

**AGREEMENT TO PROVIDE  
DEBRIS MONITORING  
AND RELATED SERVICES FOR  
CITY OF DEER PARK, TEXAS**

This Agreement is made as of the 2<sup>nd</sup> day of February 2021, by and between City of Deer Park, Texas (hereinafter referred to as the Owner), and True North Emergency Management, LLC, (hereinafter referred to as the Monitor). In consideration of the mutual covenants and promises contained herein, the Owner and the Monitor agree as follows:

**ARTICLE 1 – SERVICES**

Monitor's responsibility under this Agreement is to provide emergency management and monitoring services, as described in the Scope of Services attached hereto as Exhibit "A" and in accordance with the Monitor's proposal, dated December 17, 2020, attached hereto as Exhibit "C." Monitor will provide data and access to information to allow the Owner to closely oversee debris removal contractor's performance under this agreement. This is a non-exclusive agreement. No amount of work is guaranteed under this agreement. The Request for Proposals, Sealed RFP – Debris Monitoring Services, issued on December 2, 2020, by the Owner and the above referenced Proposal, are incorporated by reference as part of this Agreement.

As requested by the Owner, additional services may include emergency management preparation/planning services and disaster response services such as damage assessments and assistance with reimbursement/financial recovery. Task orders for additional emergency management services must be approved by the Owner prior to performing services.

**ARTICLE 2 – PAYMENT**

Monitor Fee Schedule is included in Exhibit "B," attached. Monitor acknowledges that the Owner will apply for financial assistance from the Federal Emergency Management Agency (FEMA), Federal Highway Administration (FHWA), and/or the state emergency management agency. Therefore, Monitor represents that it will perform all Services hereunder in a manner, time and place so as to assist with such reimbursement to the Owner. Monitor shall submit monthly statements for services rendered that include GPS coordinates of the geographical areas being addressed by the Contractor on all monthly statements/invoices. Monitor's statements shall be due and payable pursuant to Section 2251, Texas Government Code.

**ARTICLE 3 – TERM**

The term of this Agreement is for three (3) years, expiring January 31, 2024. After the initial term, the contract may be extended by mutual agreement of the parties.

#### **ARTICLE 4 – LIABILITY INSURANCE**

The Monitor agrees to and shall procure and maintain during the duration of this Agreement, Monitor's general public liability and property damage insurance, including auto liability and employer's liability coverage, insuring Monitor from all claims from personal injury, including death, and claims for destruction or damage to property arising out of or in connection with any operations under this Agreement, whether such operations are by the Monitor or subcontractor to the Monitor, and said insurance shall name, waive and hold harmless the Owner.

#### **ARTICLE 5 – INSURANCE LIMITS OF LIABILITY**

Insurance shall be written with limits of liability of not less than the following:

1. \$1,000,000 primary limit, for all damages arising out of bodily injury, including death, with umbrella coverage of \$2,000,000.
2. \$1,000,000 primary limit for all property damage, with umbrella coverage of \$2,000,000.

#### **ARTICLE 6 – WORKERS' COMPENSATION INSURANCE**

Monitor shall provide and maintain Workers Compensation Insurance at its expense during the term of this Agreement, in accordance with state workers compensation laws.

#### **ARTICLE 7 – ERRORS AND OMISSIONS**

Monitor shall provide and maintain an errors and omissions policy sufficient to cover the scope of this project. Monitor agrees to provide, if requested, a declaration sheet showing the effective dates and coverage for this policy.

#### **ARTICLE 8 – PERFORMANCE SCHEDULES**

Monitor shall provide progress reports to the Owner on a weekly basis or more frequently as requested by the Owner. Such reports shall contain, at a minimum, total cubic yards collected, daily totals, and include GPS coordinates and other description (as required by FEMA) of the geographical areas being addressed by the Contractor.

#### **ARTICLE 9 – TERMINATION**

The Owner may terminate this Agreement for convenience or for cause upon written notice to the Monitor. The Monitor may terminate this Agreement upon thirty (30) days written notice to the Owner. During such termination period, the Monitor shall continue to diligently perform all of its duties hereunder. After a receipt of a termination notice and except as otherwise directed by the Owner, the Monitor shall: stop work on the date and to the extent specified; terminate and settle all orders and subcontracts relating to the performance of the terminated work; transfer all work in process, completed work, and other materials related to the terminated work as directed by the Owner; and continue and complete all parts of that work that have not been terminated.

