



CITY OF REDDING

777 CYPRESS AVENUE, REDDING, CA 96001

P.O. BOX 496071, REDDING, CA 96049-6071

PURCHASING DIVISION

October 15, 2018

B-050-100-000

**REQUEST FOR PROPOSAL
TO PROVIDE
ENVIRONMENTAL SERVICES FOR
FIRE AND FLOOD RECOVERY PROJECTS
TO THE
CITY OF REDDING, CALIFORNIA
(Schedule Number 5018)**

In accordance with the provisions of the Municipal Code of the City of Redding, sealed proposals must be submitted to the City Clerk's 3rd floor office of the City of Redding, located at City Hall, 777 Cypress Avenue, Redding, California 96001 **prior to 3:00 P.M., Wednesday, October 31, 2018**, for furnishing the City of Redding a proposal for providing environmental services for fire and flood recovery projects to the City of Redding, per specifications and general conditions.

PROPOSALS RECEIVED AFTER THIS TIME AND DATE WILL NOT BE ACCEPTED OR CONSIDERED.

The said proposals will be opened at **3:00 P.M., on Wednesday, October 31, 2018**, in the designated City Hall Conference Room as posted in the main lobby of City Hall, 777 Cypress Avenue, Redding, California.

The bidder shall provide the original (unbound) and four (4) copies of the proposal. **One (1) set of the Fee Proposal is to be submitted in a separate, sealed envelope.** Request for Proposal package may be obtained from the Purchasing Division by calling 530-225-4135. The City will award any resulting contract in a manner consistent with the City Purchasing Ordinance.

The cut-off date and time for receiving questions regarding this bid is 5:00 p.m. PST, on Monday, October 22, 2018. All inquiries must be made in writing and may be submitted to the email address shown below.

THE CITY OF REDDING
Purchasing Division

Amber Edenburn, Senior Buyer
(530)225-4135

aedenburn@cityofredding.org

NOTE

If a potential bidder/proposer received this solicitation document through some means other than surface mail from the City of Redding (such as from the City of Redding Internet web site, or from another prospective bidder/proposer), it is the responsibility of the potential bidder/proposer to advise the assigned City of Redding Purchasing contact of its intention to submit a bid/proposal so that any addenda or other correspondence related to this solicitation will be sent to the potential bidder/proposer. When contacting the Purchasing Division, the bidder/proposer shall provide the solicitation number located on the cover page of this document. Transmittal of this information must be in writing, by U.S. Mail, fax, or e-mail. Transmittal of this information via telephone is not acceptable.

Please submit bid/proposal as directed in the RFP package. Forward to:

City of Redding
City Clerk
777 Cypress Avenue
Redding, CA 96001

Proposals must be received by the City Clerk's office **prior to 3:00 p.m. PST** on the date indicated below. Mailing envelope is to be clearly marked on the outside with the following notation:

**“Proposal for Schedule No. 5018; opening at
3:00 P.M., on Wednesday, October 31, 2018”**

Note: Signatures must be legible, indicating full first and last name.

The City of Redding
Purchasing Division

**CITY OF REDDING, CALIFORNIA
REQUEST FOR PROPOSALS
FOR ENVIRONMENTAL
SERVICES FOR FIRE AND
FLOOD RECOVERY PROJECTS
(Schedule No. 5018)**

I. INTRODUCTION

In January and February of 2017, winter storms caused flood damage to City property and infrastructure, and in July of 2018, the Carr Fire burned through the Redding area causing damage to additional City properties, facilities, and utilities. The City is preparing projects to repair the damage from these events, and is seeking an environmental consultant (team) to provide the environmental services necessary for compliance with Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Executive Order 11988 – Floodplain Management, and Executive Order 11990 – Wetlands Protection for the flood and fire recovery projects listed below.

The anticipated environmental document types have been included in this request; however, proposals should identify the document level the consultant would anticipate for each project.

1. Carter Creek Debris Removal:

This project does not involve ground disturbance.

Compliance documents needed:

- Section 106 Memorandum
- Floodplain Encroachment Memorandum

Assumptions: City staff will prepare a Section 7 and Biological Resources Memorandum, California Environmental Quality Act (CEQA) documentation, and obtain regulatory agency approvals and permits (401, 404, & 1600).

2. Buenaventura Boulevard and Sutro Mine Road Debris Removal:

This project does not involve ground disturbance.

Compliance documents needed:

- Section 106 Memorandum
- Floodplain Encroachment Memorandum

Assumptions: City staff will prepare a Section 7 and Biological Resources Memorandum, CEQA documentation, and obtain regulatory agency approvals and permits (401, 404, & 1600).

3. **Burned Area Utility Damage – Culvert Replacement (up to five {5} culverts):**

This project will involve ground disturbance and work in “waters”. The drainages are all ephemeral or intermittent and no perennial streams are included.

Compliance documents and activities needed:

- Section 106 Reports
- Floodplain Encroachment Memorandum
- Section 7 and Biological Resources Report
- Consultation with the National Marine Fisheries Service or United States Fish and Wildlife Service (Optional Task).
- Jurisdictional Delineation Reports may be required (Optional Task).
- Location Hydraulic Studies may be required (Optional Task).

Assumptions: City staff will prepare CEQA documentation and obtain regulatory agency approvals and permits (401, 404, & 1600).

4. **Buenaventura Boulevard and Keswick Dam Road – Fence Replacement:**

This project involves minor ground disturbance.

Compliance documents needed:

- Section 106 Memorandum
- Floodplain Encroachment Memorandum

Assumptions: City staff will prepare a Section 7 and Biological Resources Memorandum, CEQA documentation, and obtain regulatory agency approvals and permits (401, 404, & 1600).

5. **Carter Creek Flood Damage 2017 – Remove Low Water Crossing & Construct Pedestrian Bridge:**

This project involves ground disturbance in an anadromous fish stream. Carter Creek is a tributary to the Sacramento River (500 feet downstream from the project location). This project will be phased, with the low water crossing being removed by the end of the year and pedestrian bridge installation next summer. To allow for the crossing removal this winter, phased environmental documentation may be needed.

Compliance documents and activities needed:

- Section 106 Reports
- Floodplain Encroachment Memorandum
- Biological Assessment – Fish
- Biological Resources Report
- Jurisdictional Delineation Report
- Consultation with the National Marine Fisheries Service and/or United States Fish and Wildlife Service.
- Location Hydraulic Study (Optional Task)
- Biological Assessment – Terrestrial Species (Optional Task)

Assumptions: City staff will prepare CEQA documentation and obtain regulatory agency approvals and permits (401, 404, & 1600).

II. GENERAL

The timeframe to complete the environmental documents will be negotiated with the successful consultant; however, the City has set a target date and would like to have all environmental documents completed by December 28, 2018. Any consultant responding to the RFP must be willing to commit the necessary resources to the project within a mutually agreed upon schedule.

In order for the consultant to be considered qualified, the firm or project team must demonstrate experience in Section 7, Section 106, and National Environmental Policy Act (NEPA) compliance. Archaeological staff will also need to meet the Secretary of Interior's standards as Professionally Qualified Staff. Interested consultants are invited to submit qualifications in accordance with the requirements of this Request for Proposals (RFP). Resumes do not need to be included with the proposal; however, the successful proposer will be asked to provide staff resumes prior to contract execution.

All work shall meet City of Redding standards for quality assurance and NEPA compliance. The City's Environmental Compliance Manager will review and approve the compliance documentation.

Please be advised that the City of Redding anticipates FEMA funding for all or part of the work to be performed by the successful Proposer. To that end, the Federal Requirements set forth in the Section XI Attachments are required and cannot be altered in any way during contract negotiation.

Minority and Women Owned Business Enterprise (MBE/WBEs) Good Faith Effort Requirements

The City intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the consultant shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process. Failure to perform the "Good Faith Effort" process and submit the forms with the proposal shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract. Information regarding the required forms can be found in Section XI of this RFP.

Good Faith Effort Process

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONTRACTOR fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

- A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;

- B.** Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C.** Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D.** Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E.** Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- F.** If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 200.321.

Debarment and Lobbying

The consultant shall comply with the Debarment and Lobbying requirements and submit the required forms with the proposal. Failure to submit the forms with the proposal shall be cause for a proposal to be rejected as non-responsive and/or be considered as a material breach of the contract. Information regarding the required forms can be found in Section XI of this RFP.

CEQA

The projects listed in this RFP are statutorily exempt under CEQA Guideline 15269.

III. SCOPE OF SERVICES

The following services will be required:

Task 1: Kick-off Meeting

Conduct an in-person kick-off meeting with the City to discuss the scope of work for each project.

Task 2: Environmental Study Limit (ESL) and Area of Potential Effect (APE) Mapping:

The Consultant shall prepare ESL and APE maps for each of the projects included in the RFP. The mapping must be submitted to the City for review and approval prior to beginning the environmental studies.

Task 3: Research, Records Requests, and Database Review:

The Consultant shall conduct all necessary records requests, background research, and database reviews necessary for environmental impact evaluation and NEPA compliance for each project.

Task 4: Native American Outreach and Consultation

The Consultant shall prepare Native American outreach letters, conduct consultation, and coordinate joint field reviews on the City's behalf. Consultation efforts may include one site visit per project.

Task 5: Field Review and Surveys

The Consultant shall conduct all field reviews and resource evaluations necessary for environmental impact evaluation and NEPA compliance document preparation.

Task 6: Preparation of Environmental Compliance Documents

The Consultant shall prepare all documents in a standard and widely accepted federal compliance format. The consultant may choose document templates from agencies such as the United States Forest Service, Bureau of Land Management, Caltrans, or Bureau of Reclamation. The Consultant shall provide the templates to the City for review and approval prior to preparation of the draft environmental compliance documents.

The Consultant is required to provide two electronic copies and one unbound hardcopy of each draft compliance document for review and approval by the City. The electronic documents shall be provided in both Microsoft Word and Adobe PDF formats. The City will review the documents and provide all requested revisions to the Consultant in an expedited manner. The Consultant shall respond to, and incorporate, all comments received from the City at the draft document stage.

Final documents shall be submitted to the City in an electronic format for final review. The final document will be reviewed by the City to confirm that all requested modifications have been made. For efficiency, multiple reviews and requests for minor edits will be avoided; however, should inaccurate or inconsistent information be identified in the final document, edits will be requested. After the City has reviewed and approved the final document, the consultant shall provide two bound hardcopies to the City along with electronic copies in Microsoft Word and Adobe Acrobat format.

The consultant will be required to submit copies of all field notes, tribal correspondence, or other documentation necessary to satisfy the requirements of FEMA and California Governor's Office of Emergency Services (CalOES) environmental review staff.

Task 7: Permitting Support

The consultant shall provide permitting support by:

- Providing informative and timely responses to inquiries or requests.
- Providing electronic copies of mapping or files.
- Speaking with an agency's resource specialist (biologist or archaeologist) by telephone in order to answer a technical question or clarify information regarding the studies.

IV. QUALITY CONTROL AND COMMUNICATION,

The consultant shall have a Quality Control Plan in effect to assist quality assurance during the entire time work is in effect. The consultant has total responsibility for the accuracy and completeness of all mapping, reports, or documentation and shall meet that responsibility through the implementation of a Quality Control Plan. Consultant's Quality Control Plan shall be in effect throughout the entire Contract and, at a minimum, shall establish the process necessary to ensure that all environmental work is done in accordance with federal practice and all work meets standards.

Communication should occur regularly. The Environmental Compliance Manager can be reached by email or telephone during business hours, Monday through Friday. Should the need arise, after hours communication is acceptable and contact information will be provided to the successful consultant. In addition to the kick-off meeting, the consultant should anticipate up to four (4) one-hour conference calls to discuss the projects.

V. INVOICING AND PROGRESS REPORTS

Each of the projects, as identified in this RFP, will need to be invoiced separately each month. Each invoice should include a narrative progress report indicating the tasks that were accomplished during the billing period, the remaining project tasks, project percent complete, and an estimated date for completion of all compliance documents and activities for that project.

VI. PROPOSAL FORMAT

The proposal shall include, as a minimum, the following information in the order shown below:

1. Project Understanding

This section should outline the consultant's basic understanding of the project. It should identify key issues to be addressed during the project and any insights or innovative ideas the consultant can provide in addressing those issues.

