

City of South Daytona
Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: James L. Gillis Jr., City Manager
From: Becky Witte, Deputy City Clerk
Re: Consideration of approving the First Amendment to the Agreement with Tetra Tech to modify the compensation from \$100,000 to \$166,000 for support with the FEMA Public Assistance recovery program.
Date: July 7, 2023

Following the impacts of Hurricane Ian, the State of Florida received a major Disaster Declaration on September 29, 2022 and FEMA allocated resources for affected communities to respond and recover. In October 2022, the City signed an agreement with Tetra Tech, Inc to provide the City support with the FEMA Public Assistance recovery program. The agreement allowed for an initial not-to-exceed amount up to \$100,000. With the extensive damage and recovery needed from Hurricane Ian, Tetra Tech has informed the City that additional funding is required in order to complete the project.

Tetra Tech has requested that the not-to-exceed Agreement amount be amended to provide that an additional \$66,000 will be added to the original amount of \$100,000 making the total compensation paid to Contractor the not to exceed amount of \$166,000.

Staff request the City Council approve the First Amendment to the Agreement with Tetra Tech, Inc to modify the compensation from \$100,000 to \$166,000 for support with the FEMA Public Assistance recovery program. If approved, the additional expenditure will be taken from our contingency fund. Keep in in that these recovery costs are also eligible for reimbursement from FEMA.

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
CITY OF SOUTH DAYTONA, FLORIDA
AND TETRA TECH, INC.**

FIRST AMENDMENT

THIS FIRST AMENDMENT is made and entered into this _____ day of _____, 2023, by and between the City of South Daytona, a municipal corporation of the State of Florida ("City") and Tetra Tech, Inc., a Delaware company registered to do business in Florida, ("Contractor").

WHEREAS, City and Contractor have entered into an Agreement to provide the City support with the FEMA Public Assistance recovery program with an initial not-to-exceed amount of \$100,000.00; and

WHEREAS, City and Contractor desire to amend said Agreement to increase the not-to-exceed amount; and

NOW THEREFORE, the parties hereto in consideration of the mutual covenants herein recited, hereby agree as follows:


The not-to-exceed Agreement amount is hereby amended to provide that an additional \$66,000.00 will be added to the original amount of \$100,000.00 making the total compensation paid to **Contractor** the not to exceed amount of \$166,000.00.

Except as herein amended, the Agreement dated October 10, 2022 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date first above written.

TETRA TECH, INC.

CITY OF SOUTH DAYTONA, FLORIDA

Signature: 
Name: Jonathan Burgiel
Title: Business Unit President
Date: July 12, 2023

Signature: _____
Name: _____
Title: _____
Date: _____

City of South Daytona

Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3000



CITY OF SOUTH DAYTONA, FLORIDA NOTICE-TO-PROCEED

October 11, 2022

Ms. Betty Kamara
Contracts Administrator
Tetra Tech, Inc.
2301 Lucien Way, Suite 120
Maitland, FL 32804

Re: **Notice-To-Proceed (NTP): 2022 Hurricane Ian**

Dear Ms. Kamara,

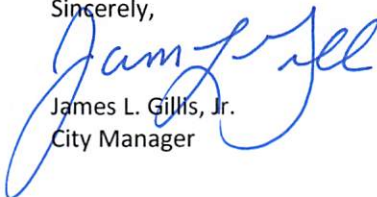
City of South Daytona, Florida (City) hereby gives Tetra Tech, Inc. a "Notice to Proceed" with mobilization of personnel to assist City staff with FEMA Public Assistance Program Consulting services in the recovery efforts associated with the recent 2022 Hurricane Ian.

On the basis of this action, you are authorized to proceed in accordance with the terms and conditions of the Cooperative Purchasing Agreement between the City of South Daytona, Florida and Tetra Tech, Inc. for FEMA Public Assistance Program Consulting.

"Notice to Proceed" is hereby given and accepted by the signature below.

Please contact Dennis Carlson at 386-322-3023 or dcarlson@southdaytona.org to coordinate efforts.

Sincerely,


James L. Gillis, Jr.
City Manager

Accepted by:

TETRA TECH, INC.

