

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 03/2019)

AGREEMENT NUMBER  
**M13708-T7061**

PURCHASING AUTHORITY NUMBER (if Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of General Services, Real Estate Services Division, Project Management and Development Branch

CONTRACTOR NAME

Turner Construction Company

2. The term of this Agreement is:

START DATE

3/24/2020

THROUGH END DATE

90 Calendar Days commencing on the start date of 3/24/2020

3. The maximum amount of this Agreement is:

\$1,750,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Project Title	Riverside Federal Medical Station (FMS) Riverside County Fairgrounds Indio, Riverside County, California M13708-T7061	
Exhibit A	Scope of Work	
Exhibit B	Budget Detail and Payment Provisions	
Exhibit B, Attachment 1	Cost Sheet	
Exhibit C	General Conditions of the Contract for Construction	
Exhibit D	Supplementary Terms and Conditions	
Exhibit E	FEMA Provisions	
Exhibit F	Payment and Performance Bonds	

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

Turner Construction Company

CONTRACTOR BUSINESS ADDRESS

2500 Venture Oaks Way, Suite 200

CITY

Sacramento

STATE

CA

ZIP

95833

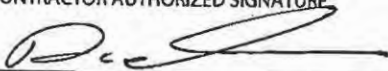
PRINTED NAME OF PERSON SIGNING

Dan R. Wheeler

TITLE

Vice President and General Manager

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

5-5-2020

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of General Services, Office of Business and Acquisition Services

CONTRACTING AGENCY ADDRESS

707 Third Street, 2nd floor

CITY

West Sacramento

STATE

CA

ZIP

95605

PRINTED NAME OF PERSON SIGNING

Rachel L. Grant Kiley

TITLE

OBAS Chief

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

05/15/2020

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

DEPARTMENT OF GENERAL SERVICES  
PROCUREMENT DIVISION

**APPROVED**

BY

DATE

*John M...*  
5/15/2020

**EXHIBIT A**

**SCOPE OF WORK**

Turner Construction Company, herein called (Contractor) is entering into this agreement with the California Department of General Services hereinafter referred to as “State” to provide essential temporary services on behalf of the State as described herein.

**1. PURPOSE**

DGS in partner with the Governor’s Office of Emergency Services (CalOES) is seeking a Contractor that can provide full essential temporary services for the mechanical, electrical, low voltage, and plumbing systems to support a Federal Medical Station (FMS).

**2. PROJECT REPRESENTATIVES DURING THE TERM OF THIS AGREEMENT**

<b>Representatives</b>		
Agency   Contractor:	Department of General Services	Turner Construction Company
Name and Title:	Don Hansen, Project Director III	Dan R. Wheeler, Vice President
Address:	707 3 <sup>rd</sup> Street, 4 <sup>th</sup> Floor	2500 Venture Oaks Way, Suite 200
City, State, Zip:	West Sacramento, CA 95605	Sacramento, CA 95833
Phone Number	(916) 879-0005	(916) 444-4421
E-mail Address:	Don.hansen@dgs.ca.gov	drwheeler@tcco.com

**3. RESPONSIBILITIES & REQUIREMENTS**

A. Requirements for services at both Fullenwider Auditorium and Taj Mahal buildings include, but are not limited to, the following:

- 1) Coordination and installation of stand-alone temporary heating and cooling equipment with associated air distribution including monthly rental for equipment, delivery, pick-up and maintenance of equipment.
  - a. Utilize packaged DX air conditioning units with electric strip heaters for supply and air handlers for exhaust achieving 100% outside air. Temporary duct shall be a combination of flex duct and duct sock. Support systems with basic materials such as rope.
  - b. Target space temperature of 65°F-75°F (no humidity target).
  - c. Provide MERV10 filters or greater on the supply.
  - d. Target space pressurization of -0.10” WC to +0.10” WC.