2. Related Experience

Include all projects in-progress or completed over the last five (3) years that are comparable to this project.

3. Scope of Work

Describe the work plan that you intend to use to complete the tasks listed in the Scope of Services. Note any changes/deviations or additions to the work descriptions that may have been overlooked or that help clarify the work tasks.

4. Responsible Personnel

List the Principal-in-Charge, Project Manager, and project staff who will be

directly involved in this project. Include a concise statement of qualifications and experience of each person together with the hours that each is committed to the project. Include all anticipated sub-consultants, listing names, addresses, telephone numbers, staff personnel, and the expected hours to be committed to the project.

5. Required Forms

Proposals must include the required submittals outlined in Section XI of this RFP.

6. Consultant Fee

The consultant shall prepare an estimated fee for the contract work. Cost proposals shall be prepared in a manner that allows for segregation of costs representing the various task categories. The cost estimate shall be broken down by task, man-hours per task, different personnel classifications per man-hour (i.e., Principal, Senior, Archaeologist, Biologist, Clerical, etc.), provide salary range of each classification, a total cost per task, subcontractors fees, expenses, and a total not-to-exceed amount for the entire project. There shall be no mention of price or cost estimates in the body of the proposal. **Cost proposals must be kept separate.**

VII. ESTIMATED SCHEDULE

Release of RFP	Monday, October 15, 2018
Written Questions due by 5:00 p.m. PST	Monday, October 22, 2018
Addendum issued by (if necessary)	Wednesday, October 24, 2018
Proposals due by 3:00 p.m. PST	Wednesday, October 31, 2018
Review of proposals	November 01-02, 2018
Execute Consultant Agreement	Wednesday, November 7, 2018
Begin Environmental Services	Friday, November 9, 2018
Complete Environmental Services	Friday, December 28, 2018

The City reserves the right to alter the schedule if deemed necessary. Any change to the due date will be announced by a written addendum. Addenda, should any be issued, will be directly emailed to all known interested parties that have provided an email address. Ultimately it is the responsibility of the Proposer to affirm they have received any and all addenda. All documents are posted at the Purchasing Division website under the link for RFP 5018 at: www.cityofredding.org/PurchasingBids.

VIII. CONTACTS AND PROPOSAL SUBMISSION

Questions must be submitted in writing to both individuals indicated below, and be received by 5:00 p.m., Monday, October 22, 2018. Submit inquiries to:

Amber Kelley, Environmental Compliance Manager akelley@cityofredding.org

Amber Edenburn, Senior Buyer aedenburn@cityofredding.org

No oral interpretations will be made by the City to any firm as to the requirements of this RFP.

Emailed PDF proposals titled in Subject as “Proposal for Environmental Services for Fire and Flood Recovery Projects, Schedule 5018” will be accepted on or before 3:00 p.m. PST on Wednesday October 31, 2018 (Deadline) at the Senior Buyer’s email address indicated above. Proposals tendered after the deadline will be rejected.

Present the Cost Proposal as a separate PDF file in the same email so the Purchasing Officer can hold it back from the review panel until the appropriate time.

In addition to the email, an original unbound proposal (wet-ink signature) and four (4) copies (bound with plastic comb, or 3-ring binder) of the proposal and supporting documentation must be mailed. Proposals must be submitted in a sealed envelope or sealed container plainly labeled in the lower-left corner: “**Proposal for Environmental Services for Fire and Flood Recovery Projects, Schedule 5018**” along with one (1) Fee Proposal. The Fee Proposal is to be submitted in a separate sealed envelope with the same notation as on the outside of the container for the proposals. **There shall be no mention of price or cost estimates in the body of the proposal.**

Mailed copies of the Proposals must be post marked by the Deadline, and sent by United States Mail, UPS, Fed-Ex or similar service, must be received by the City Clerk **prior to 3:00 p.m., Wednesday, October 31, 2018.** No proposal will be accepted by oral communication, telephone, facsimile submission. Proposals may be withdrawn prior to the Deadline. The City reserves the right to postpone the date and time for opening proposals through an addendum to this RFP.

Mail or deliver proposals to:

The City of Redding
Office of the City Clerk
777 Cypress Avenue
Redding, CA 96001

The City reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFP that cannot be met must be indicated in the proposal. Proposers must respond to the entire Request for Proposals.

Submission of a proposal indicates acceptance by the Proposer of the conditions contained in this RFP.

IX. EVALUATION CRITERIA

City of Redding City Council Policy Number 1501 establishes the method of selecting a Consultant to perform the work of this project. A Review/Selection Committee made up of Environmental and Engineering personnel will evaluate the proposals based on the following items:

- Understanding of the project/scope (20 points)
- Team experience with similar types of projects (20 points)
- Qualifications of project team (15 points)
- Familiarity with State and Federal requirements (15 points)
- Project approach (10 points)
- Project schedule (10 points)
- Cost – Fair and Reasonable Rates {there is no BAFO} (10 points)

X. CONSULTANT SERVICES CONTRACT

The projects will be funded using federal grant funds from FEMA, which are administered through CalOES.

FEMA contract clauses and the certifications must be part of any contract entered into between the City of Redding and the successful proposer. The City of Redding is without authority to modify the FEMA standard contract clauses and no contract will be entered into by the City of Redding without their inclusion in the contract between the City of Redding and the successful proposer and the successful proposer's execution of the certifications required therein (see attachments).

The successful proposer shall provide the required certificates of insurance and endorsements to City Risk Management. A City of Redding Business License will also be required. A copy of the insurance provisions and requirements are set forth in Section 5 of the attached contract document.

XI. ATTACHMENTS

- Programmatic Agreement among FEMA, CalOES, and the California State Historic Preservation Officer
- Federal Provisions
- Minority and Women Owned Business Enterprise (MBE/WBEs) Good Faith Effort Forms A and B - **Required Submittal**
- MBE/WBEs Form – **Required Submittal**
- MBE/WBEs Form Instructions
- Debarment and Lobbying Forms – **Required Submittal**
- Termination Language
- CEQA Exemptions – Emergency
- RFP General Conditions
- Example Contract

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND
THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES**

WHEREAS, the mission of the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards; and

WHEREAS, FEMA makes assistance available to States, communities, Federally recognized Indian Tribes (Tribes) and other eligible entities through programs (Programs) set forth in Appendix A, pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) (codified as amended at 6 U.S.C. § 101 *et seq.*); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); the Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295 (2006) (as amended); implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR), Executive Order 13407 (2006), and such other acts, executive orders, implementing regulations, or Congressionally authorized programs as are enacted from time to time; and

WHEREAS, FEMA has determined that implementing its Programs may result in Undertakings [as defined by 16 U.S.C. § 470w and 36 CFR § 800.16(y)] that may affect properties listed in or eligible for listing in the National Register of Historic Places (National Register) pursuant to 36 CFR Part 60 (historic properties), and FEMA has consulted with the California State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No. 89-665 (1966) (codified as amended at 16 U.S.C. § 470f), and the regulations implementing Section 106 of the NHPA (Section 106) at 36 CFR Part 800; and

WHEREAS, FEMA, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that FEMA's Section 106 requirements can be more effectively and efficiently implemented and delays to the delivery of FEMA assistance minimized if a programmatic approach is used to stipulate roles and responsibilities, exempt certain Undertakings from Section 106 review, establish protocols for consultation, facilitate identification and evaluation of historic properties, and streamline the assessment and resolution of adverse effects; and

WHEREAS, FEMA has developed a Prototype Programmatic Agreement (FEMA Prototype Agreement) pursuant to 36 CFR § 800.14(b)(4) in consultation with the ACHP and NCSHPO to

serve as a basis for negotiation of a State-specific Programmatic Agreement (Agreement) with the SHPO, State Emergency Management Agency, and/or participating Tribe(s); and

WHEREAS, this Agreement conforms to the FEMA Prototype Agreement as designated by the ACHP on December 17, 2013, and therefore does not require the participation or signature of the ACHP; and

WHEREAS, in order to implement its Programs, FEMA will provide assistance to State of California or Tribes [Grantee(s)] that may provide monies and other assistance to eligible subgrantees, and as such, the California Governor's Office of Emergency Services (Cal OES) that is typically responsible for administering funds provided under these Programs, has participated in this consultation, and FEMA has invited Cal OES to execute this Agreement as an Invited Signatory; and

WHEREAS, FEMA also may directly perform its own Undertakings pursuant to this Agreement; and

WHEREAS, in anticipation or in the immediate aftermath of an event, impacted communities and the State California, and/or affected Tribes, may conduct critical preparedness, response and recovery activities to safeguard public health and safety and/or to restore vital community services and functions before, during, and or following an event. Some of these activities may become Undertakings requiring Section 106 review subject to the terms of this Agreement, and FEMA shall coordinate the appropriate review as warranted; and

WHEREAS, FEMA has determined that its Programs may result in Undertakings with the potential to affect historic properties having religious and cultural significance to Tribes, including sites that may contain human remains and/or associated cultural items; and

WHEREAS, FEMA recognizes that Tribes may have sites of religious and cultural significance on or off Tribal lands [as defined in 36 CFR § 800.16(x)], and in meeting its Federal trust responsibility, FEMA has engaged in government-to-government consultation with all Tribes in California, and all Tribes in neighboring states that have sites of religious and cultural significance within California, and pursuant to 36 CFR § 800.2(c)(2)(ii)(E) has invited participating Tribes to enter into an agreement that specifies how FEMA and Tribes will carry out Section 106 responsibilities, including the confidentiality of information; and

WHEREAS, none of these Tribes have indicated an interest in entering into a State-specific Agreement; and

WHEREAS, certain Tribes have assumed the responsibilities of the SHPO in their Tribal lands through appointment of a Tribal Historic Preservation Officer (THPO) in accordance with Section 101 of the NHPA, and FEMA shall consult with the THPO in lieu of the SHPO for Undertakings occurring on or affecting their Tribal lands; and

WHEREAS, FEMA may invite Tribes that have sites of religious and cultural significance to enter into the terms of this Agreement as invited signatories or concurring parties in accordance

with 36 CFR § 800.14(f), and nothing in this Agreement prevents a Tribe from entering into a separate Programmatic Agreement or other agreement with FEMA for administration of FEMA Programs; and

WHEREAS, the terms of this Agreement shall not apply to Undertakings on or affecting Tribal lands without prior execution of the Agreement by the affected Tribe(s); and

WHEREAS, for the review of specific Undertakings under this Agreement, FEMA may invite other agencies, organizations, and individuals to participate as consulting parties; and

NOW, THEREFORE, FEMA, Cal OES, and the SHPO (Signatories) agree that FEMA Programs in the State of California shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 and Section 110(k) responsibilities for all resulting Undertakings, and effectively integrate historic preservation compliance considerations into the delivery of FEMA assistance. FEMA will not authorize implementation of an individual Undertaking until Section 106 review is completed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with other Signatories, FEMA shall ensure that the following measures are implemented:

I. GENERAL

A. Applicability

1. For FEMA Undertakings that also are within the jurisdiction of the Federal Communications Commission (FCC) and within the scope of its Section 106 Programmatic Agreements for communication facilities, FEMA defers Section 106 review in accordance with the ACHP Program Comment of October 23, 2009. The approval of funding for the FEMA Undertaking shall be conditioned upon the compliance of the subgrantee with FCC's applicable Section 106 review, including any required consultation with Tribes. FEMA shall notify the SHPO/THPO when it applies the ACHP Program Comment to an Undertaking. FEMA remains responsible for any FEMA Undertakings it determines are outside the jurisdiction of FCC.
2. In the event of a Stafford Act major disaster or emergency declaration (Declaration), State, Tribal and local governments may lack the capability to perform or to contract for emergency work, and instead request that the work be accomplished by a Federal agency. Through a mission assignment (MA), FEMA may direct appropriate Federal agencies to perform the work. This Agreement shall apply to such Federal assistance undertaken by or funded by FEMA pursuant to Titles IV and V of the Stafford Act and 44 CFR Part 206.
3. FEMA may utilize this Agreement to fulfill its Section 106 responsibilities and those of other Federal agencies that designate FEMA as the lead Federal agency pursuant to

36 CFR § 800.2(a)(2) with appropriate notification to the other Signatories and the ACHP regarding Undertakings that fall within the scope of this Agreement. When FEMA is not designated as the lead Federal agency, all Federal agencies, including FEMA, remain individually responsible for their compliance with Section 106.