By: _____

Name: _____

Title: _____

Date: _____

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
CITY OF SOUTH DAYTONA, FLORIDA
AND TETRA TECH, INC.**

This Agreement is made and entered into this 10th day of October, 2022, by and among the CITY OF SOUTH DAYTONA, a municipal corporation of the State of Florida (the "City of South Daytona" or the "City") and TETRA TECH, INC., a Delaware company registered to do business in South Carolina, ("Tetra Tech" or "Contractor"), collectively the parties.

WHEREAS, on November 3, 2017, the County of Volusia, Florida entered into an agreement with Tetra Tech, Inc. for the purchase of Consulting Services associated with Disaster Cost Recovery and Related Grant and Project Management Services ("County of Volusia Agreement"); and

WHEREAS, Tetra Tech was selected to provide these services following a Request for Statement of Qualifications (RSQ No. 17-SQ-43BB) issued by the County of Volusia through a competitive bidding process; and

WHEREAS, the County of Volusia Agreement does not object to other governments taking advantage of the pricing offered under the Agreement but must use their own purchasing orders; and

WHEREAS, the City of South Daytona may participate in a cooperative purchasing agreement with Tetra Tech for the purchase of these commodities and services; and

WHEREAS, the City of South Daytona is satisfied that Tetra Tech was selected by the County of Volusia based on a competitive bidding process; and

WHEREAS, the City of South Daytona is one of several communities within the State of Florida recently impacted by Hurricane Ian, DR-4673. The incident period for DR-4673 is September 23, 2022 and continuing. As a result of this disaster, the City of South Daytona desires the services of Tetra Tech to provide staff augmentation to assist the City of South Daytona with their FEMA Public Assistance claims process, and

WHEREAS, Tetra Tech is qualified and is willing and able to perform such services, and

NOW THEREFORE, for and in consideration of mutual cooperation and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **SCOPE OF SERVICES.** Contractor agrees to perform in a manner which is acceptable to the City, consistent with the standards of care common to Contractor's profession, the services set forth in **Exhibit A** attached hereto and made a part of this Agreement.

2. **COMPENSATION.** If, on the basis of the City Project Manager's observation and review of Contractor's services under this Contract and, the City Project Manager's satisfaction that the work has been completed and Contractor has fulfilled all of its obligations under this Contract, the City Project Manager, after receipt of the invoice, shall indicate in writing his or her approval of payment and present the invoice to Accounts Payable for payment. Otherwise, the City Project Manager will return the invoice to the Contractor, indicating in writing the reasons for refusing to approve final payment, in which case the Contractor shall make the necessary corrections and resubmit the invoice. The City will not unreasonably withhold its approval and will cooperate with Contractor to expedite payments.

Contractor shall invoice the City monthly on a times and material basis for all payments due to Contractor under this Contract. The City will pay invoices in accordance with this Contract, subject to the Florida Prompt Payment Act. Invoices shall be sent to the address specified by the City. Any disputed or undisputed payment which is past due for more than thirty (30) days will bear interest at the rate of one percent (1%) per month (or such lesser amount as may be provided for under the Florida Prompt Payment Act) for each month or portion thereof during which it remains unpaid. The project cost estimate breakdown is shown in **Exhibit A**.

Although the City acknowledges there is no guarantee of reimbursement of funding by a third party, Tetra Tech, Inc. shall put forth all efforts in order for the City to be eligible to receive reimbursement of funding by a third party. The City does acknowledge payment of Contractor's invoices are not contingent on reimbursement of

funding by a third party. Any interest charges due from the City on past due invoices are in addition to amounts otherwise due under this Agreement. **Payment shall be made to the following address: Tetra Tech, Inc., P.O. Box 911642, Denver, CO 80291-1642.**

3. **TERM.** This Contract is effective from the date written above and shall remain in effect for an initial term of three months, with automatic monthly renewals or pursuant to Article 12 – Changes and Termination.

4. **INSURANCE.**

(a) During the course of performance of the Services, Contractor will maintain the following insurance coverages:

<u>TYPE OF COVERAGE</u>	<u>AMOUNT OF COVERAGE</u>
Workers' Compensation/Employers Liability	Statutory/\$1,000,000
Commercial General Liability/Excess Liability	\$1,000,000/\$2,000,000
Professional Liability/Contractors Pollution Liability	\$1,000,000
Automobile Public Liability and Property Damage, including coverage for all hired or non-owned automotive equipment used in connection with the insured's operations.	\$1,000,000

(b) Before beginning any work, Contractor shall deliver to the City, a Certificate of Insurance evidencing that the above coverages are in effect as well as naming the City as an Additional Insured. An Additional Insured Endorsement must accompany the Certificate of Insurance. Such coverage will not be canceled or materially changed without thirty (30) days written notice.