## **ARTICLE 10 – PERSONNEL**

The Monitor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. All of the services required herein under shall be performed by the Monitor or under its supervision. All personnel engaged in performing the services, whether direct or contract employees, shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

## **ARTICLE 11 – SUBCONTRACTING**

Monitor shall be responsible for the compliance of all subcontracting parties with the terms of this Agreement and with any applicable local, state or federal laws or regulations. Monitor shall be solely responsible for timely paying its subcontractors.

## **ARTICLE 12 – CREDIT**

Monitor shall not pledge the Owner's credit or make the Owner a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Monitor further represents and warrants that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

## **ARTICLE 13 – PERFORMANCE**

Monitor shall perform its obligations hereunder in compliance with all applicable local, state and federal laws and regulations including the State and Federal Requirements attached hereto and incorporated herein as Exhibit "D."

## **ARTICLE 14 – FEDERAL AND STATE TAX**

The Monitor shall pay all local, state, and federal taxes which may become due based upon its performance of this Agreement. The Monitor shall be responsible for payment of its own and its share of its employee FICA and Social Security benefits with respect to this Agreement.

## **ARTICLE 15 – RISK ALLOCATION**

The Owner recognizes that Monitor's fee includes allowance for funding a variety of risks which affect the Monitor by virtue of his agreeing to perform services on the Owner's behalf. One of these risks stems from the Monitor's potential for human error. In order for the Owner to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Owner agrees to limit the Monitor's liability to the Owner and all contractors arising from the Monitor's professional acts, errors or omissions, such that the total aggregate liability of the Monitor to all those named shall not exceed \$50,000 or the Monitor's total fee for services rendered on this project, whichever is greater.

## **ARTICLE 16 – REMEDIES AND DISPUTE RESOLUTION**

Should any disputes arise with respect to the Agreement; the Parties agree to act immediately to resolve such disputes and shall include parties from the Owner and the Monitor that can bind and

implement the decisions of any resolution. Time is of the essence in the resolution of disputes. The Monitor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the Agreement that are not affected by the dispute and the Owner shall continue to make payment for all work properly performed.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or at equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **ARTICLE 17 – CONFLICT OF INTEREST**

The Monitor represents that it has no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder.

#### **ARTICLE 18 – ACCESS AND AUDITS**

The Monitor shall maintain adequate records to justify all hours incurred and charged in performing the services for at least five (5) years after completion of the Agreement.

#### **ARTICLE 19 – NONDISCRIMINATION**

The Monitor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age or national origin.

#### **ARTICLE 20 – ENTIRETY OF CONTRACTUAL AGREEMENT**

The Owner and the Monitor agree that this Agreement including its exhibits and amendments sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, deleted, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

#### **ARTICLE 21 – AUTHORITY TO PRACTICE**

The Monitor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required for conducting its businesses, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the Owner upon request.

#### **ARTICLE 22 – SEVERABILITY**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than

those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable as permitted by law.

**ARTICLE 23 – MODIFICATION OF WORK OR FEES**

The Owner reserves the right to make changes in the services, including alterations, reductions therein or additions thereto. Upon receipt by the Monitor, of the Owner notification of a contemplated change, the Monitor shall: (1) if requested by Owner, provide an estimate for the increase or decrease in cost due to the contemplated change; (2) notify the Owner of any estimated change in the completion date; and (3) advise the Owner in writing if the contemplated change shall affect the Monitor’s ability to meet the completion dates or schedules of this Agreement.

**ARTICLE 24 – SUCCESSORS AND ASSIGNS**

This Agreement is binding upon and will inure to the benefit of Owner and Monitor and their respective successors and assigns. The rights and obligations under this Agreement may only be transferred by; 1) transfer to a wholly owned subsidiary of Monitor’s parent company, 2) as a result of a merger or acquisition by another company, or 3) by mutual agreement of the parties.

**ARTICLE 25 – LAWS AND REGULATIONS**

This Agreement shall be interpreted under the laws of the State of Texas, with exclusive venue for any matter arising from this Agreement. All applicable federal and state laws, municipal ordinances, and the rules and regulations of all authorized entities having jurisdiction over any part of this project shall apply to the Agreement throughout, and they will be deemed to have been included in the Agreement as though herein written.

In Witness Whereof, the parties have made and executed this Agreement on behalf of the parties on the day and year above written.

