

**AGREEMENT FOR PROFESSIONAL SERVICES  
FOR PREPARATION OF A LOCAL HAZARD MITIGATION PLAN**

The Oceano Community Services District ("OCSD") and \_\_\_\_\_ (Consultant) agree to the terms of this agreement for professional services ("Agreement") consisting of identified Tasks and Deliverables, Appendix A, and all terms and conditions contained herein.

\_\_\_\_\_

**Scope of Work**

**TASK 1 – \_\_\_\_\_**

*Task 1.1 –*

*Task 1.2 –*

*Task 1.3 –*

*Task 1.4 –*

*Task 1.5 –*

**TASK 2 – \_\_\_\_\_**

*Task 2.1 –*

*Task 2.2 –*

*Task 2.3 –*

*Task 2.4 –*

*Task 2.5 –*

**Tasks & Pricing will be completed based on the selected proposal.  
(The number of tasks is illustrative only.)**

**TASK 3 - \_\_\_\_\_**

*Task 3.1 –*

*Task 3.2 –*

*Task 3.3 –*

*Task 3.4 –*

*Task 3.5 –*

**TASK 4 – OPTIONAL SERVICES**

*Task 4.1 – \_\_\_\_\_*

**DELIVERABLES**

Task 1

Task 2

Task 3

Task 4

The draft terms in this agreement are subject to modification, but represent general terms consistent with prior District agreements.

**Schedule**

The following schedule is based on discussions with the District, to comply with the schedule outlined in the Grant requirements, and as further illustrated in Appendix B.

Task 1. \_\_\_\_\_ ..... <DATE>  
Task 2. \_\_\_\_\_ ..... <DATE>  
Task 3. \_\_\_\_\_ ..... <DATE>

**Fees**

Task 1.		\$ XXX
Task 2.		\$ YYY
Task 3.		<u>\$ ZZZ</u>
<b>Total</b>		<b><u>\$ XYZ</u></b>
Task 4.	Optional Services	<b>\$T&amp;M</b>

**Tasks & Pricing will be completed based on the selected proposal.**  
(The number of tasks is illustrative only)

Consultant Fee Schedule - Hourly Rates by Classification

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**ACCEPTANCE OF PROPOSAL**

Proposal Date: \_\_\_\_\_, 2018

Client: Oceano Community Services District

Project: Preparation of Local Hazard Mitigation Plan

Scope of Work: \_\_\_\_\_

Fees: Tasks 1-3: \$ XYZ

Optional Task 4: \$ TIME AND MATERIALS

Appendix A details the terms for work. Consultant bills monthly for work in progress and payment is due within 25 calendar days of invoice date. Overdue amounts will be surcharged at 18 percent per annum or 1.5 percent monthly. Reimbursable Expenses are included in fee.

Client: Oceano Community Services District      Consultant

x \_\_\_\_\_  
Karen White  
President

Date: \_\_\_\_\_      Date: \_\_\_\_\_

## APPENDIX "A" - TERMS FOR CONSULTANT SERVICES

### Section 1: The Agreement

- 1.1 The agreement between the above noted parties consists of the following terms, the attached proposal and any exhibits or attachments noted in the proposal. Together these elements will constitute the entire agreement superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this agreement must be mutually agreed to in writing.

### Section 2: Standard of Care

- 2.1 Data, interpretations, and recommendations by Consultant will be based solely on information provided to Consultant. Consultant is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.
- 2.2 Services performed by Consultant under this agreement are expected by OCSD to be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of this profession practicing contemporaneously under similar conditions in the locality of the project. No other warranty, expressed or implied, is made.
- 2.3 OCSD agrees that Consultant may use and publish OCSD's name and a general description of Consultant's services with respect to the project in describing Consultant's experience and qualifications to other Clients and prospective Clients. OCSD also agrees that any patentable or copyrightable concepts developed by Consultant as a consequence of service hereunder are the sole and exclusive property of Consultant.
- 2.4 OCSD recognizes that it is neither practical nor customary for Consultant to include all details in plan preparation, creating a need for interpretation by Consultant or an individual who is under Consultant supervision.
- 2.5 OCSD acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, engineers, architects, contractors, subcontractors, or suppliers of OCSD.

