

EMERGENCY CONSULTING AGREEMENT

McKinsey & Company, Inc. Washington D.C. ("McKinsey" or "Contractor") and Miami-Dade County (the "Client" or "County") hereby agree to the following terms in connection with consulting services that McKinsey will be providing to the Client as further described herein (the "Services").

1. **SERVICES.** The working arrangements, including scope of the Services and Deliverables as defined in Statements of Work issued hereunder, team composition and workplan, are described herein. The Statements of Work ("SOW") shall be in writing and executed by duly authorized signatory of each of the parties. The SOW shall contain a description of the services to be delivered, the personnel to be involved, and the method of the County's reimbursement of the Contractor, all in the manner more specifically described below. These Services and Deliverables are being provided as covered countermeasures to the COVID-19 epidemic pursuant to the U.S. Department of Health and Human Services' February 4, 2020 Declaration pursuant to the Public Readiness and Emergency Preparedness Act, and are to be used as authorized by any public agency to which they ultimately may be provided. The Services and Deliverables are an extension of and supplement to the government functions performed by the receiving public agency. The parties may meet at mutually agreed times to discuss the progress of the Services and to exchange feedback. In order to be able to complete the Services within the timeframe and budget and to fulfill its responsibilities on a timely basis in the manner described in the applicable SOW, McKinsey will rely on the Client's timely cooperation, including the Client making available relevant data, information and personnel, performing any tasks or responsibilities assigned to the Client and notifying McKinsey of any issues or concerns the Client may have relating to the Services. During the course of the Services, priorities may shift or unexpected events may occur which may necessitate changes to the Services. In this event, the parties will jointly discuss the anticipated impact on the Services and agree on any appropriate adjustments, including to the scope of work, timeframe and budget set forth in any affected SOW. Any such modifications to the scope of work, timeframe and budget may only be made in writing by a duly authorized representative of the Client and Contractor. McKinsey will not provide advice, opinions or recommendations on policy or political matters nor will it be involved in, or support, any advocacy, policy, or lobbying efforts.

The Client acknowledges and agrees that the situation around COVID-19 is highly dynamic, evolving rapidly, subject to significant uncertainty, a lack of reliable information and other events completely beyond the parties' control. McKinsey cannot and will not give medical, regulatory, public health or legal advice. The Client must consider this context and secure appropriate legal, medical and other relevant advice prior to making any decisions in connection with the Services. McKinsey's Services are being provided on an expedited basis and may not have the benefit of certain detailed analyses in performing the Services.

2. **COMPENSATION.** The Client shall compensate McKinsey for its professional fees and expenses in connection with the Services, as set forth in this agreement. The method of compensation shall be agreed upon in the applicable SOW. The SOW may provide for lump sum reimbursement, payable upon completion of defined milestones, percentage of completion or periodic reimbursement.

In anticipation of each SOW, McKinley shall prepare and deliver to the County a written proposal (the "Proposal"). The Proposal shall identify the proposed method of reimbursement. If the Proposal is a lump sum, it shall contain a proposed lump sum price, a definition of the scope of services included and excluded, and a proposed methodology for payment of the same. If the payment is based on milestones, the Proposal shall contain defined and verifiable milestones and proposed schedule.

Upon the County's written acceptance of a Proposal, the same shall become an SOW which shall authorize McKinley to invoice the County in accordance with its terms. McKinsey will invoice the Client for professional fees and expenses in connection with the Services monthly or as otherwise set forth in the applicable SOW. All invoices issued in connection with an approved SOW are due and payable immediately on presentation. Should any invoice remain unpaid for more than 30 days after presentation, interest will accrue on the outstanding amount at the rate of 1% per month, calculated from the 31st day after presentation until the date of payment.

The total amount authorized to be paid by the County to McKinsey under this Agreement shall not exceed \$568,000, which amount may only be exceeded by change order or amendment to this Agreement executed by duly authorized signatory of the County.