5. **INDEMNIFICATION.** Contractor shall indemnify and save harmless the City from claims, actions and judgments arising out of bodily injury, death or damage to property of third parties to the extent caused by the negligence of Contractor.

6. **WARRANTY OF SERVICES.** Contractor warrants that Contractor and its employees shall, in performing Services hereunder, exercise the degree of skill, care and diligence consistent with customarily accepted good practices and procedures at the time and location and for the type of Services performed. Should Contractor fail to perform to those standards, it shall (a) without cost to the City, re-perform and correct any substandard Services; and (b) reimburse the City for the City's direct damages or otherwise correct faulty construction, to the extent resulting from such substandard Services. Services involving such activities as the prediction of ecological or health impacts, clean-up criteria, extent or degree of contamination or dispersion, air or water movement, geologic and hydro-geologic conditions, extent of appropriate investigation, scheduling, and cost estimating are highly sensitive to changes in regulatory and scientific criteria, methodologies and interpretations thereof and require the balance of diverse, often conflicting, the City business, economic, legal and other priorities. The City acknowledges these conditions and accepts the risk that, although Contractor may perform to the above standards, the City's goals or desires may nevertheless not be realized. Contractor makes no other warranties, express or implied, with respect to its performance under this Contract. Contractor's liability hereunder, including any for damage to or loss of the City property, shall in no event extend beyond one year after completion of the Services in question or exceed the amount specified in Article 7 below.

7. **LIABILITY.** Contractor's total aggregate liability in connection with or arising out of the Contract or Services, including without limitation any under Articles 5 and 6 above, shall in no event exceed one hundred thousand (\$100,000.00) dollars. This limitation applies only to Paragraphs 5 and 6 and shall not limit the insurance coverage provided to the City as an additional named insured in Paragraph 4.

8. **CONSEQUENTIAL DAMAGES AND OTHER LIABILITIES.** Contractor and its employees shall in no event be liable for any special, indirect or consequential damages, including specifically but without limitation, any based

on loss of profits or revenue, loss of or interference, whether or not by third parties, with full or partial use of any equipment, facility or property, including real property, cost of replacement power, energy or product, delay in or failure to perform or to obtain permits or approvals, cost of capital, loss of goodwill, claims of customers, fines or penalties assessed against client or similar damages. These terms provide allocations of risk and reward consistent with the nature and extent of the Services and to that end include (i) protections against, and limitations on, liability of Contractor and (ii) specific remedies of the City which shall be its sole and exclusive remedies.

9. SITE CONTRACTORS. For the benefit of the City and Contractor, the City agrees that it will cause provisions acceptable to Contractor governing insurance and indemnity to be inserted in each of the City's agreements for remediation or other construction or site services or work related to the Services.

10. DELAYS. Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligations is prevented or delayed by any cause which is beyond the reasonable control of the affected party, and the time for performance of either party hereunder shall in such event be extended for a period equal to any time lost as a result thereof, and an equitable adjustment shall be made to Contractor's compensation.

11. THIRD PARTY INTERESTS. This Contract and the Services and Work Product produced hereunder are solely for the benefit of the City and are not intended to be for the benefit, or to be construed as creating rights in favor, of any third party. If the City is not the ultimate beneficiary of the Services or Contractor's work product is used in such a way as to create or induce any reliance by any third party, the City represents and warrants (i) that it shall bind its clients and/or such third parties to limitations on and protections against liability "protective provisions" commensurate with those afforded Contractor hereunder and that such protective provisions will, in fact, inure to the benefit of Contractor, and/or (ii) that the City has the power to act on behalf of its clients and/or such third parties and does hereby bind such parties to these protective provisions.