- e. Utilize ASHRAE: Desert Resorts Regional, CA USA (WMO: 747187), Cooling DB – 2% = 107.1°F. Heating 58°F – Design for typical conditions of April – September.
  - f. Provide controls to interlock HVAC equipment and maintain space temperature.
  - g. Generators for the temporary HVAC equipment as required.
  - h. Fueling for the generators.
  - i. Equipment inspections and monitoring of fluid levels as required.
- 2) Coordination and installation of a 3,000-amp emergency generator, three phase automatic transfer switch and associated cabling to 100% back up the building.
- a. Includes monthly rental for equipment, delivery, pick-up and maintenance of equipment.
  - b. Daily equipment inspections and monitoring of fluid levels will be provided by on-site facilities.
  - c. Fuel and fluids for temporary emergency generator as required.
- 3) Verify existing emergency lighting and add temporary emergency lighting as required to meet minimum foot-candles in patient bed area.
- 4) Verify Wi-Fi and fire alarm are working and functional. Add smoke detectors for both supply and return for all temporary units.
- 5) Duct detectors are wired and tested by the County of Riverside fire alarm service contractor. Turner Construction only provides supervision of this portion of the work.
- 6) Coordination and demobilization of stand-alone temporary heating and cooling equipment with associated air distribution and generators.
- 7) Coordination of demobilization of emergency generator, automatic transfer switch and associated cabling.

**B. Fullenwider Auditorium Emergency Generator**

- 1) Coordination and installation of a 3,000-amp emergency generator, three phase automatic transfer switch and associated cabling to 100% back up the building.
- a. Includes monthly rental for equipment, delivery, pick-up and maintenance of equipment.
  - b. Daily equipment inspections and monitoring of fluid levels will be provided by on-site facilities.
  - c. Fuel and fluids for temporary emergency generator as required.

**C. Taj Mahal Building Emergency Generator**

EW COVID-19 Emergency Contract 2020  
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- 1) Coordination and installation of a 600-amp emergency generator, single phase automatic transfer switch and associated cabling to 50% back up the building. Patients beds will be located on the side of the building that has the emergency back up power.
  - a. Includes monthly rental for equipment, delivery, pick-up and maintenance of equipment.
  - b. Daily equipment inspections and monitoring of fluid levels will be provided by on-site facilities.
  - c. Fuel and fluids for temporary emergency generator as required.

D. Services shall be provided at the following location:

Riverside County Fairgrounds  
Fullenwider Auditorium and Taj Mahal Buildings  
82-503 Hwy 111  
Indio, CA 92201

**EXHIBIT B**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. INVOICING AND PAYMENT**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor in accordance with the rates/costs specified herein.
- B. Invoices must include:
- 1) Contract Number, Purchase Order Number, Mission/Task Numbers
  - 2) Invoice Number
  - 3) Date of Invoice
  - 4) Billing and/or performance period covered by invoice (Dates of Service)
  - 5) Location of Service
  - 6) Applicable rate and total contract dollar amount
  - 7) Itemized breakdown of labor and material cost with corresponding Daily Reports and subcontractor/vendor invoices.
  - 8) Invoice total
  - 9) Remittal Address
  - 10) Contact phone number for invoice questions
  - 11) Contractor's California Certified Small Business Certification Reference Number or Disabled Veteran Business Enterprise Reference Number, if applicable
- C. Contractor shall submit invoices related to Contractor's services electronically via email to: [OBASHelpline@dgs.ca.gov](mailto:OBASHelpline@dgs.ca.gov). Should an invoice be disputed, Contractor will correct any/all disputed items on the invoice and resubmit the invoice as indicated above. Failure to provide and resubmit corrected invoice will result in a delay of payment. Under no circumstances will a credit memo be accepted in lieu of a corrected invoice.
- D. If Contractor has agreed to be paid by CAL-Card, Contractor will provide OBAS a copy of the itemized transaction receipt showing payment was processed and the balance due is zero dollars (A hand-written "paid by Visa" will not be accepted). The itemized transaction receipt must reflect the invoice number, the contract number and the CAL-Card verification number charged. The itemized transaction receipt must be provided immediately to the CAL-Card holder after payment transaction is processed.
- E. Beginning with the first day and at the end of each day, the Contractor shall furnish to the State detailed hourly records for labor, construction equipment, and services; and itemized records of material and equipment used that day in performance of the work. Contractor/Sub Contractor to provide daily reports documenting hours worked
- F. Contractors who incur overnight lodging expenses at a commercial lodging establishment catering to short-term travelers, such as a hotel, motel, bed and breakfast, etc., must provide a receipt to claim reimbursement. No reimbursement will be paid without a receipt. The receipt must be from the commercial lodging establishment not a third party vendor like

Travelocity, Expedia, etc. The rate of reimbursement for Riverside County is \$95.00 per room, per night, plus tax.