4. If another Federal program or Federal agency has concluded Section 106 consultation review and approved an Undertaking within the past 2 years, FEMA has no further requirement for Section 106 review regarding that Undertaking provided that FEMA:
 - a. adopts the findings and determinations of the previous agency;
 - b. confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of its Undertaking are the same as that of the Undertaking reviewed by the previous agency, and;
 - c. determines that the previous agency complied with Section 106 appropriately.

FEMA shall document these findings in its project file in order to confirm that the requirements of Section 106 have been satisfied. Should FEMA, in consultation with SHPO and participating Tribe(s), determine that the previous Section 106 review was insufficient or involved interagency disagreements about eligibility, effect, and/or treatment measures, FEMA shall conduct additional Section 106 consultation in accordance with the terms of this Agreement.

5. With the written concurrence of the Signatories, other Federal agencies providing financial assistance for the same type of activities covered under the terms of this Agreement as outlined in Appendix A may satisfy their Section 106 responsibilities for such activities by accepting and complying in writing with the terms of this Agreement.
 - a. Other Federal Agencies may include States and units of local government who have assumed environmental responsibilities of the U.S. Department of Housing and Urban Development and, acting as the Responsible Entity pursuant to 24 CFR Part 58, are responsible for environmental review, decision-making and action.
 - b. In such situations, the other Federal Agency shall notify the Signatories in writing of its intent to use this Agreement to achieve compliance with its Section 106 requirements, and consult with the Signatories regarding its Section 106 compliance responsibilities. Resumes of staff who meet the Secretary of the Interior's Professional Qualification Standard(s) and will review Second Tier projects in accordance with Appendix B of this Agreement shall be provided to FEMA and the SHPO/THPO.
6. FEMA has determined that the following types of activities have limited or no potential to affect historic properties and FEMA has no further Section 106 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1):

- a. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including funding for owner-occupied home repair and replacement, content replacement, personal property, transportation and healthcare expenses, is exempt from the provisions of Section 106. For ground disturbing activities, and construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement housing), 206.117(b)(4) (permanent housing construction), 206.117(c)(1)(vi) (repair or replacement of privately-owned access routes), and repair of multi-family housing units, FEMA shall conduct Section 106 review.
- b. Administrative actions such as personnel actions, travel, procurement of services, supplies (including vehicles and equipment) for the support of day-to-day and emergency operational activities, and the temporary storage of goods provided storage occurs within existing facilities or on previously disturbed soils.
- c. Granting of variances, and actions to enforce Federal, State, or local codes, standards or regulations.
- d. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
- e. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
- f. Assistance provided for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
- g. Assistance provided for training, management and administration, exercises, and mobile/portable equipment purchases; with the exception of potential ground-disturbing activities and modification of existing structures.
- h. Community Disaster Loans for funding to perform governmental functions for any eligible jurisdiction in a designated disaster area that has suffered a substantial loss of tax and other revenue.
- i. Funding the administrative action of acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.
- j. Funding the administrative action of acquiring properties in acquisition projects, including the real estate transaction.
- k. Labor, equipment and materials used to provide security in the Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.

- l. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
 - m. Unemployment assistance.
 - n. Distribution of food coupons.
 - o. Legal services.
 - p. Crisis counseling.
7. Any FEMA Programs authorized by the United States Congress in the future may be included in this Agreement in accordance with Stipulation IV.A., Amendments. Any change in the FEMA name, Programs, or organizational structure shall not affect this Agreement.

B. Roles and Responsibilities of the Signatories

1. FEMA:

- a. FEMA shall use Federal, Tribal, State, subgrantee, or contractor staff whose qualifications meet the Secretary of the Interior's (Secretary's) Professional Qualifications Standards (Professional Qualifications) set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (Qualified), in completing identification and evaluation of historic properties and in making determinations of effects. FEMA shall review any National Register eligibility determination and make its own findings of effect resulting from the performance of these activities prior to submitting such determinations to the SHPO and participating Tribe(s).
- i. FEMA acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and cultural significance to them. Tribal leaders, and as appropriate, their representatives, shall decide who meets qualifications/standards as defined by their Tribes for review of Undertakings affecting properties with religious and cultural significance to them.
- b. FEMA alone shall conduct all Section 106 consultation with Tribe(s). In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize the Grantee(s), or a subgrantee through the Grantee(s), to initiate the Section 106 process with the SHPO and other consulting parties, assist in identifying other consulting parties with a demonstrated interest in the Undertaking, and prepare any necessary analyses and documentation, but FEMA shall remain responsible for determinations of National Register eligibility and findings of effect recommended by the authorized party. FEMA shall follow the process set forth in

Stipulation I.B.1.a., FEMA Roles and Responsibilities, and notify the SHPO in writing when a Grantee or subgrantee has been authorized to initiate consultation on FEMA's behalf.

- c. Prior to authorizing the release of funds for individual Undertakings requiring grant conditions pursuant to this Agreement, FEMA shall inform the Grantee(s) of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to the subgrantee. FEMA shall work in partnership with the Grantee(s) to provide subgrantees with guidance on in-kind repair pursuant to *The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 (Standards)*, 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties.
- d. FEMA shall provide the other Signatories and the ACHP with an annual report for the previous calendar year by March 1 of each year that this Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement, statistics on Undertakings reviewed, and recommend any actions or revisions to be considered, including updates to the appendices.
- e. FEMA shall confer annually and as necessary with the other Signatories within 60 days after issuance of the annual report, to review the report and/or discuss issues and concerns in greater detail. This review shall occur in person or by telephone as determined by FEMA.
- f. FEMA shall notify the SHPO and affected Tribe(s), as soon as practicable, following a Declaration to provide specific points of contact and other pertinent information about the Declaration.
- g. FEMA may convene an initial scoping meeting with the Signatories and other interested parties as soon as practicable after each Declaration to address Declaration-specific issues and procedures.
- h. FEMA shall ensure that all documentation resulting from Undertakings reviewed pursuant to this Agreement is consistent with applicable SHPO and Tribal guidelines and the confidentiality provisions of 16 U.S.C. § 470w-3 and 36 CFR § 800.11(c).

2. SHPO:

- a. The SHPO shall review FEMA's determination of the Areas of Potential Effects (APE), National Register eligibility determinations, and FEMA's effect findings, and respond within timeframes required by this Agreement.
- b. The SHPO maintains and administers the California Historical Resources Information System (CHRIS), which is an inventory of known historical resources in the State of California. This inventory is archived and made

available through regional Information Centers (IC's) located throughout the state.

- i. Upon request, the appropriate IC(s) shall provide FEMA with all requested inventory records, unless otherwise precluded by confidentiality restrictions, such as tribal objections. In the case of an Emergency Undertaking (Stipulation II.B.), records shall be provided on an expedited basis at no charge. For all other Undertakings, the records shall be provided to FEMA or Cal OES (on behalf of FEMA) in accordance with normal CHRIS operating procedures. Alternatively, FEMA or Cal OES may enter into access agreements with specific IC's that specify terms of records provision.
 - ii. If, as a result of a disaster, an IC(s) is closed or rendered inoperable, FEMA or Cal OES may request records for the affected area(s) directly from the SHPO. The SHPO will make every effort to provide all available records on a timely basis, although the records may be less extensive and complete than those retained by the IC(s).
- c. The SHPO shall identify staff or consultants to assist FEMA staff with their Section 106 responsibilities, and identify, in coordination with FEMA, those activities within the Section 106 review process that the SHPO may perform for specific Undertakings as agreed in writing with FEMA.
 - d. As requested, SHPO staff shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation with the SHPO has occurred, FEMA shall provide a written summary via e-mail or regular mail to the SHPO, including any decisions that were reached.
 - e. The SHPO may delegate some or all of its responsibilities under this Agreement to one or more Liaisons to serve as a dedicated point of contact for consultation with FEMA. The SHPO shall confer with FEMA about the selection of any Liaisons, the scope of responsibilities delegated and related implementing procedures. The SHPO shall formally document these decisions for concurrence by FEMA. Liaisons are not required to be members of the SHPO staff.
 - f. The SHPO shall participate in an initial scoping meeting for a Declaration.
 - g. The SHPO may assist local jurisdictions and/or the Grantee(s) in the State of California with advance planning efforts to consider historic properties in the context of homeland security considerations, including disaster preparedness, response, recovery, and mitigation programs for which FEMA funding may be requested.

- h. The SHPO shall coordinate with FEMA, to identify consulting parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.
- i. The SHPO shall participate in annual reviews convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1.e.

3. Grantee(s):

- a. The Grantee(s) shall ensure that their subgrantees understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement.
- b. The Grantee(s) shall participate in an initial scoping meeting for a Declaration.
- c. The Grantee(s) shall ensure that their subgrantees understand that failure to comply with any project-specific conditions that have been placed on their grants could jeopardize FEMA funding.
- d. The Grantee(s) shall notify FEMA as soon as possible of any proposed change to the approved scope of work. The Grantee(s) shall direct their subgrantee not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
- e. The Grantee(s) shall ensure that its subgrantees are made aware that in the event of an unexpected discovery involving an Undertaking that has affected a previously unidentified historic property or human remains, or affected a known historic property in an unanticipated manner, the subgrantee will comply with Stipulation III.B., Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects.
- f. The Grantee(s) shall ensure that in its subgrant agreements, any scope of work involving ground disturbance, and resultant contracts to execute said work, provide for the protection of and notification protocols for unexpected discoveries or unexpected effects to historic properties and human remains.
- g. If a Signatory Tribe assumes the role of Grantee for projects on Tribal lands, the Tribe shall assume the same responsibilities as outlined in Stipulation I.B.3. of this Agreement, Roles and Responsibilities of the Signatories.

C. Tribal Consultation

- 1. For FEMA Undertakings on Tribal lands or affecting properties of religious and cultural significance, and where no tribe-specific consultation agreements or protocols are in place, FEMA shall consult with affected Tribe(s) in accordance with 36 CFR Part 800. In determining who the affected Tribe(s) may be, FEMA will first

establish that it is a type of Undertaking with potential to affect historic properties with religious and cultural significance and may consult with the SHPO, Tribe(s), or any State Tribal Agency, and access the National Park Service (NPS) Native American Consultation Database or other tools to identify geographic tribal interests.

2. To the extent permitted by Section 304 of the NHPA, Section 9(a) of the Archeological Resources Protection Act (ARPA) (16 U.S.C. § 470aa – 470mm), and any other applicable laws, FEMA shall ensure it withholds information protected by such laws from public disclosure.
3. FEMA shall invite affected Tribe(s) to participate in the initial scoping meeting within their geographic area of interest for each Declaration.

D. Public Participation

1. FEMA recognizes that the views of the public are essential to informed decision making throughout the Section 106 consultation process. FEMA shall notify the public of proposed Undertakings in a manner that reflects the nature, complexity, significance of historic properties likely affected by the Undertaking, the likely public interest given FEMA's specific involvement, and any confidentiality concerns of Tribe(s), private individuals and businesses.
2. FEMA may consult with the Grantee(s), subgrantee, SHPO, participating Tribe(s), and other consulting parties to determine if there are individuals or organizations with a demonstrated interest in historic properties that should be included as a consulting party for the Undertaking in accordance with 36 CFR § 800.2(c)(5). If such parties are identified or identify themselves to FEMA, FEMA shall provide them with information regarding the Undertaking and its effects on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).
3. In accordance with the outreach strategy developed for an Undertaking in consultation with the SHPO and participating Tribe(s), for involving the public, FEMA shall identify the appropriate stages for seeking public input during the Section 106 consultation process. FEMA shall consider all views provided by the public regarding an Undertaking.
4. FEMA may also provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental Justice, provided such notices specifically reference Section 106 as a basis for public involvement.
5. Should a member of the public object in writing to implementation of the Agreement's terms, FEMA will notify the other Signatories in writing and take the

objection into consideration. FEMA shall consult with the objecting party and, if that party so requests, the other Signatories, for not more than 30 days. In reaching its decision regarding the objection, FEMA shall take into consideration all comments from these parties. Within 15 days after closure of this consultation period, FEMA shall provide the other parties with its final decision in writing.

