

EMERGENCY PURCHASING AGREEMENT

This Emergency Agreement (the "Agreement") is entered into this ^{MAY 2020} 15 day of ~~April~~ ("Effective Date"), by and between the Grant County ("Client") and Witt O'Brien's, LLC ("Consultant"), each of which may be referred to individually as "Party" or collectively as the "Parties".

WHEREAS, a Presidential State of Emergency was declared on the 13th day of March 2020, the State of Oregon declared a State of Emergency on the 29th day of March 2020 in response to the novel coronavirus, COVID-19. Client is mobilizing an immediate response to the declared State of Emergency and requires the services of Consultant on an immediate and emergency basis and desires to procure such services under the Agreement; and

WHEREAS, HUD and FEMA, through 2 C.F.R. § 200.320(f)2), permit procurement by noncompetitive proposals through solicitation of a proposal from only one source in limited circumstances;

WHEREAS, 2 C.F.R. § 200.320(f)(2) provides "Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals" and, in the case of Client, "one of the following circumstances applies:...(A) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (B) The awarding agency authorizes noncompetitive proposals; or (C) After solicitation of a number of sources, competition is determined inadequate[;]" and

WHEREAS, Client is authorized by ORS 279B.065 is authorized to make small procurements not to exceed \$10,000 in any manner the Client deems practical or convenient;

WHEREAS, in addition to Client's authority to ORS 279B.065, Client is authorized to make emergency procurements, pursuant to ORS 279B.080, and Client is of the view that procurement to engage Consultant to provide an immediate response to imminent risks presented by the novel coronavirus, COVID-19 is an appropriate emergency procurement of services; and

1. Initial Terms. Pursuant to Federal Grant Procurement Regulations, the Parties agree to the following:

- a. The period of performance of this Agreement is limited to a period of one hundred eighty (180) days from execution ("Period of Performance"). Services performed during the Period of Performance shall not exceed the Ceiling Price of \$10,000.00 ("NTE").
- b. Client will initiate a competitive procurement to replace this Agreement as soon as practicable, ideally before the one hundred eighty days' period of performance is complete, unless Client determines that the State of Emergency continues such that continued procurement through noncompetitive proposal is warranted in accordance with 2 C.F.R. § 200.320(f) in which case the Period of Performance may be extended and the NTE may be increased accordingly. Use of the emergency/exigency exception is only permissible during the actual emergency or exigent circumstances

2. Services and Fees. Consultant shall perform the services and shall be compensated for such services as set forth in Appendix A and the proposal attached hereto as Appendix B which is incorporated herein as part of this Agreement.

3. Consultant's Responsibilities. Consultant shall perform the services utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions. CONSULTANT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

4. Client's Responsibilities. Client shall provide site access to the site or facility at which the services are to be performed at such times as may reasonably be required by Consultant and shall make timely payments in accordance with the terms and conditions of this Agreement. Client will adhere to Federal grant funding requirements applicable to the services provided under this Agreement.

5. LIABILITY AND INDEMNIFICATION

5.1 CONSULTANT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CLIENT, FOR WHOSE BENEFIT THIS AGREEMENT IS ENTERED, FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, LIABILITY, CLAIMS, DAMAGES, LIABILITIES, PENALTIES, FINES AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) AND CAUSES OF ACTION OF WHATSOEVER CHARACTER WHICH CLIENT MAY INCUR, SUSTAIN OR BE SUBJECTED TO, DIRECTLY RELATED TO THE SERVICES PERFORMED BY THE CONSULTANT UNDER THIS AGREEMENT. THIS INDEMNIFICATION CLAUSE IS NOT INTENDED TO CONVERT A CLAIM BASED SOLELY UPON A BREACH OF CONTRACT THEORY INTO A TORT CLAIM.

5.2 NOTWITHSTANDING 5.1 ABOVE, CONSULTANT SHALL NOT BE REQUIRED TO INDEMNIFY, DEFEND, OR HOLD CLIENT HARMLESS FOR DEMANDS, CLAIMS, LOSSES, COSTS, DAMAGES, LIABILITIES, PENALTIES, FINES AND EXPENSES (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEY'S) WHICH ARE PREMISED, IN WHOLE OR IN PART, ON ANY CLAIM, LOSS, DAMAGE, INJURY, EXPENSE OR LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CLIENT OR ITS OFFICERS, EMPLOYEES OR AGENTS OR BASED ON THE ALLEGED ACTS AND/OR OMISSIONS OF CLIENT OR ITS EMPLOYEES, AGENTS, AND/OR OFFICERS.