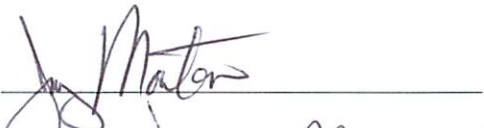
Monitor:

Owner:

True North Emergency Management, LLC

City of Deer Park, Texas

By: 

By: 

Printed Name: DERRICK TUCKER

Printed Name: Jerry Mouton Jr.

**Exhibit A**  
**Scope of Services**  
**True North Emergency Management**  
**Debris Monitoring Services**

**Staff Mobilization**

When a potential future disaster threatens the Owner, the debris monitoring firm (Monitor) will mobilize 2 to 3 days in advance with key staff experienced in various aspects of debris operations (including truck certification, mapping/zone development, etc.) in order to participate in the "response" phase of the disaster event. Monitor will mobilize right away when requested to respond to unpredicted disasters. Additional Monitor staff shall be contacted and put on standby for potential mobilization. Logistical arrangements for out of town staff such as lodging arrangements for key staff, is the responsibility of the Monitor.

**Field Documentation of Work**

Monitor shall carefully document right-of-way (ROW) debris removal activities and removal of eligible hazardous trees and hazardous hanging limbs. Monitor will work closely with the Owner and with FEMA/FHWA to determine the most effective methods of documentation to ensure that debris removal is eligible for federal funding. Monitor shall communicate with FEMA to ensure documentation supports project reimbursement. Monitor will work with FEMA in an effort to pre-validate as much eligible debris, tree and limb removal as practical.

**Collection Monitoring of Rights-of-Way and Public Property Debris Removal**

Monitor will provide collection monitors with each of the Contractor's loading crews to ensure each load is related to the disaster and follows FEMA PA guidelines. The street address and/or GPS coordinates will be recorded on each load ticket. The Monitor will initiate an electronic load ticket or multi part paper load ticket in the field for each load. Load tickets will contain information related to the location of the debris, time, date, truck identification, truck driver, etc. Each load ticket will then be delivered by the truck driver, to the disposal site or Debris Management Site (DMS) for load rating. Load ticketing and documentation will also be performed for hazardous tree and limb removal. This project may include monitoring the removal of abandoned cars, boats, marine debris, white goods, beach cleaning, structure demolition and other debris removal categories. Monitor will provide similar services for private property debris removal (PPDR) and right-of-entry (ROE) work if approved for this project. Field monitoring of debris haulers shall be performed in accordance with current FEMA, FHWA and state requirements and in coordination with the Owner.

**Monitor Training**

Monitor will provide training to all employees concerning safety, eligibility for reimbursement, and disaster specific information. The Monitor will be required to perform adequate training for locally hired staff. All Monitor employees must be able to effectively communicate to a level appropriate to their responsibilities.

### **Spot Checks and Auditing of Monitors**

Monitor will provide management and supervisory personnel to ensure that field monitors are making accurate eligibility calls, keeping good documentation, and are communicating effectively with the debris removal contractor.

### **Project Mapping**

Maps will be used to document the debris removal progress. The final pass along each roadway will be mapped for the Owner's information, and FEMA documentation. Monitor will assist the Owner in public communication and will document and relay any citizen complaints for action by the contractor or the Owner.

### **Truck Certification**

Monitor will establish a team of individuals who will inspect and certify vehicles for hauling storm related debris in accordance with FEMA guidelines. A certification sheet with measurement, photos, and calculations documenting the capacity of the truck is kept for load rating and ticket auditing. Certification data will be available at each DMS/disposal site for verification. Certifications should also include a methodology to discourage collection contractors from modifying their vehicle after certification, and for detecting modifications, such as changes to sideboards. Photographs of the vehicle and its driver shall be documented. Periodic spot checks and recertification will be performed for vehicles that have potentially been altered after initial certification.

### **Quality Control/Quality Assurance**

A QA/ QC program should be implemented by the Monitor to minimize errors in debris monitor tickets and all documentation functions. Eligibility of work, reliability of documentation and data accuracy are critical in achieving full reimbursement for eligible project expenses.

### **DMS/Disposal Sites**

Monitor will provide trained monitors at DMS and disposal sites to call loads based on the amount of debris in each truck. It is imperative that these monitors make accurate calls to safeguard public funds. Monitors will also make sure that the trucks are empty as they leave the site. Furthermore, monitors will review the truck certification worksheets to make sure the trucks have not been modified to affect their capacity (shortened or removed sideboards, for example). Similar systems will be used to verify, track, and document hauling of reduced debris from DMS sites through final disposal, where applicable.