12. CHANGES AND TERMINATION. This Contract shall not be modified except by written agreement signed by both parties. The City shall have the right to make changes within the general Scope of Services upon execution of a mutually accepted change order. The City shall also have the right to terminate this Contract prior to completion of the Services, after reasonable notice to Contractor in writing, in which event the City shall pay Contractor all amounts due Contractor hereunder up to the effective date of termination, plus Contractor's reasonable costs incurred after such date in terminating the Services. In the event that the City alleges breach on behalf of Contractor, the City shall afford Contractor in 30 days written notice to submit a reasonably acceptable plan to cure any alleged deficiency prior to termination. Recognizing that termination prior to completion may involve risks and exposures both as to cost of work and third-party claims, the City shall in such event indemnify, protect and defend Contractor from claims arising out of any incomplete aspect of the Services. Both parties have the right to terminate this Contract for convenience with thirty (30) day notice to the other party.

13. ADDITIONAL TERMS AND CONDITIONS. In performance of the services under this Contract, Contractor must comply as applicable with regulatory requirements including federal, state, and local laws, rules, regulations, orders, codes, criteria, standards and 2 C.F.R. Part 200 which is attached hereto as **Exhibit B**.

14. GOVERNING LAW, PRECEDENCE AND DIVISIBILITY. Unless specified otherwise in the City orders, this Agreement shall be governed by the laws of the State of Florida excluding choice of law rules, which direct application of the laws of another jurisdiction. The provisions of the Contractor Proposal and these Terms and Conditions shall govern exclusively any Services furnished by Contractor and shall prevail over and render void any inconsistent or conflicting provision of the City Order. If any term, condition, provision or portion of this Contract is declared void or unenforceable, or limited in its application or effect, such event shall not affect any other provision or portion hereof. All other provisions and unaffected portions thereof shall remain fully enforceable and an adjustment in the compensation or other provisions shall be made with the purpose of equitably affecting the intent of the Contract to the maximum extent allowed by law.

15. ENTIRE AGREEMENT. This Contract contains the entire agreement between the parties as to the Services rendered hereunder. All previous or contemporaneous agreements, representations, warranties, promises, and conditions relating to the subject matter of this Contract are superseded by this Contract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their Hands and Seals the day and year first above written.

TETRA TECH, INC.

Signature: _____

Name: _____

Title: _____

Date: _____

CITY OF SOUTH DAYTONA, FLORIDA

Signature:  _____

Name: James L. Gillis, Jr

Title: City Manager

Date: October 11, 2022

EXHIBIT A
SCOPE OF SERVICES AND ESTIMATED COST

I. SCOPE OF SERVICES

Following the impacts of Hurricane Ian, the State of Florida has received a major Disaster Declaration as of September 29, 2022, FEMA-4673-DR aiding in the ability of affected communities to respond and recover from this event. Tetra Tech, Inc. (Contractor) shall provide the City of South Daytona, FL (City) support with the FEMA Public Assistance recovery program through the following services on an as needed basis:

Task 1: Public Assistance Operational Planning Support

Contractor will provide support with identifying applicants disaster impacts and recovery priorities, as well as provide support with collecting critical information required to initiate a FEMA Public Assistance claim.

Subtask 1.1- Exploratory Call Support

Contractor shall provide support collecting general information about the disaster impacts in preparation for an Exploratory Call with FEMA.

Subtask 1.2- Recovery Scoping Meeting (RSM) Preparation and Support

Contractor shall provide support collecting preliminary damage information in order to support damage assessments, as well as prepare in-depth analysis and discussions surrounding the extent of total disaster damages. Contractor shall also provide support with responding to FEMA's questions during the RSM, which starts the 60-day regulatory timeframe for the applicant to identify incident-related damages.

Subtask 1.3- Preliminary Grant Management Technical Assistance

Contractor shall collect and review key policies and procedures relevant to the Public Assistance program and provide guidance regarding best practices surrounding recovery operations as required. Contractor will also provide support regarding Public Assistance programmatic timelines, requirements, key milestones and deliverables, and general recovery strategies. Contractor shall also provide support with identifying other potential funding/ reimbursement methods for disaster related costs, as well as providing financial recovery strategy support for multiple potential sources if requested to do so.

Task 2: Damage Intake Support

Contractor will provide support to accomplish critical Public Assistance milestones and prepare key deliverables to accomplish objective of capturing and documenting incident related damages. This support will be provided through the following subtasks:

Subtask 2.1- Damage Inventory Capture and Generation

Contractor will provide support gathering and preparing 60-day Damage Inventory (DI) and uploading relevant supporting documentation to Grants Portal.