E. Timeframes and Communications

1. All time designations shall be in calendar days unless otherwise stipulated. If any Signatory does not object to FEMA's finding or determination related to an Undertaking within an agreed-upon timeframe, FEMA may proceed to the next step in the consultation process as described in Stipulation II., Project Review.
2. Due to the varied nature of Undertakings, the individual response times to FEMA's requests for comment/concurrence will vary. These response times are contingent upon FEMA ensuring that its findings and determinations are made by Qualified staff and supported by documentation as required by 36 CFR § 800.11(d) and 36 CFR § 800.11(e), and consistent with FEMA guidance.
 - a. For Emergency Undertakings as outlined in Stipulation II.B., Expedited Review of Emergency Undertakings, the SHPO shall respond to any FEMA request for comments within three (3) days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.
 - b. For Undertakings associated with the Individual Assistance (IA) and Public Assistance (PA) programs, the response time for each request for concurrence shall be a maximum of fifteen (15) days, or in accordance with temporary timelines established by FEMA on a Declaration-by-Declaration basis.
 - c. For the Hazard Mitigation Grant Program (HMGP) and all non-disaster programs, the response time for each request for concurrence shall be a maximum of thirty (30) days.
3. The consulting parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this Agreement by e-mail. As appropriate, if it will facilitate completion of reviews, hard copies may be requested.

II. PROJECT REVIEW

A. Programmatic Allowances

1. If FEMA determines an Undertaking conforms to one or more of the Programmatic Allowances (Allowances) in Appendix B of this Agreement, FEMA shall complete the Section 106 review process by documenting this determination in the project file, without SHPO review or notification.

2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify the SHPO, participating Tribe(s), and the NPS NHL Program Manager of the appropriate NPS Regional Office that the Undertaking conforms to one or more Allowances. FEMA shall provide information about the proposed scope of work for the Undertaking and the Allowance(s) enabling FEMA's determination.
3. If FEMA determines any portion of an Undertaking's scope of work does not conform to one or more Allowances listed in Appendix B, FEMA shall conduct expedited or standard Section 106 review, as appropriate, for the entire Undertaking in accordance with Stipulation II.B., Expedited Review for Emergency Undertakings, or Stipulation II.C., Standard Project Review.
4. Allowances may be revised and new Allowances may be added to this Agreement in accordance with Stipulation IV.A.3., Amendments.

B. Expedited Review for Emergency Undertakings

1. Determine Expedited Review

- a. As part of the Declaration process, FEMA shall define the time interval during which the disaster-causing incident occurs [the incident period, as defined in 44 CFR § 206.32(f)]. FEMA may approve direct Federal assistance and/or funding for emergency work [as defined in 44 CFR § 206.201(b)] that occurs during the incident period, including work already completed, in response to an immediate threat to human health and safety or property. Pursuant to 36 CFR § 800.12(d), FEMA may conduct expedited review of emergency Undertakings for 30 days from the beginning of the incident period.
- b. Should FEMA determine that it is necessary to extend the expedited review period for emergency Undertakings beyond the initial 30 days, FEMA shall, in 30-day increments, as needed, notify in writing the ACHP, SHPO, Cal OES, and participating Tribe(s).

2. Conduct Expedited Reviews

- a. If the emergency Undertaking is an immediate rescue and salvage operation conducted in response to an event to preserve life and property, FEMA has no Section 106 consultation responsibilities in accordance with 36 CFR § 800.12(d); or
- b. If the emergency Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA shall complete the Section 106 review process pursuant to Stipulation II.A.1., Programmatic Allowances.
- c. If FEMA determines that the emergency Undertaking would adversely affect a historic property during this expedited review period:

- i. To the extent practicable, FEMA will propose treatment measures (avoidance, minimization, and mitigation) that would resolve adverse effects during implementation, and request the comments of the SHPO, subgrantee, and participating Tribe(s) within 3 days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period.
- ii. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA shall clarify that an “expedited review” is being requested for the Undertaking.
- iii. FEMA shall take into account any timely comments provided by the SHPO, subgrantee, and/or participating Tribe(s) in making a decision on how to proceed.
- iv. Should the SHPO, subgrantee, and/or participating Tribe(s) not comment within 3 days, FEMA shall complete Section 106 consultation for the Undertaking based on the available information.
- v. FEMA shall notify the SHPO, subgrantee, and participating Tribe(s) of the final decision, indicating how any comments received were considered in reaching that decision.

C. **Standard Project Review:** For Undertakings not exempt from further Section 106 review, FEMA shall ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some or all of these steps during consultation in accordance with 36 CFR § 800.3(g).

1. **Consulting Parties:** FEMA shall consider all written requests of individuals and organizations to participate as consulting parties, and consult with the SHPO and participating Tribe(s) to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 process. FEMA may invite others to participate as consulting parties as the Section 106 consultation proceeds. FEMA shall invite any individual or organization that will assume a specific role or responsibility outlined in a Memorandum of Agreement or Programmatic Agreement to participate as an invited signatory to the Agreement.

2. **Area of Potential Effects:**

- a. For standing structures not adjacent to or located within the boundaries of a National Register listed or eligible district, Qualified staff may define the APE, as defined at 36 CFR § 800.16(d), as the individual structure when the proposed Undertaking is limited to its repair or rehabilitation [as defined in 36 CFR § 68.2(b)].
- b. For all other Undertakings, Qualified staff shall determine the APE in consultation with the SHPO and participating Tribe(s). FEMA may consider

information provided by other parties, such as local governments and the public, when establishing the APE.

3. Identification and Evaluation: Qualified staff shall determine, in consultation with the SHPO and participating Tribe(s) if the APE contains historic properties, including properties of religious and cultural significance. This may include the review of documentation provided by the Grantee(s) or subgrantee in coordination with the SHPO.
 - a. Level of Effort: FEMA shall make a reasonable and good faith effort to identify historic properties in accordance with 36 CFR § 800.4(b)(1). FEMA may consult with the SHPO to determine the level of effort and methodology necessary to identify and evaluate a variety of historic property types. For properties of religious and cultural significance to affected Tribe(s), FEMA shall consult with the affected Tribe(s) to determine geographical areas containing them that may be affected by an Undertaking and determine the necessary level of effort to identify and evaluate or avoid any such historic properties.
 - b. National Historic Landmarks: When FEMA identifies an Undertaking with the potential to affect an NHL, FEMA shall contact the NPS NHL Program Manager of the appropriate NPS Regional Office (Pacific West Region, 333 Bush Street, Suite 500, San Francisco, CA 94104-2828) in addition to the SHPO, participating Tribe(s), and other consulting parties. The purpose of this notification is to ensure early coordination for the Undertaking, which FEMA later may determine adversely affects the NHL as outlined in Stipulation II.C.6.
 - c. Determinations of Eligibility: FEMA shall review or determine National Register eligibility based on identification and evaluation efforts, and consult with the SHPO, participating Tribe(s), and other consulting parties regarding these determinations. Should the SHPO, participating Tribe(s), or another consulting party disagree with the determination of eligibility, FEMA shall:
 - i. Elect to consult further with the objecting party until the objection is resolved;
 - ii. Treat the property as eligible for the National Register; or
 - iii. Obtain a determination of eligibility from the Keeper of the National Register (Keeper) in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).
4. Findings of No Historic Properties Affected: FEMA shall make a finding of “no historic properties affected” under the following circumstances:
 - a. If no historic properties are present in the APE;

- b. The Undertaking is designed to avoid effects to historic properties, including National Register listed or eligible properties of religious and cultural significance to participating Tribe(s); or
 - c. The Undertaking does not affect the character-defining features of a historic property.
 - d. FEMA shall notify the SHPO, participating Tribes(s), and any other consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d). Unless the SHPO or participating Tribe(s) objects to the finding within the applicable timeframe outlined in Stipulation I.E., Timeframes and Communications, the Section 106 review of the Undertaking will have concluded.
 - e. If the SHPO or participating Tribe(s) objects to a finding of “no historic properties affected,” FEMA shall consult with the objecting party to resolve the disagreement.
 - i. If the objection is resolved, FEMA either may proceed with the Undertaking in accordance with the resolution or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.C.5., Application of the Criteria of Adverse Effect, below.
 - ii. If FEMA is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review FEMA’s finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C). FEMA shall consider the ACHP’s recommendation in making its final determination. If FEMA’s final determination is to reaffirm its “no historic properties affected” finding, the Section 106 review of the Undertaking will have concluded. Otherwise, FEMA will proceed to Stipulation II.C.5., below.
5. Application of the Criteria of Adverse Effect: If FEMA finds an Undertaking may affect historic properties in the APE, including those of religious and cultural significance to affected Tribe(s), FEMA shall apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and the public concerning effects in accordance with 36 CFR § 800.5(a).
- a. If FEMA determines that an Undertaking does not meet the adverse effect criteria, FEMA shall propose a finding of “no adverse effect” in accordance with 36 CFR § 800.5(b).
 - i. FEMA shall notify the SHPO, participating Tribe(s), and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR §800.11(e).

- ii. Unless a consulting party objects within the applicable timeframe outlined in Stipulation I.E., Timeframes and Communications, FEMA will proceed with its “no adverse effect” determination and conclude the Section 106 review.
- iii. If a consulting party objects to a finding of “no adverse effect,” FEMA will consult with the objecting party to resolve the disagreement.
 - 1) If the objection is resolved, FEMA shall proceed with the Undertaking in accordance with the resolution, or;
 - 2) If the objection cannot be resolved, FEMA shall request that the ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i)-(ii), and submit the required supporting documentation. FEMA shall consider the ACHP’s comments in making its final determination.
- b. If FEMA finds the Undertaking may adversely affect historic properties, FEMA shall request through the Grantee(s) that the subgrantee revise the scope of work to substantially conform to the *Standards* for standing structures, or avoid or minimize adverse effects for National Register listed or eligible archaeological properties.
 - i. If the subgrantee modifies the scope of work to avoid the adverse effect, FEMA shall notify the SHPO, participating Tribe(s), and all other consulting parties, and provide supporting documentation, including the necessary conditions. Unless a consulting party makes a timely objection in accordance with the applicable timeframe outlined in Stipulation I.E., Timeframes and Communications, FEMA shall proceed with its “no adverse effect” determination, including any conditions, and conclude the Section 106 review.
 - ii. If an Undertaking is not modified to avoid the adverse effect(s), FEMA shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.C.6., Resolution of Adverse Effects.
- 6. Resolution of Adverse Effects: If FEMA determines that an Undertaking may adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with the SHPO, Grantee(s), subgrantee, participating Tribe(s), the ACHP, if participating, and other consulting parties, by one of the following methods depending upon the severity of the adverse effect(s) as well as the determination of the historic property’s significance on a local, state or national level. When FEMA determines an Undertaking will adversely affect an NHL, FEMA shall notify and invite the Secretary and the ACHP to participate in consultation in accordance with 36 CFR § 800.10. When the ACHP participates in consultation related to an NHL, the ACHP shall report the outcome of the consultation to the Secretary and the FEMA Administrator.

- a. **Abbreviated Consultation Process:** FEMA will propose in writing to the consulting parties to resolve the adverse effects of the Undertaking through the application of one or more Treatment Measures outlined in Appendix C as negotiated with the SHPO, participating Tribes, and other consulting parties. The use of these Treatment Measures shall not require the execution of a Memorandum of Agreement (MOA) or Programmatic Agreement.
- i. In consultation with the SHPO, participating Tribe(s), and other consulting parties, FEMA shall propose in writing the implementation of a specific Treatment Measure, or combination of Treatment Measures, with the intent of expediting the resolution of adverse effects, and provide documentation as required by 36 CFR § 800.11(e), subject to the confidentiality provisions of 36 CFR § 800.11(c). Unless a consulting party or the ACHP objects within 15 days of receipt of FEMA's proposal, FEMA shall proceed with the implementation of the Treatment Measure(s) and will conclude the Section 106 review.
 - ii. If any of the consulting parties or the ACHP objects within the 15-day review-and-comment period to the resolution of adverse effects through the application of the Abbreviated Consultation Process, FEMA shall resolve the adverse effect(s) using procedures outlined below in Stipulation II.C.6.b., MOA, or Stipulation II.C.6.c., Programmatic Agreement.
 - iii. Because funding and implementation details of Treatment Measures for specific Undertakings may vary by program, FEMA shall provide written notice to the consulting parties within sixty (60) days of the completion of the Treatment Measure(s). This written notice will serve as confirmation that the Treatment Measure(s) for a specific Undertaking have been implemented. FEMA also shall include information pertaining to the completion of Treatment Measures in the annual report pursuant to Stipulation I.B.1.d., FEMA Roles and Responsibilities.
- b. **Memorandum of Agreement:** FEMA shall provide the ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(1) if it has not already provided such under the Abbreviated Consultation Process of this Agreement, if a consulting party or the ACHP objects in accordance with Stipulation II.C.6.a.ii., or if FEMA in consultation with the SHPO, participating Tribe(s), and other consulting parties has determined that an MOA would be more appropriate to resolve the adverse effect(s). In consultation with the SHPO, participating Tribe(s), and other consulting parties, including the ACHP (if participating), FEMA shall develop an MOA in accordance with 36 CFR § 800.6(c) to agree upon treatment measures to avoid, minimize, and/or mitigate adverse effects on historic properties. The MOA may also include treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional treatment measures.