5.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PROPERTY OR EQUIPMENT AND BUSINESS INTERRUPTION LOSSES, REGARDLESS OF THE CAUSE OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY NEGLIGENCE (WHETHER ACTIVE, PASSIVE, SOLE, CONCURRENT OR GROSS), BREACH OF DUTY (WHETHER STATUTORY, CONTRACTUAL OR OTHERWISE) OR ANY OTHER FAULT OF EITHER PARTY OR ANY OTHER PERSON OR ENTITY, AND REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE.

6. Invoice and Payment Terms. Consultant will submit invoices monthly to the following address:

Grant County Court
201 S Humbolt Street
Suite 280
Canyon City, OR 97820

Payment of any undisputed amount is due 30 days after receipt of each invoice. All invoices shall include information required to comply with the Federal laws, regulations, and policies governing Federal reimbursement of disaster recovery-related expenditures. Invoices are considered received by Client unless a written notice explaining rejection of specific charges is provided to Consultant within thirty (30) days from date electronically submitted.

7. Notice. Any notice given by either Party shall be in writing and shall be given by email with delivery confirmation and registered or certified mail, return receipt requested, postage prepaid, or Federal Express or DHL courier, shipped prepaid, addressed to the Parties at the addresses herein designated for each Party or at such other addresses as they may hereafter designate in writing.

8. Governing Law. The validity, enforceability and interpretation of this Agreement will be governed by the laws of the State of Oregon, without reference to its rules relating to choice of law to the contrary. Consultant consents to the exclusive jurisdiction of state and federal courts located in the State of Oregon, with respect to any claim arising under or by reason of the Agreement.

9. Independent Contractor. Consultant is an independent contractor and shall not be deemed to be an employee or agent of the Client. Client shall not be deemed a joint employer of the other Party's employees. Consultant shall indemnify and hold Client harmless against all liability and loss resulting from i) claims made by Consultant's employees that they are co-employed by Client, ii) Consultant's failure to pay wages to its employees, and iii) Consultant's failure to pay all taxes and fees imposed by the government under employment insurance, social security and income tax laws with regard to Consultant's employees engaged in the performance of this Agreement.

10. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue without affect to the remaining provisions.

11. FEMA/HUD Clauses. If applicable to the services provided under this Agreement, the parties shall comply with all federal, state or municipal emergency, safety and health codes, laws, rules, regulations or ordinances, federal or state law, regulation and local ordinance including but not limited to all FEMA clauses and HUD clauses which are incorporated by reference and set forth in Appendix C.

12. Order of Precedence. In the event of a conflict in the terms and conditions of this Agreement, the following order of precedence shall apply:

1. The Agreement
2. Appendix C (FEMA Clause/HUD Clauses)
3. Appendix A (Work Scope and Compensation)
4. Appendix B (the Proposal)

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, execute this Agreement to be effective as of the date set forth above.

Grant County	Witt O'Brien's, LLC
Name, Title: Company: Grant County Address: City, State, Zip: Email: Phone:	Name, Title: Greg Fenton, COO Company: Witt O'Brien's, LLC Address: 818 Town & Country Blvd., Suite 200 City, State, Zip: Houston, Texas 77024 Email: contractrequests@wittobriens.com Phone: 281-606-4721

APPENDIX A
SCOPE OF WORK AND COMPENSATION

Scope of Work:

The Client intends to utilize its emergency procurement authority to secure expert consulting and staff augmentation services from Consultant as set forth in the Appendix B and as may be modified by mutual written agreement in an Appendix A to this Agreement until such time as this Agreement is replaced through a full and open contract competition or other contract vehicle appropriated to support disaster activity in accordance with applicable Federal funding requirements, including but not limited to Federal Acquisition requirements.