### Section 3: Billing and Payment

- 3.1 OCSD will pay Consultant on a monthly basis to be billed by Consultant. Invoices will be submitted to OCSD by Consultant and will be due and payable within 25 days of invoice date. If OCSD objects to all or any portion of any invoice, OCSD will so notify Consultant in writing within fourteen (14) days of the invoice date, identify the cause of the disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.
- 3.2 Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. OCSD will pay an additional charge of 1-1/2 (1.5) percent per month or 18% per year of any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of OCSD. All time spent and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount will be paid by OCSD to Consultant per Consultant's current fee schedule. In the event OCSD fails to pay Consultant within sixty (60) days after invoices are rendered, OCSD agrees that Consultant will have the right to consider the failure to pay Consultant's invoice as a breach of this agreement.
- 3.3 OCSD agrees that if OCSD requests services not specified herein, OCSD agrees to timely pay for all such services as extra work. Consultant will notify OCSD prior to performance of services which are not specified in this agreement.
- 3.4 OCSD agrees that payment to Consultant is in no way contingent on the results of work by Consultant or on the outcome of any litigation.
- 3.5 This term has been deleted for this agreement.
- 3.6 Billing rates are subject to change on an annual basis.

### Section 4: Additional Services

- 4.1 Additional services included in this contract must be included in the request for proposal issued by OCSD and the proposal submitted by the Consultant except as provided in Section 4.3.
- 4.2 This term has been deleted for this agreement.
- 4.3 Where unexpected developments increase the scope of work as defined herein and/or prove the assumptions of this proposal invalid, Consultant will contact OCSD to discuss the effects and adjustment of cost and shall obtain a written fee increase in advance of performing the increase in the scope of work.

### Section 5: Site Access and Site Conditions

- 5.1 OCSD will grant or obtain free access to the site for all equipment and personnel necessary for Consultant to perform the work set forth in this agreement.

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## Section 6: Ownership of Documents

- 6.1 All reports, maps, plans, field data, field notes, estimates and other documents, whether in hard copy or machine readable form, which are prepared by Consultant as instruments of professional service, shall become the property of OCSD. Consultant may retain copies, including copies stored on magnetic tape or disk, for information and for reference in connection with the occupancy and use of the project.
- 6.2 OCSD agrees that all reports and other work furnished to OCSD or his agents, which is not paid for, will be returned upon demand and will not be used by OCSD or others for any purpose whatsoever unless those documents are public records as determined by State law.

## Section 7: Client Responsibilities

- 7.1 OCSD shall provide full information that is agreed upon as client deliverables and included in the scope of work.
- 7.2 This term has been deleted for this agreement.
- 7.3 This term has been deleted for this agreement.
- 7.4 If OCSD observes or otherwise becomes aware of any fault or defect in the scope of work or nonconformance with the Contract Documents, prompt written notice shall be given by OCSD to Consultant.
- 7.5 OCSD shall furnish information and shall review Consultant' work and provide decisions as expeditiously as necessary for the orderly progress of the project and of Consultant' services.

## Section 8: Insurance

- 8.1 Consultant and its subconsultants (if any) shall procure and maintain insurance with companies authorized to do business in the State of California and assigned an A.M. Best's rating of no less than A-(IX), the following insurance coverage on an "occurrence basis" at the limits of liability specified for each:

General Liability Insurance (including coverage for premises, products and completed operations, independent consultants/vendors, personal injury and contractual obligations with combined single limits of coverage of at least

	\$ 1 Million per occurrence.
	\$ 2 Million in the aggregate

Workers' Compensation Insurance*	Statutory
Employer's Liability Insurance	\$ 1 Million policy limit
Professional Liability Insurance or	\$ 1 Million per claim
Errors and Omissions Insurance	\$ 1 Million in the aggregate