- c. Programmatic Agreement: Should the execution of an MOA be inappropriate given the similar nature of effects on historic properties, the inability to determine effects prior to approval of an Undertaking, or where other circumstances warrant, FEMA shall consult with the SHPO, participating Tribe(s), the ACHP, if participating, and any other consulting parties to develop a Programmatic Agreement in accordance with 36 CFR § 800.14(b), and identify programmatic conditions or treatment measures to govern the resolution of potential or anticipated adverse effects from certain complex project situations for an Undertaking or for multiple but similar Undertakings by a single subgrantee.
7. Objections: Should any Signatory or consulting party object within the timeframes established by this Agreement to any plans, specifications, or actions taken pursuant to resolving an adverse effect, FEMA shall consult further with the objecting party to seek resolution. If FEMA determines the objection cannot be resolved, FEMA shall address the objection in accordance with Stipulation IV.B., Dispute Resolution.

III. OTHER CONSIDERATIONS

- A. Changes to an Approved Scope of Work: The Grantee(s) shall notify FEMA and shall require a subgrantee to notify it immediately when a subgrantee proposes changes to an approved scope of work for an Undertaking.
 1. If FEMA determines the change meets a Programmatic Allowance or has no effect on the property, FEMA shall approve the change.
 2. If the change can be modified to meet an Allowance, or conform to any applicable Secretary's *Standards*, FEMA shall conclude its Section 106 review responsibilities.
 3. If FEMA determines that the change does not meet an Allowance, FEMA shall initiate consultation pursuant to Stipulation II.C., Standard Project Review.
- B. Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects:
 1. Upon notification by a subgrantee of an unexpected discovery, or if it appears that an Undertaking has affected a previously unidentified property or affected a known historic property in an unanticipated manner, in accordance with Stipulation I.B.3.e., Grantee(s) Roles and Responsibilities, the Grantee(s) shall immediately notify FEMA and require the subgrantee to:
 - a. Stop construction activities in the vicinity of the discovery.
 - b. Take all reasonable measures to avoid or minimize harm to the property until FEMA has completed consultation with the SHPO, participating Tribe(s), and any other consulting parties. Upon notification by the Grantee of a discovery, FEMA shall immediately notify the SHPO, participating Tribe(s), and other consulting parties that may have an interest in the discovery, previously unidentified property

or unexpected effects, and consult to evaluate the discovery for National Register eligibility and/or the effects of the Undertaking on historic properties.

- c. If human remains are discovered, ensure that there shall be no further excavation of disturbance of any nearby area that may also contain human remains, and notify the county coroner/medical examiner immediately in accordance with Section 7050.5 of the California Health and Safety Code. Discoveries of human remains on Federal or Tribal lands shall be subject to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001-3013, 18 U.S.C. § 1170) and the Archeological Resources Protection Act (ARPA) (16 U.S.C. 470aa-470mm; Public Law 96-95 as amended), as applicable.
- d. Assist FEMA in completing the following actions, as required:
 - i. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties in accordance with the consultation process outlined in Stipulation II., Project Review, to develop a mutually-agreeable action plan with timeframes to identify the discovery or previously unidentified property, take into account the effects of the Undertaking, resolve adverse effects if necessary, and ensure compliance with applicable Federal, State, and local statutes.
 - ii. FEMA shall coordinate with the Grantee(s) and the subgrantee regarding any needed modification to the scope of work for the Undertaking necessary to implement recommendations of the consultation and facilitate proceeding with the Undertaking.
 - iii. In cases where discovered human remains are determined to be American Indian, FEMA shall consult with the appropriate Tribal representatives and the SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects (2007)* and any State-specific policies that may be in force.

C. Curation

- 1. In cases where archaeological survey and testing are conducted on private land, any recovered collections remain the property of the land owner. In such instances, FEMA and the Grantee(s), in coordination with the SHPO and affected Tribe(s), shall encourage land owners to donate the collection(s) to an appropriate public or Tribal entity. In cases where the property owner wishes to transfer ownership of the collection(s) to a public or Tribal entity, and in the case of artifacts recovered from public lands, FEMA and the Grantee(s) shall ensure that recovered artifacts and related documentation are curated in a suitable repository as agreed to by FEMA, the SHPO, and affected Tribe(s), following applicable State or Tribal guidelines.

2. When an Undertaking will adversely affect an archaeological resource listed in or eligible for the National Register only under Criterion D, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties to prepare a research design (data recovery plan), including a specific plan for curation. This plan will incorporate any relevant curation provisions contained in the *California Guidelines for the Curation of Archeological Collections (May 7, 1993)*, ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* published in the Federal Register [64 Federal Register 27085-27087 (May 18, 1999)], or other provisions agreed to by the consulting parties. No excavation should be initiated before FEMA acceptance and approval of the curation plan.
 - a. As stipulated in the curation plan, artifacts, as well as field and laboratory records sufficient to document the collection, shall be curated at a facility, preferably in-state, that meets the standards of, and in accordance with the provisions of 36 CFR Part 79, *Curation of Federally Owned and Administered Archaeological Collections*, and applicable State or Tribal requirements.

D. Review of Undertakings Initiated Before Initiation or Completion of Section 106 Review

1. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a subgrantee who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has intentionally significantly and adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed an adverse effect to occur. However, if after consultation with the SHPO, Grantee, appropriate Tribes(s), and ACHP, FEMA determines that extraordinary circumstances justify granting assistance despite the adverse effect created or permitted by the subgrantee, FEMA shall complete consultation for the Undertaking pursuant to the terms of this Agreement.
2. FEMA shall specifically advise the Grantee(s) and shall require that the Grantee(s) advise its subgrantees in writing that they may jeopardize Federal funding if work is performed without all required local, State, and Federal licenses, permits, and/or approvals, including the completion of the Section 106 process. FEMA also shall document this requirement in its Record of Environmental Consideration, as applicable, as well as all project approval documents specifying the project scope and limits, and containing all conditions and caveats.
3. In circumstances where FEMA determines a subgrantee has initiated an Undertaking without willful intent to avoid the requirements of this Agreement or Section 106 of NHPA, FEMA shall proceed as follows:
 - a. Determine if the Undertaking is of a type for which FEMA has no further Section 106 responsibilities, namely:
 - i. An Undertaking listed in Stipulation I.A.8.; or

- ii. An immediate rescue and salvage operation in accordance with 36 CFR § 800.12(d); or
 - iii. A Programmatic Allowance as described under Stipulation II.A.
- b. In any such cases listed in Stipulation III.D.3.a., above, FEMA shall document this determination in the project files, and consider the Undertaking Section 106 compliant.
 - c. If FEMA determines the Undertaking would have required Section 106 review, FEMA shall coordinate with the SHPO and appropriate Tribe(s) to determine if consultation is feasible.
 - i. If after coordination with the SHPO and appropriate Tribes, FEMA determines that consultation is feasible, FEMA shall review the Undertaking in accordance with Stipulation II.C., Standard Project Review.
 - ii. If after coordination with the SHPO and appropriate Tribe(s), FEMA determines that review is infeasible, FEMA shall document the outcome of the Section 106 review process, and the applicable FEMA Program shall take the outcome into account before making a decision whether to fund the Undertaking. FEMA shall provide written notification of its funding decision to the SHPO, the Grantee, appropriate Tribe(s), and the ACHP.
4. FEMA shall ensure that all Undertakings considered for after-the-fact review in accordance with this Stipulation are included in the annual report.

IV. IMPLEMENTATION OF AGREEMENT

A. Amendments

- 1. If any Signatory determines that an amendment to the terms of this Agreement must be made, the Signatories shall consult for no more than 30 days to seek amendment of the Agreement.
- 2. An amendment to this Agreement, exclusive of the Appendices, shall be effective only when it has been signed by all the Signatories. An amendment shall be effective for Undertakings occurring on or affecting historic properties on Tribal lands only when the Tribe has signed the Agreement and its amendment.
- 3. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances), and Appendix C (Treatment Measures) may be amended at the request of FEMA or another Signatory in the following manner:

- a. FEMA, on its own behalf or on behalf of another Signatory, shall notify the Signatories of the intent to modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all Signatory parties.
- b. If no other Signatory objects in writing within 30 days of receipt of FEMA's proposed modification, FEMA shall date and sign the amended Appendix and provide a copy of the amended Appendix to the other Signatories. Such an amendment shall go into effect on the date FEMA transmits the amendment to the other Signatories.

B. Dispute Resolution

1. Should any Signatory object in writing to the terms of this Agreement, FEMA shall consult with the objecting party for not more than 30 days to resolve the objection.
2. If the objection is resolved within 30 days, FEMA shall proceed in accordance with the resolution.
3. If FEMA determines within 30 days that the objection cannot be resolved, FEMA shall forward to the ACHP all documentation relevant to the objection, including FEMA's proposed resolution. Within 30 days of receipt, the ACHP will:
 - a. Concur in FEMA's proposed resolution; or
 - b. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the objection; or
 - c. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so.
4. FEMA shall take into account any ACHP recommendations or comments, and any comments from the other Signatories, in reaching a final decision regarding the objection. FEMA shall provide in writing to the ACHP and Signatories a summary of its final decision before authorizing any disputed action to proceed. The Signatories shall continue to implement all other terms of this Agreement that are not subject to objection.
5. Should the ACHP not respond within 30 days, FEMA may assume the ACHP has no comment and proceed with its proposed resolution to the objection after providing the ACHP and Signatories a written summary of its final decision.

C. Severability and Termination

1. In the event any provision of this Agreement is deemed by a Federal court to be contrary to, or in violation of, any applicable existing law or regulation of the United

States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the Agreement shall remain in effect.

2. FEMA, the SHPO, Cal OES, or the ACHP may terminate this Agreement by providing 30 days written notice to the other Signatories, provided that the Signatories consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, FEMA shall comply with Section 106 through other applicable means pursuant to 36 CFR Part 800. Upon such determination, FEMA shall provide all other Signatories and the ACHP with written notice of the termination of this Agreement.
3. A participating Tribe may notify the other Signatories that it is fully withdrawing from participation in the Agreement. Following such a withdrawal, FEMA shall review Undertakings that may affect historic properties of religious and cultural significance to the Tribe, and Undertakings that occur on the Tribal lands of the relevant Tribe, in accordance with 36 CFR §§ 800.3 through 800.7, 36 CFR § 800.8(c), or an applicable alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a Tribe does not terminate the Agreement. At any time that this Agreement remains in effect, a Tribe that has withdrawn from the Agreement may notify FEMA, the Grantee(s), and the SHPO in writing that it has rescinded its notice withdrawing from participation in the Agreement.
4. This Agreement may be terminated by the implementation of a subsequent Agreement, pursuant to 36 CFR § 800.14(b), that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

D. Duration and Extension

1. This Agreement shall remain in effect from the date of execution for a period not to exceed 5 years unless otherwise extended pursuant to Stipulation IV.D.2. below, or terminated pursuant to Stipulation IV.C.2. or IV.C.4., Severability and Termination. The Agreement shall remain in effect for Declarations made prior to expiration of the Agreement in order to minimize delays in delivery of FEMA assistance.
2. The Signatories may collectively agree to extend this Agreement to cover additional calendar years, or portions thereof, through an amendment per Stipulation IV.A., provided that the original Agreement has not expired.