Subtask 2.2- Insurance Review

Contractor will provide insurance support through the review of insurance policies for facilities and damages related to the event, with the objective of verifying and identifying projects that may be completely or partially reimbursed by insurance proceeds.

Subtask 2.3- Site Inspection Planning

The Team will assist with planning and preparing for FEMA Site Inspections. Contractor will provide the best practices on how to complete site inspections and capture critical information required for project formulation. Contractor will also assist with scheduling FEMA site inspections.

Subtask 2.4- Site Inspection Execution

Contractor will provide a staff member to attend FEMA Site Inspections with City staff. The Team will assist the City's staff by capturing critical information during the visits. Contractor staff will review FEMA's Site Inspection Report alongside City technical staff and advise on potential compliance pitfalls.

Subtask 2.5- Damage Description and Dimensions (DDD) development and capture support

Contractor will prepare DDD based on data and technical information captured during the site inspection process, as well as compare results to FEMA prepared DDD for verification that all damages identified by applicant and Contractor staff were captured in totality and correctly.

Subtask 2.6- Completed Work Data Intake and Desktop Review

Contractor will work with identified department points-of-contact (POCs) to collect, and capture completed force account labor, equipment, material and contract purchase/ invoice records and expense documentation related to the disaster. Upon receipt of this documentation, Contractor will conduct a preliminary desktop review of the data to identify systematic data/information deficiencies that may impact data entry, reconciliation and the creation of project cost summary records and reimbursement submissions. The team will identify issues and deficiencies will be reported for resolution.

Task 3: Project Formulation

Contractor with the development of scope and cost for projects to submission to FEMA. Depending on project type, this support will be provided through the subtasks listed below:

Subtask 3.1- Completed Work Data Reconciliation and Review

Contractor will reconcile completed work cost expenses, create project cost summary documents, as well as prepare supporting documentation for eventual submission to Grants Portal. Contractor will also review documentation for validity, and compliance with FEMA Public Assistance programmatic requirements. If supporting documentation or compliance deficiencies are identified, Contractor will work with client points of contact to collect missing documentation or rectify compliance issues if able.

Subtask 3.2- Procurement and Compliance Support

Contractor will review emergency and permanent work procurements for 2CFR compliance, and provide feedback regarding compliance issues, and pitfalls.

Subtask 3.3- Work to-be-completed Cost Estimation

Upon finalization of permanent work DDD's, Contractor will prepare repair cost estimates using FEMA approved cost estimation software (RS Means). Contractor will also prepare additional project cost estimation documentation including project CEF as relevant.

Subtask 3.4- Work to-be-completed 406 Mitigation Alternatives Support, and 406 Hazard Mitigation Proposal (HMP) Development

Upon completion of site inspection, and DDD finalization, and during cost estimation phase, Contractor technical staff will present 406 mitigation alternative options for review by relevant points of contact with the goal of developing 406 Hazard Mitigation Proposals (HMPs). Upon selection of preferable 406 mitigation alternative option, Contractor technical staff will prepare 406 HMP for submission for applicable permanent work projects.

Task 4: Grant Management

Contractor shall support client through FEMA review, obligation, and reimbursement processes through the following subtasks:

Subtask 4.1- Grants Portal Project Submission Support, and Obligation Support

Contractor will support applicant with the final creation, collection, and upload of critical documentation and information required through Grants Portal, including EEI support and completion, and upload of relevant project documentation. During FEMA's review process, Contractor will also support applicant with responses to FEMA Requests for Information (RFIs) that may be requested prior to securing project obligations. Contractor will also support applicant with relevant project versioning/ amendment requests if/ when required to do so.

Subtask 4.2- Grant Management Reporting

Contractor will support client with FEMA reporting requirements including Time Extensions, Quarterly Progress Reports (QPRs), as well as associated monitoring requirements such as permanent work project work validation and completed cost collection.

Subtask 4.3- Completed Work Request for Reimbursement Support

Contractor will provide support with submitting requests for reimbursement from State agency, as well as responding to State RFIs if required.

Subtask 4.4- Grant Management Technical Assistance

Contractor shall collect and review key policies and procedures relevant to the Public Assistance program and provide guidance regarding best practices surrounding recovery operations as required. Contractor will also provide support regarding Public Assistance programmatic timelines, requirements, key milestones and deliverables, and general recovery strategies. Contractor shall also provide support with identifying other potential funding/ reimbursement methods for disaster related costs, as well as providing financial recovery strategy support for multiple potential sources if requested to do so.