- 8.2 If Consultant or its employees and agents will use personal automobiles in any way in performing the services under this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person. The General and Commercial Automobile liability policies shall be endorsed to include the following: (1) OCSD, its officers, directors, employees and agents shall be named as Additional Insureds using an endorsement appropriate for design professionals; and (2) the coverage afforded shall be primary and non-contributing with any other insurance maintained by OCSD; and (3) if not covered separately under a business automobile liability policy, the general liability policy shall also be endorsed to include non-owned and hired automobile liability.
- 8.3 Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.
- 8.4 Prior to commencing work under this Agreement, Consultant shall provide OCSD with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance for commercial general liability, automobile liability, employer's liability, and professional liability insurance shall specify that the insurer shall give Consultant thirty (30) days advance written notice by the insurer prior to cancellation of the policy except ten (10) days for nonpayment of premium. Consultant shall give OCSD fifteen (15) days advance written notice prior to cancellation of the workers' compensation policy except seven (7) days for nonpayment of premium.
- 8.5 All insurance coverage required hereunder shall be kept in full force and effect for the term of this Agreement. Professional liability insurance shall be maintained for an additional, uninterrupted period of one (1) year after termination of this Agreement, provided such insurance is commercially available at rates reasonably comparable to those currently in effect. Certificates of Insurance evidencing renewal of the required coverage shall be provided within ten (10) days of the expiration of any policy at any time during the period such policy is required to be maintained by Consultant hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

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- 8.6 All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to OCSD or its operations limits the application of such insurance coverage. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to OCSD and approved of in writing.
- 8.7 No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
- 8.8 Consultant agrees to provide immediate notice to OCSD of any claim or loss against Consultant arising out of the work performed under this Agreement.

#### Section 9: Indemnification

- 9.1 To the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to OCSD) indemnify and hold harmless OCSD and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its subconsultants), and expense to the extent that such claims, loss, cost, damage, or expenses are caused by the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities") in performing services pursuant to Tasks and/or for breach of the obligations set forth in Section 16 of this Agreement. Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, or willful misconduct of such Indemnitee.
- 9.2. Neither termination of this Agreement or completion of the services referenced in individual Tasks under this Agreement shall release Consultant from its obligations referenced in subsection 9.1, above, as to any claims, so long as the event upon which such claims is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.
- 9.3 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement and individual Tasks. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section. OCSD's failure to monitor compliance with this requirement imposes no additional obligations on OCSD and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend OCSD as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.
- 9.4. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve Consultant from liability referenced in this Section 9. The obligations of this Section 9 shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

#### Section 10. Conflict of Interest

- 10.1 Consultant covenants that neither it, nor any officer or principal of its firm, or subcontractors retained by Consultant has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of OCSD for, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of OCSD in the performance of the services pursuant to the Agreement.

#### Section 11: Termination

- 11.1 This agreement may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this agreement or in the event of substantial failure of performance by the other party, or if OCSD suspends the work for more than three (3) months. Notwithstanding the foregoing, OCSD may terminate this agreement upon ten (10) days written notice to Consultant for any reason whatsoever in its sole and absolute discretion. In the event of termination, Consultant will be paid for services performed prior to the date of termination plus reasonable termination expenses including the cost of completing analyses, records and reports necessary to document job status at the time of termination.
- 11.2 Failure of OCSD to make payments to Consultant when due in accordance with this agreement shall be considered substantial nonperformance and cause for termination. If OCSD fails to make payment when due to Consultant for services and expenses, Consultant may, upon seven (7) days written notice to OCSD, suspend performance of services under this agreement. Unless payment in full is received by Consultant within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Consultant shall have no liability to OCSD for delay, damage, loss of agency approvals, loss of financing, interest expenses, etc. caused OCSD because of such suspension of service.

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## Section 12: Disputes Resolution

- 12.1 The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator who shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be submitted to the judicial system with a venue in San Luis Obispo County.
- 12.2 No claim, potential claim, dispute or controversy, except non-payment by OCSD of undisputed amounts, shall interfere with the progress and performance of the services referenced in this Agreement, or any changes thereto, and OCSD shall proceed as directed by OCSD in all instances with its services.

## Section 13: Assigns

- 13.1 Consultant shall not assign this agreement in whole or in part nor shall it subcontract any portion of the work to be performed hereunder; except that Consultant may use the services of persons or entities not in Consultant's employ when it is appropriate and customary to do so. Such persons and entities include, but are not necessarily limited to, specialized consultants and testing laboratories. Consultant' use of others for additional services shall not be unreasonably restricted by OCSD provided Consultant notifies OCSD in advance.

## Section 14: Governing Law and Survival

- 14.1 The law of the State of California will govern the validity of these terms, their interpretation and performance.
- 14.2 If any of the provisions contained in this agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this agreement for any cause.