### **Data Management**

Monitor will establish an advanced project data management system and upload load ticket information on a daily basis. This information can be provided to the Owner, FEMA, and the Contractor, as directed by the Owner. This will include GPS coordinates / addresses for tree and stump removal. Additionally, the staff will work with the Contractor to reconcile invoices, and review debris removal invoices for recommendation of payment by the Owner. Furthermore, Monitor will organize field information for FEMA documentation including photographs and/or GPS coordinates. Monitor will help track invoices for FEMA reimbursement and provide additional supporting information as requested.

**Public Information Support** - Monitor may be asked to assist the Owner in public outreach following a disaster event as it relates to debris recovery efforts. This may include establishing and staffing (including supplying equipment, phone lines, etc.) a "debris hotline" to respond to public complaints and concerns, or establishing a website. This also may include assistance with press releases, public notices, and other public information functions. All functions will be performed in a manner to maximize federal and state reimbursement.

### **Funding Support**

The Monitor shall assist the Owner in securing reimbursement for eligible work from state and federal agencies. Specific funding support services may include working with the Owner to develop a cash flow strategy that focuses on early reimbursement. This includes assistance in preparing a debris quantity estimate, early preparation of a project worksheet to cover the estimated cost of the entire debris removal effort at the outset of the project, and assisting the Owner and FEMA personnel with Project Worksheets, Versions, etc. Monitor shall be prepared to assist Owner with appeals based on their knowledge of FEMA and FHWA reimbursement policies. Monitor shall be prepared to assist the Owner, if requested, in tracking progress of Project Worksheets and providing quick response to any problem issue that may arise that could slow funding. Monitor shall be prepared to assist Owner in finding additional funding reimbursement sources related to disaster mitigation.

### **Recovery Services**

The Owner is interested in selecting a monitoring firm with field implementation and FEMA reimbursement experience in community recovery including, but not limited to:

- Right-of-Entry (ROE) administration and data base management
- ROW and private property vegetative/C & D hazard removal monitoring
- ROW and private property demolition coordination and monitoring
- Monitoring of marine debris removal and beach sand cleaning

### **Other Related Services**

Services not specifically identified in this request, but are needed to provide a complete debris removal and documentation project.

### **Safety Meetings and Monitoring Updates**

Safety of monitoring staff is of paramount importance. Monitor will hold regular meetings with debris monitors and staff for project updates and to communicate safety issues. If important information becomes available, the staff may meet more frequently.

### **Coordination Meetings with Contractor(s)**

Monitor will initiate a coordination meeting with the debris removal contractor to help expedite the work, and to discuss any issues that may arise during the project. It is important that the monitor and contractor are communicating with each other to ensure a successful project.

### **Contractor Damages**

The Monitor may be asked to develop a database application to track and help the Owner manage contractor damages.



**Status Reports**

Monitor will provide detailed daily or weekly status reports to the Owner as requested for use and information. Relevant project statistics and cumulative statistics will be shown in a straight forward manner to officials to provide information to the media or to their constituents.

**Public Assistance (PA) Consulting & Planning**

The Monitor will provide PA Consulting Services if requested by the Owner, such as:

- (a) Identification of eligible emergency and permanent work (Category A-G);
- (b) Damage Assessment;
- (c) Assistance in attaining Immediate Needs Funding;
- (d) Loss measurement and categorization;
- (e) Insurance evaluation, documentation adjusting and settlement services;
- (f) Project Worksheet generation and review;
- (g) FEMA, FHWA and Natural Resources Conservation Services (NRCS) reimbursement support;
- (h) Staff augmentation with experienced Public Assurance Coordinators and Project Officers;
- (i) Interim inspections, final inspections, supplemental Project Worksheet generation and final review;
- (j) Appeal services and negotiations;
- (k) Reconstruction and long-term infrastructure planning; and
- (l) Final review of all emergency and permanent work performed.

The Monitor will provide Emergency Management Planning Services if requested by the Owner, such as:

- (a) Disaster Debris Management Plan (DDMP);
- (b) Continuity of Operations Planning (COOP);
- (c) Pandemic Illness Planning and Response;
- (d) Comprehensive Emergency Management Plan; and
- (e) Hazard Mitigation Plan.