3. **CONFIDENTIALITY.** McKinsey will keep confidential any confidential information, including any personal data (as defined below), furnished by the Client to McKinsey in connection with the Services ("Confidential Information"). McKinsey will disclose Confidential Information only to its employees, agents and contractors who have a need to know and are bound to keep it confidential, will use Confidential Information only for purposes of performing the Services, including preparing Proposals and evaluating potential Services, or as otherwise requested or authorized by the Client, and will protect Confidential Information in accordance with the McKinsey Data Protection Protocols available at <https://solutions.mckinsey.com/msd/data-protocols.pdf> (the "Protocols") except where such Protocols conflict with Florida's applicable public records laws. Subject to its confidentiality obligations, where the agreed upon Services include benchmarking services McKinsey may also incorporate Confidential Information into its benchmarking databases for use in reporting on sanitized or aggregate trends and metrics without attribution to the Client. To bring the best of McKinsey's global resources to serve the Client, the Client agrees that McKinsey may transfer Confidential Information to geographies other than those in which it was collected or received, including to McKinsey affiliates and sub-processors that comprise or support McKinsey's infrastructure and maintenance functions as set forth in the Protocols, to facilitate any activities authorized by the Client, provided that at all times Confidential Information will be treated as confidential and protected in accordance with the terms of this agreement. Confidential Information shall not include information that is or becomes publicly available, already known to McKinsey, independently acquired or developed by McKinsey or legally required to be disclosed. McKinsey will reasonably cooperate with the Client in responding to any legally required disclosure. In performing the Services, McKinsey will use and rely primarily on information and data available from public sources and information and data provided by or on behalf of the Client, including the Confidential Information. Client acknowledges and agrees that, with respect to such information and data: (a) it shall comply with all applicable laws and regulations in gathering and providing the same to McKinsey, and has obtained the necessary consents of individual data subjects with respect to any personal data; (b) it has and will have full and sufficient right to assign or grant the rights and/or licenses in and to such information and data for McKinsey's use as authorized pursuant to this agreement; (c) McKinsey has no obligation to independently verify any such information or data; and (d) it shall promptly notify McKinsey if it becomes aware that the Client is in breach of any of the foregoing representations and warranties. At the Client's election and notification to McKinsey, McKinsey shall promptly return or destroy any Confidential Information, including any personal data, in its possession or control when the same is no longer necessary for the provision of the Services, provided that McKinsey may retain such Confidential Information only as required by applicable law, regulation or documented professional archival policy or as otherwise authorized or instructed by the Client. Any Confidential Information so retained shall at all times remain subject to the terms and conditions of this agreement, including with respect to confidentiality, security and non-disclosure.

4. **DATA SECURITY.** Without limiting the foregoing, if McKinsey processes data as part of the Services and on behalf of the Client which relates to an identified or identifiable person ("personal data"), McKinsey shall (i) only process such personal data, including with respect to McKinsey's use of subcontractors or sub-processors, as set forth in this agreement and the Protocols, as otherwise authorized in writing by the Client, or as required by applicable law, (ii) implement appropriate technical and organizational measures to protect such personal data as set forth in the Protocols, (iii) promptly notify the Client of any incident in which the confidentiality, integrity or security of the personal data has been compromised, and (iv) collaborate with the Client as required by applicable law or the Client's request to document the personal data, data subjects and processing activities related to the Services, including as part of an applicable Proposal. McKinsey will comply with the Client's reasonable requests to furnish information regarding McKinsey's processing activities as is reasonably necessary to enable the Client to verify that McKinsey is complying with its obligations under this agreement, including by making its Director of IT Security or person of comparable knowledge and position available to provide information about the Protocols and McKinsey's processing in

connection with the Services, and the foregoing shall apply in full satisfaction of any Client audit or inspection rights of McKinsey, but shall not limit or restrict the ability of any legal or regulatory authority to conduct such audit or inspection pursuant to applicable law.