- G. In an emergency, the DGS Representative may approve payment of lodging expenses in excess of the above rate for the duration of time in which services were authorized and performed prior to an executed contract.
- H. Mileage reimbursement for a personal vehicle is 57.5 cents per mile. Reimbursement will be made only for the method of transportation which is in the best interest of the State, considering both direct expense as well as the contractor's time.

## **2. BUDGET CONTINGENCY CLAUSE**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to the Contractor to reflect the reduced amount.

## **3. PROMPT PAYMENT CLAUSE**

- A. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with section 927.

## **4. TIMELY SUBMISSION OF FINAL INVOICE**

- A. A final undisputed invoice that is clearly marked "Final Invoice" shall be submitted for payment no more than thirty (30) calendar days following the expiration or termination date of this Agreement.
- B. If the State disputes the Final Invoice or any item in the Final Invoice, the State shall provide written notice to the Contractor describing the reason or reasons the State disputes the Final Invoice, and the Contractor shall be required to submit a corrected Final Invoice to the State no later than ten (10) calendar days after the date the Contractor received the State's written notice.
- C. If the Contractor fails to submit a corrected Final Invoice within the time required, or if the Contractor's corrected Final Invoice fails to correct the disputed item, the State shall have the right to elect to deny payment of the disputed item and pay only the undisputed amounts under the Final Invoice.
- D. The State may, at its discretion, choose not to honor any final invoice submitted after the deadline specified in Exhibit B, Budget Detail and Payment Provisions Section 5.A

above if the Contractor fails to obtain prior written State approval of an alternate Final Invoice submission deadline.

**5. CONTRACTOR OVERPAYMENTS**

- A. If the State determines that an overpayment has been made to the Contractor, the State will seek recovery immediately upon discovery of the overpayment by: (a) calling the Contractor's accounting office to request a refund of the overpayment amount, or (b) offsetting subsequent Contractor payments by the amount of the overpayment if Contractor repayment or credit is not received within thirty (30) days from the date of notice.
- B. If Contractor discovers it has received an overpayment, Contractor must notify the State and refund the overpayment immediately.



**EXHIBIT B, ATTACHMENT 1**

**TOTAL CONTRACT AMOUNT\***

Installation, Equipment Set up and Demobilization	\$757,267.06
Equipment Rental (3 months)	\$992,732.94
<b>Total</b>	<b>\$1,750,000.00</b>

**RATES\*\***

<b>TURNER STAFF</b>	<b>POSITION</b>	<b>RATE PER HOUR</b>
Dan Wheeler	Vice President & General Manager	no charge
Steve Yots	Construction Executive	\$253
Mauricio Romero	Lead Superintendent	\$158
Carl J. Beryma	Second Superintendent	\$136
Andres Orozco	Safety Manager	\$170
Monica Alba	Project Manager & Project Engineer	\$113
	Accounting Support	\$107
Donna Afflerbach	Purchasing Manager	\$193

<b>CONTRACTOR CONSTRUCTION RATES</b>	
Turner Markup fee***	5%
General Liability Insurance	1.1%
Staff mileage	57.5 cents per mile
Travel and Lodging****	

<b>SUBCONTRACTOR RATES</b>
20% mark up on labor
15% mark up on material & equipment
8% on total cost of sub-tier subcontractors
Sunbelt rental equipment*****
Fuel Charges*****
Other rental equipment*****

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\*Time & Material (including 5% fee on all work associated with the Agreement) not to exceed \$1,750,000.00. Contractor shall notify owner if the cost to date is nearing the total contract amount.