**Exhibit B**  
**True North Emergency Management**  
**Monitoring Fee Schedule**

The below hourly labor rates include all applicable overhead and profit. Overtime hours will be billed at the same rate as regular time hours. All normal expenses are absorbed in the below hourly rates, including lodging, meals, transportation, and per diem. Special costs such as boat rental and marine expenses may be billed to the Owner at cost without mark-up.

<b>POSITION</b>	<b>HOURLY RATE</b>
Project Manager	\$77.00
Operations Manager	\$77.00
Data Manager	\$59.00
GIS Analyst	\$49.00
Field Supervisor	\$59.00
Debris Site/Tower Monitors	\$34.00
Collection Monitor	\$34.00
Data Entry Clerk/Clerical	\$34.00
Billing/Invoice Analysts	\$34.00

**Exhibit C**  
**True North Emergency Management**  
**Debris Monitoring Services**

**Insert Proposal for "RFP - Debris Monitoring Services" for the City  
of Deer Park, Tx Submitted 12/17/2020.**

## **Exhibit D**

### **State and Federal Requirements**

#### **NOTICE: THIS IS A FEDERALLY FUNDED PROJECT**

AWARDING AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

References to “contractor” in this exhibit refer to the party providing services to a governmental entity through this agreement or contract.

Funding, in whole or in part, for this Project is through a Public Assistance grant from FEMA therefore all provisions of 2 CFR §§ 200.317 through 200.326 under the Uniform Administrative Requirements (“Uniform Rules”) apply to this Project. Federal Law requires that contracts relating to the Project include certain provisions of 2 CFR §§ 200.317 through 200.326 under the Uniform Administrative Requirements. Depending upon the type of work or services provided and the dollar value of the Project, some of the provisions set forth in 2 CFR §§ 200.317 through 200.326 may not apply to the Contractor or to the work or services to be provided hereunder; however, the provisions are nonetheless set forth to cause this Project to comply with Federal Law.

This Project will be in strict compliance with program requirements of the Awarding Agency and of 2 CFR §§ 200.317 through 200.326.

#### **Equal Opportunity Clause**

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

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, 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, “Equal Employment Opportunity” 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 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.
- G. The contractor will include the portion of the sentence immediately preceding paragraph and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms**

The Contractor agrees to take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. The Contractor shall, if subcontracts are to be let, take the affirmative steps listed in paragraphs (1) through (5) of this section.

**Disadvantaged Business Enterprises (DBE) Contractors.**

Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 C.F.R., Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and this agreement. In this regard, contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R., Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The

contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.

**Contract Work Hours and Safety Standards Act.**

1. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
2. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
3. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
4. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
5. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act

- (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 (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 (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

#### **Access to Records**

Contractor acknowledges the following access to records requirements apply to this contract:

- (1) 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.
- (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 representative(s) access to construction or other work sites pertaining to the work being completed under the contract.

#### **Compliance with Clean Air Act and the Federal Water Pollution Control Acts**

The Contractor or subcontractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### **Debarment and Suspension (Executive Orders 12549 and 12689)**

The Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235). The term “principal” for purposes of this Contract is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

#### **Byrd Anti-Lobbying Amendment**

Contractors who apply or bid for an award of \$100,000 or more shall provide the required certification 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 USC § 1352.

#### **Certification Regarding Lobbying**

Certification for Contracts, Grants, Loans, and Cooperative Agreements (See attached certification regarding lobbying.

Contractor shall file the required certification: See Exhibit E.

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.

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.

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.

#### **Procurement of Recovered Materials**

- (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—
  - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - (ii) Meeting contract performance requirements; or
  - (iii) 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>.

#### **DHS Seal, Logo, and Flags**

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**

Contractor acknowledges that FEMA financial assistance will be used to fund the Contract and Contractor agrees it will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

#### **No Obligation by Federal Government**

The Contractor acknowledges and agrees that the Federal Government is not a party to the Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

#### **Program Fraud and False or Fraudulent Statements or Related Acts**

Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.

#### **Prohibition on Contracting for Covered Telecommunications Equipment or Services**

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or



essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services as used in this clause.

(b) *Prohibitions.*

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service 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.

(c) *Exceptions.*

(1) This clause does not prohibit contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original

equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.*

The contractor shall insert the substance of this clause, including this paragraph, in all subcontracts and other contractual instruments.

END OF DOCUMENT