5. INTELLECTUAL PROPERTY. Upon McKinsey's completion of the Services and provision to the Client the final Deliverables, and Client's final payment for the Services and Deliverables, the Client will own all reports and other deliverables prepared for and furnished to the Client by McKinsey in connection with the Services (the "Deliverables") provided that McKinsey is free to copy, use, share, and disclose the Deliverables. McKinsey further retains ownership of all concepts, know-how, tools, questionnaires and assessments, modules, courses, frameworks, software, algorithms, databases, content, models, and industry perspectives developed or enhanced outside of or in connection with the Services (the "McKinsey Tools"), it being understood that none of the McKinsey Tools will contain the Client's Confidential Information. To the extent the Deliverables include any embedded McKinsey Tools, McKinsey hereby grants the Client a non-exclusive, non-transferable, non-sublicenseable, worldwide, royalty-free license to use and copy the McKinsey Tools solely as part of the Deliverables and subject to the limitations herein on disclosure of McKinsey materials and publicity. The Client agrees that, without McKinsey's prior written permission, it will not, or permit any third party to (a) access, copy or reverse engineer any McKinsey Tool or Deliverable, or (b) remove or circumvent security or technological safeguards, including notices, digital protection mechanisms, metadata, watermarks, or disclaimers provided with any McKinsey Tool or Deliverable.

6. DISCLOSURE OF MCKINSEY MATERIALS; PUBLICITY. The Client will not disclose any materials or information that McKinsey furnishes to the Client which material or information has been identified by McKinsey as confidential in writing, including any such confidential material or information included in the Deliverables, to any third parties without McKinsey's prior written permission, except as required by law. McKinsey will identify information to be confidential only in those instances where the material or information constitutes a trade secret of McKinsey or the disclosure of which may impair McKinsey's confidential processes or intellectual property interests. The Client further agrees not to use McKinsey's name or trademarks in any proactive communication with any third party without McKinsey's prior written permission, as practicable. McKinsey disclose that they have been retained by the Client and provide a general description of the Services.

7. SERVING COMPETITORS. It is McKinsey's long-standing policy to serve competing clients and clients with potentially conflicting interests as well as counter-parties in merger, acquisition and alliance opportunities, and to do so without compromising McKinsey's professional responsibility to maintain the confidentiality of client information. Consistent with such practice and McKinsey's confidentiality obligations to its other clients, McKinsey is not able to advise or consult with the Client about McKinsey's serving the Client's competitors or other parties. Nothing in this section shall operate to limit or reduce McKinsey's obligations with respect to the Client's Confidential Information, including the confidentiality and non-disclosure obligations with respect thereto.

8. LIMITATION OF LIABILITY. The Services are not (and will not be interpreted as) medical, investment, legal, tax, accounting or other regulated advice, and do not constitute policy advice. McKinsey's Services do not supplant the Client's management, policy-making, or decision-making functions and do not guarantee results. The Client remains solely responsible for its decisions (including policy decisions), actions, use of the Deliverables and any other materials received pursuant to this agreement, and compliance with applicable laws, rules and regulations. The Client agrees to hold harmless and not pursue claims or suits against McKinsey for any losses, damages, costs or expenses arising out of the provision of these Services that result from the Client's negligence or willful misconduct. Should third party suits be filed against McKinsey arising out of the provision of these Services, the parties hereto agree to cooperate with each other during such litigation, including the timely provision of documents and witnesses to each other as well as the filing of supportive documents and briefs in such litigation. The Client agrees to pay for any costs, including attorney fees, McKinsey incurs as a result of its participation as a non-party in any legal, regulatory, administrative or

other proceeding relating to the Services. In no event shall McKinsey's liability to the Client in connection with the Services provided to the Client in a SOW exceed the fees received by McKinsey from the Client in connection with that SOW. Neither party will be liable for any lost profits or other indirect, consequential, incidental, punitive or special damages.