Task 5: Closeout Support

Contractor will support applicant through process of final confirmation of eligibility of all costs submitted, and final reimbursement reconciliations for projects as required. This support can be carried out through the following subtasks:

Subtask 5.1 Closeout Reviews

Contractor will support final project cost reconciliations versus reimbursements for concurrence with alignment of each.

Subtask 5.2 Closeout Inspection Support

Contractor will support with recipient large project closeout site inspections for verification of work completed as designed and approved by FEMA and FDEM prior to closeout.

Subtask 5.3 Closeout Form Submission Support

Contractor will support client with completion of project specific closeout forms, including P4/P5, and disaster encompassing forms if relevant.

II. ESTIMATED COST (not to exceed)

Initial Estimated Not-to-Exceed: \$100,000.00

Due to the uncertain nature of the work involved, Contractor cannot guarantee that the work will be performed within the initial not-to-exceed amount provided above. If, during the performance of this work, it is determined additional funding is required in order to complete the project, Contractor and City will mutually agree on a new/revised estimated cost and Contractor will not proceed without written authorization from an authorized representative of City.

The fee for the services will be based on the actual hours of services furnished multiplied by Contractor's hourly rate along with direct project related expenses reimbursed to Contract.

Table 1: Rate Schedule [1]

Labor Category	Hourly Rate
PIC/Executive Consultant	\$215.00
Project Manager/Principal Consultant	\$165.00
Senior Grant Management Consultant	\$150.00
Grant Management Consultant	\$135.00
Consultant	\$125.00
Senior Analyst	\$110.00
Analyst	\$90.00
Analytical Aide	\$65.00
Administrative Assistant	\$45.00

[1] The hourly rates are inclusive of overhead, profit, direct, and general & administrative expenses. If travel is required Contractor will seek written approval from the City.

EXHIBIT B
FEMA CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY UNDER FEDERAL AW ARDS REQUIRED
BY 2 C.F.R. §200.326 APPENDIX II TO 2 CFR §200

REMEDIES

(For all awarded contracts with a value greater than \$150,000.00)

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. Any violation or breach of terms of this contract of the Contractor or the Contractor's sub-contractors will be subject to the remedies, including liquidated damages, described in the bid specifications or Request for Proposal and the Client rules and regulations and special conditions which are incorporated herein by reference in their entirety.

TERMINATION FOR CAUSE AND CONVENIENCE

(For all awarded contracts with a value greater than \$10,000.00)

The Client reserves the right to terminate this contract for cause or convenience pursuant to the rules and regulations and special conditions which are incorporated herein by reference in their entirety.

EQUAL EMPLOYMENT OPPORTUNITY

(For all awarded contracts that meet the definition of "federally assisted construction contract" provided in 41 CFR Part 60-1.3) **Contractor must complete enclosed certification**

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

1. 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.
2. 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.
3. 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.
4. 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.

5. 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.
6. 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.
7. 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.
8. 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:

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

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

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

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

DAVIS-BACON ACT AND COPELAND "ANTI-KICKBACK" ACT

(The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

1. *Minimum wages.*

- i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- ii. (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- 1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- 2) The classification is utilized in the area by the construction industry; and
- 3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification

under this contract from the first day on which work is performed in the classification.

- i. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- ii. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. *Withholding.*

The Federal Agency and/or Client 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. *Payrolls and basic records.*

- i. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- ii. (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the federal agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on

weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the federal agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- 1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a) (3) (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a) (3) (i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- 2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- 3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- i. The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the federal agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. *Apprentices and trainees-*

- i. *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training

Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- iii. *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. *Compliance with Copeland Act requirements.*

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. *Subcontracts.*

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (I) through (10) and such other clauses as FEMA may by 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 the contract clauses in 29 CFR 5.5.

7. *Contract termination: debarment.*

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. *Compliance with Davis-Bacon and Related Act requirements.*

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. *Breach.*

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.

10. *Disputes concerning labor standards.*

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

11. *Certification of eligibility.*

- 1) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis Bacon Act or 29 CFR 5.12(a)(I).
- 2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(I).
- 3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(For all awarded contracts related to "mechanics and laborers" with a value greater than \$100,000.00)

- 1) 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.
- 2) 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.