\*\*Overtime and Double time rate will be billed only at the Bill Rate. All rates shall be fully burdened and inclusive of staff benefits and overhead, vehicle, cell phone, and computer infrastructure charges. Rates are fixed for the duration of the project and not subject to audit. Turner Staff shall bill for actual hours worked; however the approved rate shall be the maximum billable rate.

\*\*\*Applied to total cost of work (Subcontractor, Rental equipment, Contractor Staff and Insurance; includes employee labor, overhead, vehicle, cell phone and computer infrastructure, fixed rates for the duration of the project).

\*\*\*\*Travel and lodging shall be at cost, not to exceed the caps identified on the CalHR website for excluded employees.

\*\*\*\*\*Charged at Turner National agreed to rates (cost includes rental, freight, transportation fees) plus labor setup/removal costs and fuel charges.

\*\*\*\*\*For Sunbelt rental equipment, fuel charges will be charged at cost plus \$1/gallon and a \$250 drop charge.

\*\*\*\*\*HVAC units will be charged at cost, setup/removal costs, freight plus Turner's 5% fee on all costs incurred.

**EXHIBIT D**

**SUPPLEMENTARY CONDITIONS**

Requirements included herein supplement DOCUMENT 00 72 00 - GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION.

**1. ARTICLE 1 – GENERAL PROVISIONS**

**Paragraph 1.1, DEFINITIONS**

Add the following definition:.

Hazardous Materials: These materials include but are not limited to products and materials containing: Asbestos, Lead, PCB's, Petroleum fuels and lubricants (including chemical additives), oxidizers, corrosives, solvents, acids and carcinogens.

**2. ARTICLE 3 – CONTRACTOR**

**Paragraph 3.3, LABOR AND MATERIALS**

Delete Subparagraph 3.3.3 in its entirety and replace it with new Subparagraph 3.3.3 as follows:

3.3.3. Prevailing Wage: The Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1774, the Contractor and every subcontractor, regardless of tier, shall pay not less than the specified prevailing wage rates to all workers employed in the execution of the Contract. In accordance with Section 1775, the Contractor shall forfeit to the State up to \$200 for each day, or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any work executed under the Contract by the Contractor or by any subcontractor, regardless of tier, in violation of the provisions of the Labor Code; and, in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to such forfeiture, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each day, or portion thereof, shall be paid to each underpaid worker by the Contractor. This provision shall not apply to properly registered apprentices.

- .1 Pursuant to Labor Code, Section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and a general prevailing rate for legal holiday and overtime work for each craft required for execution of the Contract. The Contractor shall obtain copies of the prevailing rate of per diem wages from the Department of Industrial Relations, Division of Labor Statistics & Research, PO Box 420603, San Francisco, CA 94142-0603, (415) 703-4780; or wage rates may be accessed on the internet at <https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. The Contractor is responsible to read, understand and comply with all the guidelines, including the fine print in the prevailing wage determinations; and shall post a copy of the prevailing wage rates, specific to the Project, at the Project site.

- .2 Wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein shall be construed as preventing the Contractor from paying more than the minimum rates set. No extra compensation will be allowed by the State due to the inability of the Contractor to hire labor at minimum rates, nor for necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the Bid Form
- .3 If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate booklet, the Contractor shall contact the Division of Labor Statistics and Research as noted above. The rates thus determined shall be applicable as minimum for the contract and incorporated in the bid. When the wage determination shows an expiration date (noted by a double asterisk\*\*), to expire during the term of the contract, the Contractor must call or write the DIR to obtain the new rates and incorporate them in the bid to be applicable for the term of the contract.
- .4 The Contractor and each subcontractor, regardless of tier, shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. The Contractor's and subcontractor's certified payroll records for each employee shall be submitted with each payment request, covering the period of the payment request unless requested otherwise by the Labor Commissioner of the Department of Industrial Relations pursuant to Labor Code Section 1771.4(c)(2)(b) monthly payrolls should be sent directly to the Department of Industrial Relations in the current prescribed electronic format. Refer to <https://www.dir.ca.gov/public-works/certified-payroll-reporting.html> for access to the electronic Certified Payroll (eCRP) Application.
- .5 Labor Compliance Monitoring and Enforcement: This project is subject to monitoring and enforcement by the Department of Industrial Relations (DIR), Compliance Monitoring Unit. All Contractors and subcontractors, regardless of tier, shall be required to comply with the Monitoring and Enforcement Program, including, but not limited to, contractor registration, submittal of electronic certified payroll reports directly to the DIR and cooperation with on-site monitoring by DIR personnel.