## Section 15: Prevailing Wage

- 15.1 Consultant acknowledges the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. To the extent required by the California Labor Code, Consultant shall fully comply with and require its subconsultants to fully comply with such Prevailing Wage Laws.
- 15.2 Pursuant to Labor Code Sections 1725.5 and 1771.1, Consultant and all its subconsultants performing work subject to prevailing wage must be registered with the Department of Industrial Relations and submit their certified payroll records directly to the DIR. In order to do so, the awarding body needs to complete the PWC-100 (Public Works Project Registration) within five days of awarding the contract; and provide Consultant with the DIR Project ID prior to the start of Consultant's work.

## Section 16: Grant Compliance

- 16.1 Consultant shall maintain books, records, and other documents pertinent to its work in accordance with generally accepted accounting principles and practices. Records shall be subject to inspection by the California Office of Emergency Services and the Federal Emergency Management Agency at any and all reasonable times upon demand.
- 16.2 Pursuant to Section 7110 of the Public Contracts Code, Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement , including , but not limited to, disclosure of information and compliance with earnings assignment orders; and Consultant acknowledges that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.
- 16.3 Consultant shall, if required, file a Statement of Economic Interests (Fair Political Practices Commission Form 700) in compliance with applicable Conflict of Interest laws and policies.

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- 16.4 Consultant certifies, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code §8350 et seq.) and has provided or will provide a drug-free workplace by taking the following actions: a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code §8355(a)(1); b) Establish a Drug-Free Awareness Program, as required by Government Code §8355(a)(2) to inform employees, contractors, or subcontractors about all of the following: i) The dangers of drug abuse in the workplace; ii) Consultant's policy of maintaining a drug-free workplace iii) Any available counseling, rehabilitation, and employee assistance programs, and iv) Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations; c) Provide, as required by Government Code §8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Agreement: i) Will receive a copy of Consultant's drug-free policy statement, and ii) Will agree to abide by terms of Consultant's condition of employment, contract or subcontract.
- 16.5 Consultant shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medical and family care leave or pregnancy disability leave. Consultant shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant shall comply with the provisions of the Fair Employment and Housing Act (Government Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 16.6 Consultant represents and warrants that it is in compliance with Public Contract Code Section 10295.3 regarding non-discrimination against domestic partners.
- 16.7 Consultant acknowledges that OCSD retains all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement, which shall be made available to the CalOES and FEMA and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act., Government Code §6250 et seq. Consultant acknowledges that OCSD may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Agreement, subject to appropriate acknowledgement of credit to State for financial support. The CalOES and FEMA shall have the right to use any data described in this paragraph for any public purpose.
- 16.8 Consultant acknowledges and understands that OCSD may lose its grant funding and that the Consultant may be subject to debarment if the CalOES or FEMA determines that Consultant has made a false certification or Consultant has violated the certification by failing to carry out the requirement noted in the subject grant agreement. Consultant agrees to not make any false certification or violate the certification by failing to carry out the requirement noted in the subject grant agreement between OCSD and CalOES.
- 16.9 Consultant affirms that it is aware of the provisions of §3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant affirms that it will comply within such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.
- 16.10 Consultant acknowledges that it has reviewed and understands the Funding Agreement for the Grant Agreement between OCSD and CalOES and agrees to comply with all conditions applicable to contractors and subcontractors of OCSD, including but not limited to the required contract clauses included in Appendix B.

Appendix "B" - Federally Required Contract Provisions

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

1. Equal Employment Opportunity.

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

A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

C. 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.

D. 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.

E. 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.

F. 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 as 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.

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G. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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."

2. Debarment and Suspension.

A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to, the State of California, and (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

3. Procurement of Recovered Materials.

A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

B. Information about this requirement is available at the EPA's Comprehensive Procurement Guidelines website, <http://www.epa.gov/cpg/>. The list of EPA designated items is available at <http://www.epa.gov.cpg.products.htm>.

4. Additional FEMA Requirements.

A. 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.

B. Access to Records.

The following access to records requirements apply to this contract:

- i. The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), 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.
- ii. 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.
- iii. 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."

5. Department of Homeland Security (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.

6. Compliance with Federal Law, Regulations, and Executive Orders.

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

7. 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."

8. 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."

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