- 3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) 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.
- 4) 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.

RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

(This requirement **does not apply** to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households - Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement." If FEMA federal award meets definition of "funding agreement" under 37 CFR §401.2(a), for all awarded contracts related to experimental, developmental, or research work type contracts)

(a) Definitions

- (1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of *et seq.*
- (2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 240l (d)) must also occur during the period of *contract* performance.
- (3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- (4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3- 12, respectively, will be used.
- (6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501 (c) (3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject

invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

- (1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *Contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.
- (2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention-

- (1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.
- (2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.
- (3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File

- (1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was

legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal* to which the invention pertains.

- (2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor* Action to Protect the Government's Interest

- (1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to
 - (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and
 - (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.
- (2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c) (1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
- (4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the *Federal agency*). The government has certain rights in the invention."

(g) Subcontracts

- (1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

- (2) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (i) of this clause.

(h) Reporting on Utilization of Subject Inventions

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (i) of this clause. As required by 35 U.S.C. 202(c) (5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

- (1) Such action is necessary because the *contractor* or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations If the *contractor* is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its

primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

- (2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication

Any communications to be given hereunder by either party to the other shall be deemed to be duly given if set forth in writing and personally delivered or sent by mail, registered or certified, postage prepaid with return receipt requested, as follows:

Written notices hereunder delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated five (5) days after deposit in the mail, post prepaid, certified, in accordance with this Paragraph.

CLEAN AIR ACT

(For all awarded contracts with a value greater than \$150,000.00)

- (m) 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.
- (n) The contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) 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.
- (o) 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.

FEDERAL WATER POLLUTION CONTROL ACT

(For all awarded contracts with a value greater than \$150,000.00)

- (1) 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.
- (2) The contractor agrees to report each violation to the (name of the applicant entering into the

contract) and understands and agrees that the (name of the applicant entering into the contract) 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.

- (3) 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.

DEBARMENT AND SUSPENSION

Contractor must complete enclosed certification

- (1) 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).
- (2) 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.
- (3) This certification is a material representation of fact relied upon by Client. 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 (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) 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.

BYRD ANTI-LOBBYING AMENDMENT

(For all awarded contracts with a value greater than \$100,000.00. **Contractor must complete enclosed certification**

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.

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

- (1) 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 any 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.
- (2) If any funds other than federally 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 contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) Contractor will include language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000.00 shall certify and disclose

accordingly.

PROCUREMENT OF RECOVERED MATERIALS

(The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.)

- (1) 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:
 - a) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b) Meeting contract performance requirements; or
 - c) At a reasonable price.
- (2) 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 <http://www.epa.gov/cpg/products.htm>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide the Client, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the Client 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.

CHANGES

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

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.

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. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

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.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

2 C.F.R. § 200.216, as implemented by FEMA Policy 405-143-1, prohibits the Contractor from using 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.

DOMESTIC PREFERENCES FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the Contractor agrees, to the greatest extent practicable, prefer 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).

AFFIRMATIVE SOCIOECONOMIC STEPS

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

COPYRIGHT AND DATA RIGHTS

"License and Delivery of Works Subject to Copyright and Data Rights"

The Contractor grants to the Client a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Client or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Client data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Client."

BYRD ANTI-LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements-The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) 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.
- 2) 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.
- 3) 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 section 1352, title 31, U.S. Code. 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.Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

DEBARMENT/SUSPENSION CERTIFICATION

Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (No procurement Debarment and Suspension).

This requirement applies to all FEMA grant and cooperative agreement programs.

Federal Executive Order (E.O.) 12549 "Debarment" requires that all contractors receiving individual awards, using federal funds, and all sub recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. By signing this document, you certify that your organization and its principals are not debarred. Failure to comply or attempts to edit this language may disqualify your bid. Information on debarment is available at the following websites: www.sam.gov and <https://acquisition.gov/far/index.html> see section 52.209-6.

The Contractor _____ certifies or affirms by your signature that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

CIVIL RIGHTS COMPLIANCE PROVISIONS

1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)

(For all awarded contracts that meet the definition of "federally assisted construction contract" provided in 41 CFR Part 60-1.3)

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

- 1) 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.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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.
- 7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or order 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.

- 8) 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:

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date