### **Paragraph 3.13, TESTS AND INSPECTIONS**

Delete Subparagraph 3.13.1 in its entirety and replace with the following Subparagraph 3.13.1.

3.13.1 The Contractor shall at all times permit the State, its agents, officers, and employees to visit the Project site and inspect the Work, including shops where the work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. Including, but not limited to providing lifts, ladders, scaffolds, platforms and paths of travel. When the Contract Documents require a portion of the Work to be tested, such portion of the work shall not be covered up until inspected and approved by the State. The Contractor shall be solely responsible for notifying the State where and when the work is ready for inspection

and testing and shall give written notice no fewer than two business days prior to the time of inspection. For inspections that require the State Fire Marshal's (SFM) presence, the Contractor shall provide the State's Inspector of Record (IOR) written notice where and when the work is ready for inspection no fewer than three business days prior to the time of inspection.

Should any work be covered without the required testing and approval, such work shall be uncovered and recovered at the Contractor's expense.

Delete Subparagraph 3.13.2 in its entirety and replace with the following Subparagraph 3.13.2.

3.13.2 If the State determines that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, the State will instruct the Contractor, in writing, to make arrangements for additional testing, inspection or approval by an entity acceptable to the State, and the Contractor shall give written notice to the State of where and when tests and inspections will be conducted no fewer than two business days prior to the time of the additional testing, inspection or approval so that the State may observe the procedures. For inspections that require the State Fire Marshal's (SFM) presence, the State's Inspector of Record (IOR) will make the necessary arrangements with the SFM. The Contractor shall provide a written notice no fewer than three business days prior to the time of inspection.

The State will bear the costs except as provided in Subparagraph 3.13.3.

### **Paragraph 3.25, CONTRACTOR REQUIRED NOTIFICATION OF CHANGES**

Delete Paragraph 3.25 in its entirety and replace with the following Paragraph 3.25

3.25 **CONTRACTOR REQUIRED NOTIFICATION OF CHANGES:** The Contractor shall notify the State's Representative in writing of any change to Contractor's name, status, or information including but not limited to:

1. Name
  - a. An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of Contractor's notification and legal documentation of the name change, the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
  - b. The State shall not be liable for penalties or interest on payments which are delayed due to Contractor's change of name and subsequent amendment processing.
2. Address/Location
3. Federal Employer Identification Number (FEIN)
4. Type of Organization or Legal Status – including:
  - a. Corporate
  - b. Partnership
  - c. Individual/Sole-Ownership
  - d. Joint Venture

- e. Limited Liability Company
- f. DBA
- 5. Ownership
- 6. Officers or Key Personnel
- 7. License
- 8. Other (Bankruptcy, Etc.)

Contractor shall immediately provide an updated Standard Form 204 (IRS/FTB form) to the Architectural, Construction and Engineering Contracts Section within five (5) calendar days of any such relevant change.

The State shall not be liable for penalties or interest on payments which are delayed due to Contractor's lack of proper or timely notice and documentation of a relevant change in status which impacts the State's ability to pay.

Contractor shall submit the firm's status change in writing including the Contract Number, Project Title and all necessary backup and legal documentation to support the status change to:

The State Department of General Services, Administration Division  
Office of Business and Acquisition Services, Contracts Services Section  
707 Third Street, Suite 2-300  
West Sacramento, CA 95605-2811

### **Paragraph 3.4, NONDISCRIMINATION CLAUSE**

Delete Paragraph 3.4 in its entirety and replace with the following:

3.4.1. During the performance of this contract, the recipient, contractor, and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

3.4.2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.

3.4.3. Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing (DEFH) and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours'

notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

3.4.4. Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

3.4.5. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

#### 3.4.6 STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION CONTRACT SPECIFICATIONS (GOV. CODE SECTION 12990)

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.