- Cost Recovery and Emergency Management Advisory Services
 - Assessment, Planning and Decision Making
 - Application, Funding and Cost Reimbursement
 - Compliance Monitoring and Reporting

Compensation:

Consultant shall be compensated in accordance with the rates set forth in Appendix B and as may be additionally set forth below:

Labor Category	Hourly Rate
Executive Advisor	\$400
Project Liaison	\$250
Emergency Management Specialist I	\$350
Emergency Management Specialist II	\$260
Emergency Management Specialist III	\$225
Emergency Management Specialist IV	\$190
Emergency Management Specialist V	\$170
Emergency Management Specialist VI	\$150
Emergency Management Specialist VII	\$120
Admin I	\$90
Admin II	\$65

In addition to the hourly rates, Consultant shall be reimbursed for out of pocket expenses incurred in connection with performance of this Agreement. Travel expenses such as lodging, airfare (coach class), rental car, and other miscellaneous expenses shall be reimbursed at Consultant's cost, without mark-up. Per diem shall be reimbursed in accordance with the rates published by General Services Administration (GSA) for the area of operation. If mileage is applicable, mileage shall be reimbursed at the prevailing IRS mileage rate.

APPENDIX B

The Witt O'Brien's proposal to the Grant County, May 12, 2020: Proposal for Cost Recovery and Emergency Management Advisory Services

APPENDIX C
FEMA CLAUSES

FEMA STANDARD TERMS AND CONDITIONS FOR CONTRACTS AND GRANTS

The Parties shall comply with all federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to the contractual procedures set forth in Title 2 of the Code of Federal Regulations, Part 200 ("2 CFR 200"), including Appendix II to such Part ("Appendix II").

In addition, the Parties agrees as follows:

1. Client confirms that it is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Consultant's compliance with the terms of this Agreement, except to the extent expressly provided otherwise by this Agreement.
2. Client confirms that it may terminate this Agreement for cause or convenience in accordance with the procedures set forth in this Agreement.
3. Compliance with the Davis-Bacon Act and Copeland Anti-Kickback Act as applicable to the Services.
 - a. Consultant shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this Agreement.
 - b. Subcontracts. Consultant and any subcontractors to Consultant shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontractors. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR §5.12.
4. Compliance with the Clean Air Act and the Federal Water Pollution Control Act.
 - a. Clean Air Act
 - (i) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §7401 et seq.
 - (ii) Consultant agrees to report each violation to CLIENT and understands and agrees that Client will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.
 - (iii) Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
 - b. Federal Water Pollution Control Act
 - (i) Consultant agrees to comply with all applicable standards, orders or

regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

- (ii) Consultant agrees to report each violation to Client and understands and agrees that Client will, in turn, report each violation as required to assure notification to FEMA and appropriate Environmental Protection Agency Regional Office.
- (iii) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

5. Suspension and Debarment

- a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Consultant is required to verify that none of Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by Client. If it is later determined that Consultant 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 Client, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. Compliance with Byrd Anti-Lobbying Amendment

- a. Consultant hereby certifies to the best of its knowledge that:
 - (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, 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.
 - (ii) 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, Consultant shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

- b. Consultant 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. 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.
- c. 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.
- d. By executing this Agreement, Consultant hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Consultant understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

7. Procurement of Recovered Materials

- a. In the performance of this contract, Consultant shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

8. Access to Records

The following access to records requirements apply to this Agreement:

- a. Consultant agrees to provide Client, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Consultant 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.

9. Use of DHS Seal

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

10. Compliance with Federal Law

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

11. Non-Obligation of Federal Government

The Federal Government is not a party to this Agreement 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.

12. Program Fraud and False or Fraudulent Statements or Related Acts

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

HUD GENERAL PROVISIONS

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development ("HUD"). In addition, Consultant shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

2. STATUTORY AND REGULATORY COMPLIANCE

Client shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

3. BREACH OF CONTRACT TERMS

Client reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Consultant or any

of its subcontractors violate or breach any contract term. If the Consultant or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4. REPORTING REQUIREMENTS

The Consultant shall complete and submit all reports, in such form and according to such schedule, as may be required by Client. The Consultant shall cooperate with all Client efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

5. ACCESS TO RECORDS

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Consultant which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least four (4) years following the date of final payment and close-out of all pending matters related to this contract.

7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Consultant will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 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 HUD.