9. CONTINGENCIES; ADVERSE EVENTS. If an event, circumstance, regulation, restriction, development or a combination thereof (an "Adverse Event"), whether or not foreseeable or preventable through the exercise of reasonable diligence, occurs, is implemented or becomes effective during the term of this agreement and makes it unsafe (or gives rise to a health risk), impracticable, onerous, uneconomic or burdensome for McKinsey to proceed with or continue the performance of the Services or any part thereof (including, without limitation, the occurrence of any Adverse Event having the characteristics of force majeure such as natural disaster, act of God, act of government, war and other hostilities, terrorism, protest, external disruptions, pandemic, or others), McKinsey may, upon notice in writing to the Client, suspend the Services indefinitely until such time as the Adverse Event has subsided and the parties mutually deem it practicable for the Services to resume. If the suspension exceeds 60 days, either party may terminate this agreement upon notice in writing to the other party. Suspension hereunder shall be without liability and without payment of any amount by way of penalty, damages or other compensation. Any events, circumstances, regulations, restriction, development or a combination thereof related to COVID-19, which existed prior to the written acceptance of an SOW by both parties, shall not constitute an Adverse Effect as defined herein and shall not be grounds for any delay or suspension of the Services.

10. TERM AND TERMINATION. This agreement shall become effective on April 27, 2020 and shall continue through December 31, 2020 or such later date as may be provided for reasonable completion of any of the tasks in any of the SOW issued under this agreement. The parties may agree in writing via amendments to this agreement to extend term of this agreement beyond this period. Except as otherwise provided in the applicable Statement of Work, either party may terminate the Services at any time effective upon written notice to the other.

11. WARRANTY. The information included in the Deliverables is intended to inform the Client's management and business judgement only and will not contain, nor are the Deliverables provided for the purpose of constituting or informing, policy judgments or advice. McKinsey emphasizes that statements of expectation, forecasts and projections relate to future events and are based on assumptions that may not remain valid for the whole of the relevant period. Consequently, they cannot be relied upon, and McKinsey expresses no opinion as to how closely the actual results achieved will correspond to any statements of expectation, forecasts or projections. McKinsey makes no representation or warranty of any kind, express or implied, regarding the accuracy, adequacy, validity, reliability, availability or completeness of any information in the Deliverables.

12. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The parties agree that the Contractor is providing consulting services to the County and not on behalf of the County. This Section 12 shall only apply to Contractor to the extent that Contractor is determined by a court of competent jurisdiction to be performing services on behalf of the County.

The Contractor shall comply with the Public Records Laws of the State of Florida, including but not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public

records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128.

13. AUDITS. The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's invoices and final Deliverables ("Records") arising out an SOW performed for the County.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Contractor will grant reasonable access to the Commission Auditor to all directly pertinent financial and performance related records, property, and equipment purchased in whole or in part with government funds that relate to performance of an SOW for the County. Contractor shall comply with the Commission Auditor's reasonable requests to furnish information regarding the performance of a SOW by providing access to such information in a reasonable time and manner and during reasonable business hours.

14. MISCELLANEOUS. This agreement and Proposals constitute the entire agreement between the parties, and there are no prior or contemporaneous oral or written representations, understandings or agreements relating to this subject matter that are not fully expressed herein or therein. The terms of this agreement may only be amended or modified in writing signed by both parties. This agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflicts of law principles and shall inure to the benefit of and be binding on the successors and assigns of the Client and McKinsey. The following Sections shall survive the completion or any termination of the Services: 3 (Confidentiality), 4 (Data Security), 5 (Intellectual Property), 6 (Disclosure of McKinsey Materials; Publicity), 7 (Serving Competitors), 8 (Limitation of Liability), 9 (Contingencies; Adverse Events), 10 (Term and Termination), 11 (Warranty) and 12 (Miscellaneous) and any other provision which by law or by its nature should survive. Neither party may assign its rights or obligations under this agreement to any person or entity without the written consent of the other party, not to be unreasonably withheld, provided, however, that either party may assign its rights and obligations under this agreement to its affiliates upon reasonable written notice to the other party but without the written consent of the other party. Assignment shall not relieve either party of its obligations hereunder. McKinsey is an independent contractor and not the Client's agent or fiduciary. Notwithstanding any course of dealings of the parties at any time or any statement to the contrary contained therein, no purchase order, invoice or other similar document issued by a party shall be construed to modify the terms of this agreement. Rights and remedies provided in this agreement are cumulative and not exclusive of any right or remedy provided at law or in equity. The Client considers McKinsey to be a "contractor" as defined by 2 CFR 200.330.