E. Execution and Implementation

1. This Agreement may be executed in counterparts, with a separate page for each Signatory, and shall become effective on the date of the final signature of FEMA and the SHPO.
2. The Agreement shall go into effect regarding Undertakings occurring, or affecting historic properties, on Tribal lands when the relevant Tribe has signed the Agreement.

3. FEMA shall ensure that each Signatory is provided with a complete copy of the Agreement, including an original set of signatures.
4. Execution and implementation of this Agreement evidence that FEMA has afforded the ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of its referenced Programs.

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SIGNATORY PARTIES

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: Karen Armes
Karen Armes, Acting Regional Administrator, Region IX

Date: 10/30/2014

By: Alessandro Amaglio
Alessandro Amaglio, Environmental Officer, Region IX

Date: 10/30/14

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Carol Roland-Nawi
Carol Roland-Nawi, State Historic Preservation Officer

Date: 10-30-14

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

By: Mark Ghilarducci
Mark Ghilarducci, Director

Date: 10/28/14

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Appendix A

FEMA Program Summaries

This Appendix may be amended in accordance with Stipulation IV.A., Amendments.

Disaster Response and Recovery Programs

The following Programs are authorized under Titles IV and V of the Stafford Act.

Public Assistance Program (PA)

This program assists States, Tribal and local governments, and certain types of private nonprofit organizations to quickly respond to and recover from major disasters or emergencies declared by the President. Grants are provided for debris removal (Category A), emergency protective measures (Category B), and the repair, replacement, or restoration of disaster-damaged, publicly-owned and certain private non-profit facilities (Categories C-G).

Individual Assistance Programs (IA)

These programs help to ensure that individuals and families that have been affected by disasters have access to the full range of FEMA assistance including: crisis counseling (Section 416), disaster legal services (Section 415), essential assistance (Section 403), emergency sheltering assistance (Section 403), transportation (Section 419), funeral services, minor home repairs (Section 408), and temporary housing assistance (Section 408). It should be noted that other Federal agencies provide disaster assistance programs, services, and activities to individuals as well, including the U.S. Small Business Administration, U.S. Department of Agriculture, and U.S. Department of Labor, but these other assistance programs are not subject to the terms of this Agreement.

Fire Management Assistance Grant Program (FMAG)

The FMAG is available to State, Tribal, and local governments for the mitigation, management, and control of fires on publicly or privately owned lands. Eligible costs may include expenses for field camps, equipment use, repair and replacement, materials and supplies, and mobilization and demobilization activities.

Hazard Mitigation Grant Program (HMGP)

The HMGP provides grants to States, Territories, Tribes, and local governments to implement long-term hazard mitigation measures after a Declaration. Activities may include buyouts, retrofits, relocations, elevations, and minor flood control projects.

Non-Disaster Programs

Pre-Disaster Mitigation Program (PDM)

The PDM program provides competitive grants to States, Territories, Tribes, and local governments for hazard mitigation planning and the implementation of mitigation projects prior

to a disaster event. Activities may include planning, buyouts, retrofits, relocations, elevations, minor flood control projects, and vegetative fuels reduction.

Flood Mitigation Assistance Program (FMA)

The FMA program provides grants to States, Territories, Tribal entities, and communities to assist in their efforts to reduce or eliminate the risk of repetitive flood damage to buildings and structures insurable under the National Flood Insurance Program (NFIP).

Assistance to Firefighters Grant Program

The AFG program provides funding for purchase of equipment and retrofit or construction of fire stations to improve first responder capabilities.

Homeland Security Grant Program (HSGP)

The HSGP plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal (NPG) of a secure and resilient Nation. HSGP is comprised of three interconnected grant programs: (1) the State Homeland Security Program (SHSP), (2) the Urban Areas Security Initiative (UASI), and (3) the Operation Stonegarden (OPSG). Together, these grant programs and other future projects that may be included under the HSGP fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, management, and administration.

State Homeland Security Program (SHSP)

This core assistance program provides funds to build capabilities at the state and local levels and to implement the goals and objectives included in state homeland security strategies and initiatives in the State Preparedness Report.

Urban Areas Security Initiative (UASI) Program

The Urban Areas Security Initiative program focuses on enhancing regional preparedness in major metropolitan areas. The UASI program directly supports the National Priority on expanding regional collaboration in the National Preparedness Guidelines and is intended to assist participating jurisdictions in developing integrated regional systems for prevention, protection, response and recovery.

Metropolitan Medical Response System (MMRS) Program

The MMRS program supports the integration of emergency management, health, and medical systems into a coordinated response to mass casualty incidents caused by any hazard. Successful MMRS grantees reduce the consequences of a mass casualty incident during the initial period of a response by having augmented existing local operational response systems before the incident occurs.

Citizen Corps Program (CCP)

The Citizen Corps mission is to bring community and government leaders together to coordinate community involvement in emergency preparedness, planning, mitigation, response and recovery.

State Homeland Security Program Tribal (SHSP Tribal)

To provide supplemental funding to directly eligible Tribes to help strengthen the nation against risks associated with potential terrorist attacks. Pursuant to the 9/11 Act, "a directly eligible tribe applying for a grant under section 2004 [SHSP] shall designate an individual to serve as a tribal liaison with [DHS] and other Federal, state, local, and regional government officials concerning preventing, preparing for, protecting against and responding to acts of terrorism."

Nonprofit Security Grant Program (NSGP)

NSGP provides funding support for target-hardening activities to nonprofit organizations that are at high risk of a terrorist attack and are located within one of the specific UASI-eligible urban areas.

Operation Stonegarden (OPSG)

The intent of OPSG is to enhance cooperation and coordination among local, State and Federal law enforcement agencies in a joint mission to secure the United States borders along routes of ingress from international borders to include travel corridors in States bordering Mexico and Canada, as well as States and territories with international water borders.

Transit Security Grant Program (TSGP)

The TSGP provides grant funding to the nation's key high-threat urban areas to enhance security measures for their critical transit infrastructure including bus, ferry and rail systems.

Freight Rail Security Grant Program (FRSGP)

The FRSGP funds security training for frontline employees, the completion of vulnerability assessments, the development of security plans within the freight rail industry, and GPS tracking systems for railroad cars transporting toxic inhalation materials.

Intercity Passenger Rail (Amtrak)

The purpose of the Intercity Passenger Rail (IPR) is to create a sustainable, risk-based effort to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters and other emergencies within the Amtrak rail system.

Port Security Grant Program (PSGP)

The PSGP provides grant funding to port areas for the protection of critical port infrastructure from terrorism. PSGP funds are primarily intended to assist ports in enhancing maritime domain awareness, enhancing risk management capabilities to prevent, detect, respond to and recover from attacks involving improvised explosive devices (IEDs), weapons of mass destruction (WMDs) and other non-conventional weapons, as well as training, exercises and Transportation Worker Identification Credential (TWIC) implementation.

Intercity Bus Security Grant Program (IBSGP)

The IBSGP provides funding to create a sustainable program for the protection of intercity bus systems and the traveling public from terrorism. The program seeks to assist operators of fixed-route intercity and charter bus services in obtaining the resources required to support security measures such as enhanced planning, facility security upgrades, and vehicle and driver protection.

Trucking Security Program (TSP)

TSP funding will be awarded to eligible applicants to implement security improvement measures and policies deemed valuable by DHS as indicated in the *Security Action Items* publication of June 26, 2008. These items are primarily focused on the purchase and installation or enhancement of equipment and systems related to tractor and trailer tracking systems. Additionally, the TSP will provide funding to develop a system for DHS to monitor, collect and analyze tracking information; and develop plans to improve the effectiveness of transportation and distribution of supplies and commodities during catastrophic events.

Buffer Zone Protection Program (BZPP)

The BZPP provides funding to increase the preparedness capabilities of jurisdictions responsible for the safety and security of communities surrounding high-priority pre-designated Tier 1 and Tier 2 critical infrastructure and key resource (CIKR) assets, including chemical facilities, financial institutions, nuclear and electric power plants, dams, stadiums and other high-risk/high-consequence facilities, through allowable planning and equipment acquisition.

Emergency Management Performance Grants (EMPG)

The purpose of the EMPG program is to assist State and local governments in enhancing and sustaining all-hazards emergency management capabilities.

Interoperable Emergency Communications Grant Program (IECGP)

IECGP provides governance, planning, training and exercise and equipment funding to States, territories, and local and Tribal governments to carry out initiatives to improve interoperable emergency communications, including communications in collective response to natural disasters, acts of terrorism and other man-made disasters. According to the legislation that created IECGP, all proposed activities must be integral to interoperable emergency communications and must be aligned with the goals, objectives, and initiatives identified in the grantee's approved statewide Communication Interoperability Plans (SCIP). IECGP will also advance DHS near-term priorities that are deemed critical to improving interoperable emergency communications and are consistent with goals and objectives of the National Emergency Communications Plan.

Emergency Operations Center (EOC) Grant Program

The EOC grant program is intended to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure, and interoperable Emergency Operations Centers (EOCs) with a focus on addressing identified deficiencies and needs. This program provides funding for construction or renovation of a State, local, or tribal governments' principal EOC. Fully capable emergency operations facilities at the State and local levels are an essential element of a comprehensive national emergency management system and are necessary to ensure continuity of operations and continuity of government in major disasters caused by any hazard.

Driver's License Security Grant Program

The purpose of the Driver's License Security Grant Program is to prevent terrorism, reduce fraud, and improve the reliability and accuracy of personal identification documents that States and territories issue.

Integrated Public Alert and Warning System (IPAWS)

The Integrated Public Alert and Warning System (IPAWS) was established by Executive Order 13407 in 2006. In the event of a national emergency, the President may use IPAWS to send a message to the American people quickly and simultaneously through multiple communications pathways. FEMA has identified several radio transmission sites across the nation with significantly powerful signals for this purpose, and FEMA is responsible for upgrading, maintaining, and managing the agency installed and owned auxiliary fuel systems at each of these radio transmission sites.

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Appendix B

Programmatic Allowances

This list of Programmatic Allowances enumerates FEMA funded activities that based on FEMA experience have no or minimal effect on historic properties if implemented as specified in this Appendix, and will not require review by the SHPO and participating Tribe(s).

The Programmatic Allowances consist of two tiers – First Tier and Second Tier. Staff may apply First Tier Allowances whether or not they meet professional historic preservation qualification standards, while only staff meeting the applicable Secretary of Interior’s Professional Qualifications Standards in accordance with Stipulation I.B.1.a. of this Agreement may apply Second Tier Allowances.

First Tier Allowances are those that will have no or minimal effect on historic properties, while Second Tier Allowances require the use of professionally qualified staff to ensure that the proposed scope of work will result in no adverse effect on identified historic properties within the project’s Area of Potential Effect.

When referenced in the Programmatic Allowances, “in-kind” shall mean that the result of the work shall match all physical and visual aspects of existing materials, including design, form, color, finish, texture, workmanship, and to the greatest extent possible, the materials. “In-kind” mortar will also match the strength and joint tooling of existing mortar, as appropriate. The “in-kind” repair provided for in both First and Second Tier Allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures.

When referenced in the Allowances, “previously disturbed soils” shall refer to soils that are not likely to possess intact and distinct soil horizons, and have the reduced likelihood of possessing historic properties within their original depositional contexts in the area and to the depth to be excavated.

I. First Tier Allowances

A. GROUND DISTURBING ACTIVITIES AND SITE MODIFICATION, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

1. Debris and Snow Removal

- a. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights-of-way and public areas, as well as the transport and disposal of such waste to existing licensed waste facilities or landfills. This includes the temporary establishment and expansion of non-hazardous debris

staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g., parking lots, roads, athletic courts) but not the creation of new or temporary access roads.

- b. Removal of debris from private property provided that buildings are not affected, ground disturbance is minimal and in-ground elements, such as driveways, walkways or swimming pools are left in place.
- c. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
- d. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.
- e. Dewatering flooded developed areas by pumping.

