMAGES SUFFERED BY OWNER. CONTRACTOR, THEREFORE, AGREES THAT IN ANY CLAIM BY OWNER AGAINST CONTRACTOR FOR SUCH BREACH, OWNER SHALL BE ENTITLED TO RECOVER FROM CONTRACTOR AN AMOUNT EQUAL TO THREE (3) TIMES THE AMOUNT OF DIRECT DAMAGES PROVEN BY OWNER, IN ADDITION TO ATTORNEYS' FEES AND COSTS.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Affidavit as of the date written below.

CONTRACTOR:

a _____

By: _____

Name: _____

Title: _____

Date: _____

[TO BE NOTARIZED]

Attachment C-2

Subcontractor Fair and Ethical Business Practice Affidavit

To induce _____ (“Contractor”) to enter into a subcontract with the subcontractor identified below (“Subcontractor”) in connection with the construction of the _____ (the “Work”), and as partial consideration for Contractor’s agreement to do so, if Contractor has entered into such a subcontract, the undersigned, individually and as authorized representative of the Subcontractor, hereby represent and warrant, under penalty of perjury, and covenant, in favor of Contractor and in favor of _____ (“Owner”), the entity intended to be benefitted by the Work, as follows

(a) (i) the prices in Subcontractor’s bid for its portion of the Work as delivered to Contractor were, or will be, arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any other competitor; (ii) unless otherwise required by law, the prices which have been or will be quoted in any bid have not been knowingly disclosed by Subcontractor, directly or indirectly, to any other bidder or to any competitor; (iii) no attempt has been made by Subcontractor to induce any other person or entity to submit or not to submit a bid for the purpose of restricting competition; (iv) Subcontractor is licensed, reputable, experienced in similar projects, and has adequate financial resources for the performance of all portions of the Work to be provided by Subcontractor; and (v) Subcontractor has not paid or agreed to pay to Contractor any share of the payments to be received by a Subcontractor under its subcontract (i.e., a “kick-back”) or any other consideration, fee, payment or other compensation. Prior to commencement of Subcontractor’s applicable portion of the Work, at Owner’s or Contractor’s request, Subcontractor shall provide evidence reasonably satisfactory to Owner that it is licensed, reputable, experienced in similar projects, and has adequate financial resources.

(b) Fair, legal and ethical business practices shall be strictly adhered to by Subcontractor in the performance of the Work. In furtherance thereof, neither Subcontractor, nor any of its directors, partners, principals, officers or employees shall, in connection with the Work or any other contract which Subcontractor has with any other party: (i) file with a government office or employee, a written instrument which intentionally contains a false statement or false information; (ii) falsify business records; (iii) give, or offer to give, money or any other benefit with intent to influence the award of the Work or pricing of the Work; (iv) otherwise violate any laws.

(c) Subcontractor shall not cause an increase in the cost of the Work payable by Owner by adjusting its bid for the Work or the cost to Owner based on information other than the documents prepared by design professionals and other consultants retained by Owner; and

(e) Subcontractor shall not perform tasks or any portion of the Work that are described as general conditions items to be provided directly by Contractor under its contract with Owner without Owner's written authorization.

(f) Subcontractor has not included in its bid to Contractor or in the amount payable by Contractor under its subcontract with Subcontractor additional cost for items that are described as general conditions items under Contractor's agreement with Owner and has not included any amounts that are earmarked for return to Contractor in the form of a rebate at or after the conclusion of the Work.

(g) Subcontractor shall maintain and make available to Owner and its representatives for inspection and copying full and complete copies of all invoices and evidence of payment pertaining to the Work for a period of at least three (3) years following final completion of the Work.

SUBCONTRACTOR ACKNOWLEDGES THAT IF IT BREACHES ANY OF THE REPRESENTATION, WARRANTIES OR COVENANTS SET FORTH IN THIS AFFIDAVIT, THE DIRECT DAMAGES INCURRED BY OWNER SHALL NOT BE ADEQUATE COMPENSATION FOR ALL DAMAGES SUFFERED BY OWNER. SUBCONTRACTOR, THEREFORE, AGREES THAT IN ANY CLAIM BY OWNER AGAINST CONTRACTOR AND/OR SUBCONTRACTOR FOR SUCH BREACH, OWNER SHALL BE ENTITLED TO RECOVER FROM CONTRACTOR AND/OR SUBCONTRACTOR AN AMOUNT EQUAL TO THREE (3) TIMES THE AMOUNT OF DIRECT DAMAGES PROVEN BY OWNER, IN ADDITION TO ATTORNEYS' FEES AND COSTS.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Affidavit as of the date written below.

SUBCONTRACTOR:

a _____

By: _____

Name: _____

Title: _____

Date: _____

[TO BE NOTARIZED]

Attachment C-3

Monthly Certification

[This Certification shall be submitted with each application for payment by Contractor and by all 15 of the Subcontractors with the largest subcontracts ranked by subcontract amount. Submission shall be a condition of the obligation of Owner to make a progress payment. The Certification shall be signed by an authorized Contractor officer, and by authorized Subcontractor officer(s), and shall be notarized.]

Contractor and its subcontractor executing this Certification hereby represent, under penalty of perjury, that **Attachment ZZ** lists all payments, gifts, discounts, rebates, monetary offsets, any other financial remunerations, and all other financial benefits (either in-cash or in-kind) between (either to or from) them within the preceding 12 months and that they have promised to make in the future that are not otherwise provided for in the subcontract between them pertaining to _____ (the “Project”).

Contractor acknowledges and agrees that all such financial benefits, unless previously completely disclosed and previously explicitly approved by Owner, are prohibited by the Contract between them pertaining to the Project, and shall not be considered “Cost Of The Work”; any such payments shall be subject to non-payment by Owner, and if previously paid by Owner, Contractor shall refund all such amounts to Owner.

The definition of Contractor and Subcontractor shall include Contractor each of such entities, all entities and persons controlled by, controlling, under common control with or otherwise affiliated with Contractor and Subcontractor, respectively, and all officers, directors, members, managers and employees of Contractor and Subcontractor, respectively.

All financial information which Owner, in its sole discretion, considers potentially related to this Monthly Certification shall be made completely available and shall be made available in the County in which the Project is located for inspection and copying by Owner and its representatives..

IN WITNESS WHEREOF, the undersigned have executed and delivered this Certification as of the date written below.

CONTRACTOR:

SUBCONTRACTOR:

[TO BE NOTARIZED]