- .1 As used in the specifications:
  - a. "Act" means the Fair Employment and Housing Act.
  - b. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority;
- .2 Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.
- .3 The contractor shall implement the specific nondiscrimination standards provided in paragraphs 6(a) through (e) of these specifications.
- .4 Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer members of any group protected by the Act shall excuse the contractor's obligations under these specifications, Government Code section 12990, or the regulations promulgated pursuant thereto .5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.

- .5 In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.
- .6 The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under steps a. through e. below:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment.
  - b. Provide written notification within (7) seven days to the director of the DFEH when the referral process of the union or unions with which the contractor has a collective bargaining agreement has impeded the contractor's efforts to meet its obligations.
  - c. Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.
  - d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
  - e. Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.
- .7 Contractors are encouraged to participate in voluntary associations that assist in fulfilling their equal employment opportunity obligations. The efforts of a



contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on equal employment opportunity in the industry, ensures that the concrete benefits of the program are reflected in the contractor's workforce participation, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's.

- .8 The contractor is required to provide equal employment opportunity for all persons. Consequently, the contractor may be in violation of the Fair Employment and Housing Act (Government Code section 12990 et seq.) if a particular group is employed in a substantially disparate manner.
- .9 The contractor shall not use the nondiscrimination standards to discriminate against any person because race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- .10 The contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code section 12990.
- .11 The contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code section 12990 and its implementing regulations by the awarding agency. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code section 12990.
- .12 The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

### **3. ARTICLE 3.5 GUARANTEE**

Delete Paragraph 3.5.1 and replace it with the following Paragraph 3.5.1:

- 3.5.1 The Contractor unconditionally guarantees the Work will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of 90 days from the date of Completion of the Work of the Project, unless a longer guarantee period is specifically called for in the Contract Documents. The Contractor shall repair or replace work, or adjacent work, or both, that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the State; ordinary wear and tear and abuse excepted.

#### **4. ARTICLE 4 – SUBCONTRACTORS**

##### **Paragraph 4.2, SUBCONTRACTUAL RELATIONS**

Delete Paragraph 4.2.2 and replace it with the following Paragraph 4.2.2:

4.2.2 Subcontractor Payments: Subcontractors and Sub-subcontractors shall be paid for work performed in accordance with Public Contract Code Sections 10262 and 10262.5.

Delete Paragraph 4.3 and replace it with the following Paragraph 4.3

4.3 DISABLED VETERAN BUSINESS ENTERPRISE PROGRAM: This project is not subject to the requirements of Public Contract Code (PCC) Section 10115 et. seq., requiring the Contractor shall use, employ and utilize Disabled Veteran Business Enterprise (DVBE) subcontractors, sub-subcontractors or material suppliers who were listed in their bid documents for DVBE Program participation, to the full extent of the amount of money and/or percentage of commitment manifested in the bid documents. If the Contractor wishes to substitute any listed DVBE subcontractors, sub-subcontractors or material suppliers for just and legal cause, the Contractor shall follow the dictates of PCC Sections 4107 and 10115.12b, as well as Military and Veterans Code (M&VC) Section 999.5(e) and California Code of Regulations, Title 2, Section 1896.64. The DVBE may only be replaced by another DVBE and shall obtain the written authorization of the State prior to any such substitutions. The Contractor shall not unilaterally substitute a listed DVBE subcontractor, sub-subcontractor or material supplier. Failure of Contractor to seek substitution and adhere to the DVBE participation requirement identified in the bid may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in M&VC Section 999.9; PCC Sections 4110 and PCC Section 10115.10.

## **5. ARTICLE 7 – TIME**

### **Paragraph 7.2, CONTRACT TIME**

Delete Subparagraph 7.2.1 and replace it with the following Subparagraph 7.2.1:

7.2.1 Time is of the Essence in this Contract. The Contractor shall complete all the Work of the Contract within the Contract Time of:

NINETY (90)

calendar days, starting on the Start Date stipulated in the Agreement.