2. Temporary Structures and Housing

- a. Installation and removal of temporary structures for use as school classrooms, offices, or temporary shelters for essential public service agencies, such as police, fire, rescue and medical care, as well as temporary housing for disaster personnel and survivors at the following types of locations:
 - i. Single units on private residential sites when all utilities are installed above ground or tie into pre-existing utility lines.
 - ii. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups.
 - iii. Paved areas, such as parking lots and paved areas at such facilities as conference centers, shopping malls, airports, industrial port facilities, business parks, and military bases when all utilities are installed above ground or tie into pre-existing utility lines.
 - iv. Sites that have been previously prepared for planned construction, such as land being developed for public housing, office buildings, city parks, ball fields, schools, etc. when all utilities are installed above-ground or tie into pre-existing utility lines.
 - v. Areas previously filled to depths of at least six feet so that subsurface utilities can be installed.

3. Recreation and Landscaping
 - a. Installation of temporary removable barriers.
 - b. In-kind repairs, installation, or replacement, and minor upgrades/mitigation of bollards and associated protective barriers when in previously disturbed areas.

B. BUILDINGS AND STRUCTURES

1. Repair or retrofit of buildings less than 45 years old.
2. Removal of water by physical or mechanical means.
3. Installation of exterior security features and early warning devices on existing light poles or other permanent utilities.

C. TRANSPORTATION FACILITIES, when proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils, including any staging areas.

1. Roads and Roadways
 - a. Paving and repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders medians, clearances, curbs, and side slopes. This Allowance does not include improvement to existing roadways and appurtenances.
 - b. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.
 - c. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip.
 - d. Re-establishment, armoring and/or upgrading of existing roadway ditches.
 - e. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, or traffic surveillance systems.
 - f. Installation and removal of temporary traffic control devices, including pre-formed concrete barriers and fencings.
 - g. In-kind repair or replacement of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is permitted.

2. Airports

- a. In-kind repair or replacement of existing runway surfaces and features (e.g., asphalt, concrete, gravel, and dirt) and associated air transportation safety components and systems (e.g., lighting bars, beacons, signage and weather sensors).

3. Rail Systems

- a. In-kind repair or replacement of safety components.
- b. In-kind repair or replacement of existing track system and passenger loading areas.

D. FEES AND SERVICES

1. Reimbursement of a subgrantee's insurance deductible, not to exceed \$2,500.

II. Second Tier Allowances

A. GROUND DISTURBING ACTIVITIES AND SITE WORK, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

1. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems

- a. In-kind repair, replacement, and reinforcement of footings, foundations, retaining walls, slopes, and slope stabilization systems (e.g., gabion baskets, crib walls, soldier pile and lag walls) if related ground disturbing activities are within the boundary of previously disturbed soils.
- b. Installation of perimeter drainage (e.g., French drains) when performed in previously disturbed soils.

2. Recreation and Landscaping

- a. In-kind repairs or replacement, and minor upgrades to recreational facilities and features (e.g., playgrounds, campgrounds, fire pits, dump stations and utility hook-ups, swimming pools, athletic fields and signage, batting cages, basketball courts, swing sets, pathways, simple wooden/wire stream crossings).
- b. In-kind repair, replacement, and minor upgrades to landscaping elements (e.g., fencing, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, steps).

3. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers
 - a. In-kind repair and replacement and minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.
4. Cemeteries
 - a. Removal of woody debris such as branches and limbs, from cemeteries, provided that heavy equipment and other machinery are not operated or staged on areas potentially containing human remains.

B. BUILDINGS AND STRUCTURES

1. Interior Work: Floors, Walls, Stairs, Ceilings and Trim
 - a. In-kind repair and replacement of floors, walls, stairs, ceilings, and/or trim. The Allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster.
 - b. Interior cleaning of surfaces using a weak solution of household bleach and water, mold remediation, or mold removal. The Allowance applies to interior finishes, including plaster and wallboard, provided the cleaning is restricted to damaged areas and does not affect adjacent materials.
 - c. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.
2. Building Contents
 - a. Repair or replacement of building contents including furniture, movable partitions, computers, cabinetry, supplies, and equipment, and any other moveable items which are not character-defining features of a historic property.
3. Utilities and Mechanical, Electrical, and Security Systems
 - a. In-kind repair or replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning), electrical, and plumbing systems. This Allowance does not provide for the installation of new exposed ductwork.
 - b. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not visible from the street.
 - c. Installation or replacement of interior fire detection, fire suppression, or security alarm systems. The Allowance does not apply to surface-mounted wiring,

conduits, piping, etc., unless previously existing, provided that installation of the system hardware does not damage or cause the removal of character-defining architectural features and can be easily removed in the future.

- d. Installation of communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems, provided that installation of the system hardware does not damage or cause the removal of character-defining architectural features and can be easily removed in the future.
- e. Installation of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), provided the device does not damage or cause the removal of character-defining architectural features and can be removed in the future without impacts to significant architectural features.

4. Windows and Doors

- a. In-kind repair of damaged or severely deteriorated windows and window frames, shutters, storm shutters, doors and door frames, and associated hardware, where profiles, elevations, details and materials match those of the originals.
- b. In-kind replacement of window panes. Clear plate, double, laminated or triple insulating glazing can be used, provided it does not result in altering the existing window material, tint, form, muntin profiles, or number of divided lights. This Allowance does not apply to the replacement of intact decorative glass.
- c. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non-character-defining spaces with metal blast resistant doors and frames.
- d. Installation of security bars over windows on rear elevations.

5. Exterior Walls, Cornices, Porches, and Foundations

- a. In-kind repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding and chemical cleaning.
- b. In-kind repair of walls, porches, foundations, columns, cornices, siding, balustrades, stairs, dormers, brackets, trim, and their ancillary components, or in-kind replacement of severely deteriorated or missing or lost features, as long as the replacement pieces match the original in detail and material. Any ground disturbance will be limited to previously disturbed soils.
- c. In-kind repair or replacement of signs or awnings.
- d. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage.

- e. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view.
 - f. In-kind repair of concrete and masonry walls, columns, parapets, chimneys, or cornices, or limited in-kind replacement of damaged components including comparable brick, and mortar that matches the color, strength, content, rake, and joint width.
 - g. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or reversible in the future.
 - h. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in-kind, including mortar that matches the color, content, strength, rake, and joint width where occurring.
 - i. Repairs to and in-kind replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size, reflectivity, materials, and visual patterns are unaltered.
6. Roofing
- a. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character-defining features.
 - b. In-kind repair, replacement, or strengthening of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.
 - c. Repairs to flat roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.
7. Weatherproofing and Insulation
- a. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
 - b. In-kind repair or replacement of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered.
8. Structural Retrofits
- a. The installation of the following retrofits/upgrades, provided that such upgrades are not visible on the exterior: attic bracing, cross bracing on pier-and-post foundations; fasteners; collar ties; gussets; tie downs; strapping and anchoring of

mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut-off valves.

b. Replacement, repair or installation of lightning rods.

9. Americans with Disabilities Act (ADA) Compliance

a. Installation of grab bars and other such minor interior modifications.

10. Safe Rooms

a. Installation of individual safe rooms within the property limits of a residence where the installation would occur within the existing building or structure or in previously disturbed soils.

11. Elevation, Demolition, and Reconstruction

a. Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than 45 years of age so long as the proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils including any staging area, and the buildings or structures are not located within or adjacent to a National Register listed or eligible historic district.

C. TRANSPORTATION FACILITIES, when proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

1. Roads and Roadways

a. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This Allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches.

b. In kind repair to historic paving materials for roads and walkways.

c. In-kind repair or replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.

- d. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.
- e. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

2. Bridges

- a. Installation of a temporary (Bailey-type) bridge over an existing structure or at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.
- b. In-kind repair or replacement of bridges and bridge components (e.g. abutments, wing walls, piers, decks, and fenders) in previously disturbed soils.

D. UTILITIES, COMMUNICATIONS SYSTEMS AND TOWERS, when proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

1. General

- a. In-kind repair or replacement, or minor upgrading, small scale realignment, and elevation of utilities and associated features and structures within previously disturbed soils of rights-of-way or utility corridors.
- b. Installation of new utilities and associated features within existing rights-of-way.
- c. Directional boring of new/replacement service line and related appurtenances involving boring or silt trenches within previously disturbed soils of rights-of-way or utility corridors.
- d. In-kind repair or replacement, or minor upgrade of water towers provided activities take place within previously disturbed soils. Ground-level facilities may be added or expanded in previously disturbed areas. This Allowance does not apply to masonry water towers.

2. Generators and Utilities

- a. In-kind repair or replacement, or minor upgrades, elevation, and/or installation of generators, HVAC systems, and similar equipment provided activities occur within previously disturbed soils and any roof-mounted equipment is not visible from the ground level.

3. Communication Equipment/Systems and Towers

- a. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure right-of-way.
- b. The collocation of communication and security equipment on existing towers and buildings/structures less than 45 year in age, provided that the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
- c. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
- d. Installation of new temporary (not to exceed 12 months) communications towers and antenna structures provided that the work does not require modification of buildings/structures 45 years or older and occurs within previously disturbed soils.
- e. Installation of new communication towers, less than 200 feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures 45 years or older, occurs within previously disturbed soil, and is not within 1,000 feet of the boundaries of a historic property.

E. WATER RESOURCE MANAGEMENT AND CONTROLS, when proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

1. Canal Systems

- a. In-kind repairs or replacement to canal systems and associated elements.

2. Breakwaters, Seawalls, Revetments, and Berms

- a. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils.

3. Dams, Levees, and Floodwalls

- a. In-kind repair of dams, levees, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.

4. Fish Hatcheries

- a. In-kind repair or replacement of fish hatcheries and fish ladders.

5. Waste-Water Treatment Lagoon Systems

- a. In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon systems.

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Appendix C

Treatment Measures

When avoidance or minimization of adverse effects is not appropriate, the following Treatment Measures are suggested for the resolution of adverse effects:

If Undertakings may or will result in adverse effects, FEMA, the Grantee(s), subgrantee, SHPO, and participating Tribes(s) may develop a treatment measure plan that includes one or more of the following Treatment Measures, depending on the nature of historic properties affected and the severity of adverse effects. This Appendix may be amended in accordance with Stipulation IV.A.3. of this Agreement, Amendments.

A. Recordation

1. Digital Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a digital photography package prepared by staff or contractors meeting the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The digital photography package will meet the standards cited in the NPS's *National Register of Historic Places Photographic Policy* March 2010 or subsequent revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).
- a. The digital photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
- b. The digital photography package shall include printed color copies of the digital photographs (on appropriate paper, per the NPS *Photographic Policy*), a CD/DVD of the digital photographs, a completed state architectural inventory form, and a written site history of the historic property.
- c. The designated responsible party shall submit the digital photography package to the SHPO and participating Tribe(s) for review and approval. Once approved by the SHPO and participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.

2. 35mm Black and White Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a 35 mm black and white film photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
 - a. The 35 mm black and white film photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
 - b. The 35 mm black and white film photography package shall include one (1) full set of 35mm black and white film photographs printed on acid free paper, the corresponding 35mm film negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
 - c. The designated responsible party shall submit the 35 mm black and white film photography package to the SHPO and/or participating Tribe(s) for review and approval. Once approved by the SHPO and/or participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.
3. Large Format Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a large format photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
 - a. The large format photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
 - b. The large format film photography package shall include one (1) full set of 4 x 5 or 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5

x 7-inch negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.

- c. The designated responsible party shall submit the large format film photography package to the SHPO and/or participating Tribe(s) for review and approval. Once approved by the SHPO and/or participating Tribe(s), the designated responsible party shall submit copies of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.

B. Public Interpretation

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to design an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites, workshops and other similar mechanisms to educate the public on historic properties within the local community, state, or region. Once an interpretive plan has been agreed to by the parties, the SHPO and/or participating Tribes, the designated responsible party shall continue to consult throughout implementation of the plan until all agreed-upon actions have been completed by the designated responsible party.