The parties agree that this contract may become eligible for federal funding. Accordingly, the parties agree to the provisions of Appendix A entitled "Federal Terms and Certifications" attached hereto and incorporated herein by this reference.

MCKINSEY & COMPANY, INC.
WASHINGTON D.C.

By: _____

Print Name: Kirk Rieckhoff

Title: Senior Partner

Date: 04/29/2020

Fed. I.D. No.: 56-2405213

Corporate Seal / Notary Seal

Attachment:
Appendix A (Federal Terms and Certifications)

MIAMI-DADE COUNTY

By: _____
Digitally signed by Tara C. Smith
Date: 2020.04.29 16:21:11 -04'00'

Print Name: Carlos A. Gimenez

Title: Mayor

Date: 4/30/20

Attest: _____



Approved as to form
And legal sufficiency

Assistant County Attorney

Appendix A
Federal Terms and Certifications

This document supersedes any conflicting provisions contained elsewhere in the Contract.

Federal Provisions:

The following provisions shall be applicable to the Contract:

- A. BREACHES AND DISPUTE RESOLUTION.** For all purchases in excess of the simplified acquisition threshold, currently \$150,000, the following provisions shall apply:
- (1) Disputes and Remedies - Disputes arising in the performance of this Contract which are not resolved by the Contractor and the County's project manager or contractor manager, shall be referred, in writing, to the authorized representative of the County Mayor for a decision. If there is a disagreement among the parties regarding the decision of the County Mayor's representative, then either party may submit any claim, counterclaim, dispute and other matters in question between the County and the Contractor arising out of or relating to this Contract or its breach to a court of competent jurisdiction within Miami-Dade County.
 - (2) Performance During Dispute - Unless otherwise directed by the County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
 - (3) Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

B. TERMINATION FOR CONVENIENCE

The County, at its sole discretion, reserves the right to terminate this Contract without cause upon thirty (30) days written notice. Upon receipt of such notice, the Contractor shall not incur any additional costs under this Contract. The County shall be liable only for reasonable costs incurred by the Contractor prior to notice of termination. The County shall be the sole judge of "reasonable costs."

C. DEFAULT; REMEDIES; TERMINATION FOR CAUSE

The County reserves the right to terminate this Contract, in part or in whole, or place the Contractor on probation, or to avail itself of all other remedies available at law and equity, inclusive injunctive relief and specific performance, in the event the Contractor fails to perform in accordance with the terms and conditions stated herein. Following breach of the Contract by the Contractor, the County

shall provide written notice specifying the breach to the Contractor and advising the Contractor that the breach must be cured immediately or this Agreement may be terminated by the County. The County reserves the right to avail itself of any and all remedies available at law or at equity, including claims for damages and injunctive relief. The County further reserves the right to suspend or debar the Contractor in accordance with the appropriate County ordinances, resolutions and/or administrative/implementing orders. The vendor will be notified by letter of the County's intent to terminate if, following the initial notice of breach, the Contractor fails to timely or adequately and to the satisfaction of the County cure said breach. In the event of termination for default, the County may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the terminated Contractor.

D. EQUAL EMPLOYMENT OPPORTUNITY

- (1) In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, ancestry, marital status, pregnancy, sexual orientation, veteran's status, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, age, disability, ancestry, marital status, pregnancy, sexual orientation, veteran's status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by MDC setting forth the provisions of this Equal Opportunity clause.
- (2) The Contractor shall, 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 Equal Opportunity 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 provisions of this Equal Opportunity clause 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 of Contractor's vendors and subcontractors. The Contractor will take such action with respect to any subcontract or purchase order as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance.

E. DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148) and COPELAND "ANTI-KICKBACK" ACT (18 USC § 40 U.S.C. 3145). The Davis-Bacon Act and the Copeland Anti-Kickback Act only apply 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. They do not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program. Accordingly, if applicable to this Contract:

- (1) All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
 - a) In accordance with the statute, and if applicable, the Contractor must pay all laborers and mechanics employed or working upon the site of the work, 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 pursuant to 29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) at rates not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The County will attach a copy of the current prevailing wage determination issued by the Department of Labor to this form.
 - b) 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 29 CFR §5.5; 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 29 CFR § 5.5(a)(4).
 - c) 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 29 CFR § 5.5) 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.