### **Paragraph 7.3, LIQUIDATED DAMAGES**

Add the following Subparagraphs 7.3.1 and 7.3.2:

7.3.1 The Contractor shall pay to the State the sum of \$0 per day for each and every calendar day delay in finishing of Work under this Contract beyond the Contract time.

7.3.2 If the Contractor is more than 14 calendar days behind schedule at any point during the Contract Time, based on the latest updated Official Progress Schedule, the State will withhold \$0 per day for each and every day that the Contractor is behind schedule from the monthly payment for that month. If the Contractor recoups all or a portion of the delay during the next pay period, the amount withheld will be reduced accordingly.

## **6. ARTICLE 8 – PAYMENTS AND COMPLETION**

### **Paragraph 8.2, TIMELINESS OF PAYMENTS**

Delete Paragraph 8.2.3 and replace it with following Paragraph 8.2.3:

8.2.3 The State will make progress payments pursuant to Public Contract Code, Sections 10261 and 10261.5.

### **Paragraph 8.3, RETENTIONS**

Delete Subparagraph 8.3.1.2 and replace it with the following Subparagraph 8.3.1.2:

.2 The State shall retain 5 percent of the estimated value of Work completed.

### **Paragraph 8.5, OCCUPANCY BY THE STATE PRIOR TO COMPLETION OF THE WORK**

Delete Paragraph 8.5.1 and replace it with the following:

- 8.5.1 The State reserves the right to occupy all or any part of the Project prior to Completion of the Work, upon written notice. Such occupancy or use is herein referred to as Beneficial Occupancy. In this event, the Contractor shall be relieved of responsibility to the State for liability arising out of such occupancy by the State.

## **7. ARTICLE 11 – INSURANCE AND BONDS**

### **Paragraph 11.1, CONTRACTOR’S INSURANCE**

Delete Paragraph 11.1 and replace it with the following 11.1:

#### **11.1 CONTRACTOR'S INSURANCE**

##### **11.1.1 General Insurance Requirements:**

- .1 Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors.
  - .1 Contractor shall furnish the State with certificates and endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the State before work commences.
  - .2 The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- .2 Insurance Companies shall be acceptable to Department of General Services (DGS) and Office of Risk and Insurance Management (ORIM). Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-VII, unless otherwise acceptable to DGS, Office of Risk and Insurance Management. Exception may be made for the State Compensation Insurance Fund. If self-insured, review of financial information may be required.
- .3 Except as otherwise provided for Builders Risk/Installation Floater under Clause 11.1.2.4, all coverage shall be in force until the Acceptance of the Work by the Director of DGS. If the insurance expires, the Contractor shall immediately provide a new current certificate or be declared in breach of Contract. The State reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the State. Renewal insurance certificates must be tendered to the State prior to or exactly at the expiration of the previous insurance certificate. There shall be no gap in insurance coverage. This renewed insurance shall be in accordance with the terms of the Contract.
- .4 Contractor is responsible to notify the State a minimum of five (5) business days before the effective date of any cancellation, non-renewal or material change that affects required insurance coverage.
- .5 Unless otherwise stated in the contract, the Contractor shall be responsible for any premium deductible or self-insured retention contained within the insurance.

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- .6 All insurance policies required by this contract must allow the State to pay and/or act as the contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the contractor's agent in satisfying any SIR is at the State's discretion.
  - .7 In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to the remedies noted in Article 11.1.1.3 above and any other remedies it may have, remove the Contractor from the work site and/or may terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.  
In the event, the State elects to remove the Contractor from the work site, the Contractor will not be entitled to additional days or compensation.
  - .8 Any insurance required to be carried shall be primary and not excess or contributory, to any other insurance carried by the State.
  - .9 Any required endorsement requested by the State must be submitted with all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
  - .10 Minimum Scope of Insurance - Coverage shall be at least as broad as:
    - .1 Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
    - .2 Insurance Services Office Form Number CA 0001 covering Automobile Liability, "any auto", or "all owned, hired and non-owned".
  - .11 All coverage and limits available to the contractor shall also be available and applicable to the State.
  - .12 Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.
  - .13 With the exception of Builders Risk/Installation Floater, Contractor shall require and verify that all subcontractors maintain insurance coverage and limits meeting or exceeding all the requirements stated herein. Contractor shall ensure that the Department of General Services and the State of California, its officers, agents, and employees, as additional insured on insurance required from subcontractors but only insofar as the operations under the Contract are concerned. For Commercial General Liability coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13. The State reserves the right to require the Contractor to provide the subcontractors' insurance certificates and policies, when so directed by the State.
- 11.1.2 Insurance Requirements: The Contractor shall furnish to the State evidence of the required insurance as follows:
- .1 Commercial General Liability: The Contractor shall maintain commercial general liability with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage liability combined. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If the aggregate applies "per project or location", it shall so state on the certificate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products,

completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy shall include the Department of General Services and the State of California, its officers, agents, and employees, as additional insureds, but only insofar as the operations under the Contract are concerned.

- .1 Additional Insured coverage shall be provided in the form of an insured endorsement as broad as the (CG 20 10 11 85) to the contractor's insurance policy. All coverage and limits available to the named insured shall be available and applicable to the additional insured. The endorsement must be attached to the certificate.
- .2 Deductibles and Self-Insured Retentions (for Commercial General Liability): Any deductibles or self-insured retentions must be declared to and approved by the State. At the option of the State, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State of California and the Department of General Services, its officers, agents, employees and servants or the Contractor shall provide a financial guarantee satisfactory to the State guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- .2 Automobile Liability: The Contractor shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The State is to be covered as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor. The policy shall include the Department of General Services and The State of California, its officers, agents, and employees, as additional insureds, but only insofar as the operations under the Contract are concerned. All coverage and limits available to the named insured shall also be available and applicable to the additional insured.
- .3 Workers' Compensation: The Contractor shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract, including special coverage extensions where applicable as required by the State of California. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the State for all work performed by the contractor, its employees, agents and subcontractors. Except for State Fund certificates, all subrogation waiver endorsements shall be submitted on a separate form. The Contractor shall maintain Employer's Liability coverage of \$1,000,000 per accident for bodily injury or disease.
- .4 Builders Risk/Installation Floater: not required.

**EXHIBIT E**

**FEMA PROVISIONS**

**1. REMEDIES**

The rights and remedies set forth in this agreement are in addition to, and not in limitation of, any and all other rights and remedies at law or in equity, and exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

**2. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- 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.
- H. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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:
  - 1) 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.
  - 2) The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
  - 3) The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
  - 4) The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965,



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

### **3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Compliance with the Contract Work Hours and Safety Standards Act.

- A. ***Overtime requirements.*** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. ***Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (b)(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 (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$27 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 (b)(1) of this section.
- C. ***Withholding for unpaid wages and liquidated damages.*** The State 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 (b)(2) of this section.

- D. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.

**4. CLEAN AIR ACT**

- 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. Section 7401 et seq.
- B. The contractor agrees to report each violation to the California Air Resources Board and understands and agrees that the California Air Resources Board will, in turn, report each violation as required to assure notification to the Department of Resources Recycling and Recovery, the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**5. FEDERAL WATER POLLUTION CONTROL ACT**

- A. 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. Sections 1251 et seq.
- B. The contractor agrees to report each violation to the State Water Resources Control Board and understands and agrees that the State Water Resources Control Board will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- C. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**6. DEBARMENT AND SUSPENSION CLAUSE**

- 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, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 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.
- C. This certification is a material representation of fact relied upon by the State. 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 the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- D. 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.

**7. BYRD ANTI-LOBBYING CLAUSE**

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$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. 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 recipient who in turn will forward the certification(s) to the awarding agency.

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned Contractor certifies, to the best of his or her knowledge, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date

## **8. PROCUREMENT OF 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 is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **9. ACCESS TO RECORDS**

The following access to records requirements apply to this contract:

- A. The Contractor agrees to provide the State, the FEMA Administrator, the Controller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever of to copy excerpts and transcriptions as reasonably needed.
- C. The contractor agrees to provide the FEMA Administrator or his authorized representative 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, the State 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.

## **10. DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**11. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract only. The contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**12. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**13. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's action pertaining to this contract.