9. ENERGY EFFICIENCY

The Consultant shall comply with mandatory standards and policies relating to energy efficiency issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Consultant shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Consultant shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Consultant shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 94), as amended, and any applicable regulations.

The Consultant agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

13. AGE DISCRIMINATION ACT OF 1975

The Consultant shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Consultant represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

15. CONFLICTS OF INTEREST

The Consultant shall notify CLIENT as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). The Consultant shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Consultant shall provide CLIENT any additional information necessary for CLIENT to fully assess and address such actual or potential conflict of interest. The Consultant shall accept any reasonable conflict mitigation strategy employed by CLIENT, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

16. SUBCONTRACTING

When subcontracting, the Consultant shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

The Consultant represents to Client that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Consultant will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

17. COPELAND "ANTI-KICKBACK" ACT (Applicable to all construction or repair contracts)

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Subcontractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

18. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers)

The Consultant shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

19. DAVIS-BACON ACT

(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation)

The Consultant shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

20. TERMINATION FOR CAUSE (Applicable to contracts exceeding \$10,000)

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Subcontractor shall violate any of the covenants, agreements, or stipulations of this contract, CLIENT shall thereupon have the right to terminate this contract by giving written notice to the Subcontractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Subcontractor under this contract shall, at the option of CLIENT, become CLIENT's property and the Subcontractor shall be entitled to receive just and equitable compensation for any work satisfactorily

completed hereunder. Notwithstanding the above, the Subcontractor shall not be relieved of liability to CLIENT for damages sustained by CLIENT by virtue of any breach of the contract by the Subcontractor, and CLIENT may withhold any payments to the Subcontractor for the purpose of set-off until such time as the exact amount of damages due CLIENT from the Subcontractor is determined.

21. TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000)

Client may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Consultant. If the contract is terminated by CLIENT as provided herein, the Subcontractor will be paid for the time provided and expenses incurred up to the termination date.

22. SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding \$10,000)

The Consultant shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers with Disabilities

1. The Consultant will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Consultant agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
 - i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
 - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the contractor including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.

2. The Consultant agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
3. In the event of the Consultant's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
4. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Subcontractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
5. The Consultant will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Consultant is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
6. The Consultant will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

23. EXECUTIVE ORDER 11246

(Applicable to construction contracts and subcontracts exceeding \$10,000)

The Consultant shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

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

- A. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- B. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Consultant 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 by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- F. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- G. In the event of the Consultant's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Subcontractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- H. Consultant shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Consultant will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

24. CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding \$10,000)

The Consultant certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit

employees to perform their services at any location under its control where segregated facilities are maintained. The Consultant agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Consultant further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

25. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS (Applicable to contracts exceeding \$100,000)

The Consultant and all its subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Consultant or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Consultant to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- D. Agreement by the Consultant that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Subcontractor will take such action as the government may direct as a means of enforcing such provisions.

26. LOBBYING (Applicable to contracts exceeding \$100,000)

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subcontractor, 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 Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Consultant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

27. BONDING REQUIREMENTS

(Applicable to construction and facility improvement contracts exceeding \$100,000)

The Consultant shall comply with CLIENT bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements:

- (1) *A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.*
- (2) *A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.*
- (3) *A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.*

28. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (As required by applicable thresholds)

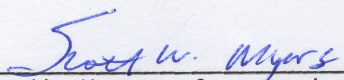
- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Consultant agrees to send to each labor organization or representative of workers with which the Consultant has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Consultant's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Consultant agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The Subcontractor will not subcontract with any subcontractor where the Consultant has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- E. The Consultant will certify that any vacant employment positions, including training positions, that are filled: (1) after the subcontractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Subcontractor's obligations under 24 C.F.R. part 135.
- F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts

and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

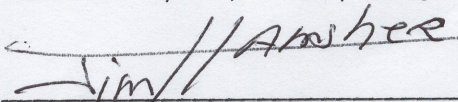
29. FAIR HOUSING ACT

Consultant shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Please visit http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11868.pdf for more information.

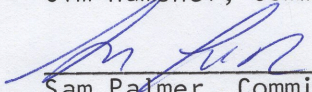
Dated this 15 day of May, 2020.



Scott W. Myers, County Judge



Jim Hamsher, Commissioner



Sam Palmer, Commissioner