- (2) The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.

Contractors and Subcontractors are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor or subcontractor shall insert in any subcontracts the clause in these subparagraphs (G)(1) and (2), and also a clause requiring the subcontractors to include this clause in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with this clause. A breach of this clause 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.

F. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OF 1962, 40 U.S.C. §§ 3702 AND 3704.

If applicable, the Contractor and all of its subcontractors shall comply with the Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. §§ 3702 and 3704, requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a workweek. In the event of any violation of the preceding clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the County 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 herein, 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. The County 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 herein. The Contractor or subcontractor shall insert in any subcontracts this clause set forth in subsection (F) herein also a clause requiring the subcontractors to include this clause 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 herein.

G. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AWARD.

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the County wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the County must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

H. THE CLEAN AIR ACT OF 1955, as amended, 42 U.S.C. §§7401-7671q and the FEDERAL WATER POLLUTION CONTROL ACT, as amended, 33 U.S.C. §§ 1251-1387.

- (1) 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. and issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et. seq.
- (2) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, 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.

I. ENERGY CONSERVATION.

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. Section 6321 et seq.) and (42 U.S.C. 6201).

J. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.

- (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, 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). 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. This certification is a material representation of fact relied upon by the County. 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 County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and shall include a provision requiring such compliance in its lower tier covered transactions.

- (2) By signing and submitting this form, the Contractor shall also execute and provide the County with, and require all lower tiered contractors to also execute, the certification set out in "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower tier Covered Transaction" attached hereto. The Contractor shall require all lower tier participants to agree that they:
- a. shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the County;
 - and ii. they will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", and the certification form, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. The Contractor may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Contractor may decide the method and frequency by which it determines the eligibility of its principals. The Contractor may, but is not required to check the Non-procurement List issued by U.S. General Service Administration. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Contractor and any other participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If the Contractor or any other lower tier participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the County may pursue available remedies including suspension and/or debarment.

K. BYRD ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENTS.

Contractors who apply or bid for or have received an award of \$100,000 or more shall file the required and attached 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.

L. RECYCLED PRODUCTS/RECOVERED MATERIALS

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6962), including but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. All goods and/or services to be purchased as a result of any award under this Contract shall be in accordance with all applicable governmental standards, including, but not limited to those issued by the Occupation Safety and Health Administration (OSHA), the National Institute of Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA). It shall be the responsibility of the Contractor and vendors to be regularly informed to conform to any changes in standards issued by any regulatory agencies that govern the commodities or services applicable to this solicitation, during the term of any contract resulting from this solicitation. 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:

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting Contract performance requirements; or
- (3) At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/regulatory-background-comprehensive-procurement-guideline-program-cpg>.

M. CONTRACTING WITH SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS, C.F.R. § 200.321(G).

Pursuant to C.F.R. 200.321 (g), the County will 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) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.

N. ACCESS TO RECORDS. In addition to the provisions contained in the Contract, the following access to records requirements apply to this Contract:

- (1) The Contractor agrees to provide the County, 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.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OF RELATED ACTS. The Contractor hereby acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to the Contract.

P. 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.

Q. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance may 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.

R. 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.

S. CHANGES

The Contract may be modified by mutual consent, in writing through the issuance of a modification to the Contract.

Byrd Anti-Lobbying Amendment Certification Form

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.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned Contractor certifies, to the best of his or her knowledge, 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 31, U.S.C. § 1352 (as amended by the Lobbying

Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Signature of Contractor's Authorized Official

 _____

Name and Title of Contractor's Authorized Official

Kirk Rieckhoff, Senior Partner

Date

04/30/2020

Suspension and Debarment Certification Form

(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, 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).

(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 the County. 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 County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor 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 Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

Signature of Contractor’s Authorized Official



Name and Title of Contractor’s Authorized Official

Kirk Rieckhoff, Senior Partner

Date

04/30/2020