C. Historical Context Statements and Narratives

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and participating Tribe(s) to determine the topic and framework of a historic context statement or narrative that the designated responsible party shall be responsible for completing. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the statewide preservation plan. Once the topic of the historic context statement or narrative has been agreed to, the designated responsible party shall continue to coordinate with the SHPO and participating Tribe(s) through the drafting of the document and delivery of a final product. The designated responsible party shall use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

D. Oral History Documentation

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to identify oral history documentation needs and agree upon a topic and list of interview candidates. Once the parameters of the oral history project have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribe(s) through the data collection, drafting of the document, and delivery of a final product. The designated responsible party shall use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

E. Historic Property Inventory

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to establish the appropriate level of effort to accomplish a historic property inventory. Efforts may be directed toward the resurvey of previously-designated historic properties and/or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. Once the boundaries of the survey area have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribe(s) through the data collection process. The designated responsible party shall use SHPO and/or participating Tribe(s) standards for the survey of historic properties and SHPO and/or participating Tribe(s) forms as appropriate. The designated responsible party shall prepare a draft inventory report, according to SHPO and/or participating Tribe(s) templates and guidelines, and work with the SHPO and/or participating Tribes until a final property inventory is approved. The designated responsible party shall use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

F. National Register and National Historic Landmark Nominations

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribes to identify the individual properties that would benefit from a completed National Register or National Historic Landmark nomination form. Once the parties have agreed to a property, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribes through the drafting of the nomination form. The SHPO and/or participating Tribe(s) shall provide adequate guidance to the designated responsible party during the preparation of the nomination form, and shall formally submit the final nomination to the Keeper for inclusion in the National Register. The designated responsible party shall use staff or contractors that meet the Professional Qualifications for the appropriate discipline.

G. Geo-References of Historic Maps and Aerial Photographs

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to identify the historic maps and/or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribes through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to the SHPO and/or participating Tribe(s) for review. The final deliverable produced by the designated responsible party shall include a paper copy of each scanned image, a geo-referenced copy of each scanned image, and the metadata relating to both the original creation of the paper maps and the digitization process.

H. Archaeological Sites: Archaeological Treatment Plan

1. In accordance with Stipulation II.C.6.a. of this Agreement, potential adverse effects to an archaeological property may be resolved through alternative mitigation measures to avoid or minimize adverse effects, or data recovery to recover important information that would have been otherwise lost as a result of an undertaking. FEMA staff or contractors that meet the Professional Qualifications for the appropriate discipline shall determine applicability of an archaeological treatment plan (ATP), and as applicable, the appropriate level of documentation.
 - a. The ATP will provide detailed descriptions of protection measures for archaeological resources and resources of importance to Tribes or Tribal organizations because of cultural affinity. The ATP could include, but is not limited to the establishment of environmentally sensitive areas (ESAs), use of preconstruction archaeological excavation, preservation-in-place, avoidance, minimization, monitoring during construction where appropriate, procedures to be followed when unanticipated discoveries are encountered [see Stipulation III.B.], processes for revaluation and data recovery of discoveries, responsibilities and coordination with Tribes and Tribal organizations, NAGPRA compliance [Stipulation III.B.1.c.], and curation of recovered materials [Stipulation III.C.].
 - b. The ATP will address historic properties adversely affected and set forth means to avoid, protect, or develop treatment measures to minimize the Undertaking's effects where FEMA, the SHPO, participating Tribe(s), and other consulting parties determine that adverse effects cannot be avoided. The ATP will conform to the principles of the ACHP's *Treatment of Archaeological Properties: A Handbook Parts I and II*, the Secretary of the Interior's *Guidelines for Archeology and Historic Preservation* (Federal Register, Vol. 48, September 29, 1983, pp. 44716-44742) and appropriate SHPO Guidelines. FEMA will take into consideration the concerns of the consulting parties in determining the measures to be implemented.
 - c. Each ATP will include, but not be limited to:
 - i. FEMA's intent to recover a reasonable sample of the intact archaeological deposits from National Register eligible archaeological sites that the agency determines, through the process set out in Stipulation III.B.1.c. of this Agreement, may be adversely affected by the implementation of the Undertaking;
 - ii. Specify the research issues/questions to be addressed through the recovery of data and explain how data from the historic property will address those research issues/questions;
 - iii. Specify methods to be used in fieldwork and analysis, and explain how these methods are relevant to the research issues/questions;

- iv. Indicate how recovered materials and records will be curated, taking into account the expressed wishes of the participating Tribes;
- v. Include a schedule for providing the participating Tribes with periodic updates on implementation of the data recovery plan;
- vi. If applicable, include the curation agreement in accordance with applicable laws and regulations;
- vii. Specify the manner in which human remains and grave-associated artifacts recovered during data recovery will be treated according to applicable laws and regulations, taking into account the expressed wishes of participating Tribes; and
- viii. Clarify the public benefit that will be achieved from the ATP.

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Exhibit A

FEDERAL PROVISIONS

This Exhibit is hereby incorporated into the (**Consulting and Professional Services Contract OR Public Works Contract**) (“Agreement”) between the Parties. If any ambiguity, inconsistency, or conflict exists or arises between the provisions set forth in the main body of the Agreement and this Exhibit, the provisions of this Exhibit shall control. Failure to comply with any of the provisions set forth in this Exhibit is a material breach of the Agreement.

SECTION 1. DEFINITIONS.

- A. **“Contractor”** shall have the same meaning as “Consultant” in the Agreement.
- B. **“Government”** means the United States of America and any executive department or agency thereof.
- C. **“FEMA”** means the Federal Emergency Management Agency.
- D. **“Third Party Subcontract”** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

SECTION 2. REMEDIES.

- A. Contractor shall pay to the City of Redding the replacement cost of any equipment or repair cost of any facilities or equipment provided by the City of Redding for Contractor's use in performance of services that are lost or damaged by Contractor or Contractor's officers, employees, agents or subcontractors.
- B. The measure of damages for breach of contract shall be governed by California Civil Code section 3300 et seq. The measure of damages is that amount which will compensate the Party aggrieved for the detriment proximately caused thereby, or which, in the ordinary course of business would be likely to result therefrom. Notwithstanding the preceding and pursuant to California Civil Code section 3358, the measure of damages shall not exceed that which the party would have received if the contract had been fully performed on both sides.
- C. Neither Party will be liable for breach of contract damages that the breaching party could not reasonably have foreseen upon entry into this Agreement.
- D. In addition to the remedies set forth in this section, the City of Redding shall be entitled to its costs to procure any services which Contractor has failed to perform or performed in a manner which is less than the standard of care and skill generally accepted in Contractor's industry.

- E. In the case of a contract for public works of improvement, the remedies set forth in California Civil Code section 3320 shall also be applicable.

SECTION 3. TERMINATION

- A. Contractor is advised that the City may terminate this Agreement for any breach of the Agreement. Contractor's failure to perform or observe any term, covenant, or condition of this Agreement shall constitute a default under the Agreement. All provisions of the Agreement are agreed between the Parties to be material.
 - 1. Termination due to breach of contract is set forth in Section Greenbook Section 6-4, Termination of the Contract for Default, of the Agreement.
- B. Contractor is advised that the City may terminate this Agreement without cause or for its convenience.
 - 1. Termination due to the convenience of the City is set forth in Greenbook Section 6-5, Termination of Contract for Convenience, of the Agreement.

SECTION 4. FEDERAL CONTRACT REQUIREMENTS

- A. Contractor hereby acknowledges that FEMA financial assistance will be used to fund the Agreement only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.
- B. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives, as they may be amended or promulgated from time to time, during the term of this Agreement, including, but not limited to, those requirements of 2 CFR 200.317 through 200.326 as more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is incorporated herein by reference. Contractor's failure to so comply shall constitute a material breach of this contract.
- C. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- D. Whether or not expressly set forth herein, all contractual provisions required by FEMA are hereby incorporated herein by this reference. In the event of any conflict between any provision of this Agreement or any FEMA term, condition, or requirement, the stricter standard shall apply. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause City to be in violation of any FEMA term, condition, or requirement.

- E. The provisions set forth herein include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act that would cause City to be in violation of the FEMA terms and conditions. Further, Contractor shall not fail to perform any act or refuse to comply with any request by the City which, in its sole discretion, City determines is necessary to remedy any breach or anticipated breach of FEMA terms and conditions.

SECTION 5. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City, FEMA, the Comptroller General of the United States, and the State of California or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. 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.
- C. The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain the same until the City, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D. 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.
- E. The requirements set for in this Section shall be considered in addition to, and not in lieu of, any right set forth in the Agreement regarding access to records and record retention.

SECTION 6. DEBARMENT AND SUSPENSION

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. By signature of this Agreement, Contractor represents, certifies, and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.
1. As a condition precedent to the Agreement, Contractor shall execute and deliver to City the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion attached herein.
- C. Contractor is hereby advised that it may check the debarment status of any contractor by means of access to the System for Award Management ("SAM") at www.sam.gov.
- D. 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. Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and the Certification set forth below, Contractor is the "prospective lower tier participant."
- E. The Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- F. This certification is a material representation of fact relied upon by City. 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 herein, the State of California, the City, and the Federal Government may pursue available

remedies, whether administrative, legal or equitable, including but not limited to suspension and/or debarment.

- G. 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 Contractor, bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SECTION 7. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 8. EQUAL OPPORTUNITY COMPLIANCE

During the performance of this Agreement, Contractor agrees as follows:

- A. Contractor agrees to 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 C.F.R. Part 60). 41 C.F.R. 60-1.4 is hereby incorporated by reference.
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for

employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Contractor will 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.
4. 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.
5. 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.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (A)(1) through (A)(7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of

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

SECTION 9. CONTRACT WORK HOURS AND SAFETY STANDARDS

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanics receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. Withholding for unpaid wages and liquidated damages. The City shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (C) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any

subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (C) of this section.

SECTION 10. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

- A. 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.
- B. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- C. The Contractor agrees to report each violation of the Clean Water Act and Federal Water Pollution Control Act to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
- D. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

SECTION 11. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
 - 1. The copyright in any work developed with the assistance of funds provided under this Agreement;
 - 2. Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.
- B. The Contractor agrees to include paragraph (A), above, in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 12. ENERGY CONSERVATION REQUIREMENTS

- A. The 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 USC 6201).

- B. The Contractor agrees to include paragraph (A), above, in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 13. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this Agreement, 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 time frame providing for compliance with the Agreement performance schedule;
 - 2. Meeting contract performance requirements; or
 - 3. At a reasonable price.

SECTION 14. DHS SEAL, LOGO, AND FLAGS

Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logo(s), crest(s), or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

SECTION 15. PROGRAM FRAUD, FALSE OR FRAUDULENT ACTIONS

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

SECTION 16. MBE/WBE REQUIREMENTS

- A. The City intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the Contractor shall make every effort to procure Minority and Women's Business Enterprises (collectively, "DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit all documentation, which in City's sole discretion, it deems necessary to confirm Contractor's good faith efforts shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

- B. Prime contractor responsibilities. All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported to the City.

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- C. Good faith effort process. Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a contractor fails to take the steps outlined below it shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.
1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
 2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
 5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- D. If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 200.321.

SECTION 17. BYRD ANTI-LOBBYING

- A. It is a condition precedent to this Agreement that, for the award of \$100,000, by the Federal government, that Contractor execute the attached certification relating to anti-lobbying.
- B. Contractor shall not use or pay any funds received under this Agreement to influence or attempt 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 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.

- C. Contractor agrees to the provisions of the Certification Regarding Lobbying, attached hereto and incorporated herein.
- D. Contractor agrees to include paragraphs (B), above, in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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**MBE/WBEs
Work Task Made Available
Form C**

Bid Item No.	Description of Work or Portion of Work Made Available

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**Delivery Schedules Established
Form D**

**Agencies Contacted to Provide Assistance in Contracting with MBE/WBEs
Form E**

Name of Agency	Date Contacted
Small Business Administration http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm	
Minority Business Development Agency-Department of Commerce https://www.mbda.gov/	

Additional Data to Support Good Faith Efforts with Attachments

Please attach any additional data to support demonstration of "Good Faith Efforts."

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**Prime Contractor/Consultant/Recipient
Minority - and Women-Owned Business Enterprises (MBE/WBEs)
To Be Executed By Bidder and Submitted with Bid**

Contractor/Consultant Name:	Contract No.
Project Description:	Project Location
Prime Contractor/Consultant Information	
Name & Address:	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Amount of Contract: \$
Federal Employer Tax ID #:	
Subcontractor/Supplier/Subconsultant Information	
Subcontractor/Joint Venture <input type="checkbox"/> Supplier/Service Broker <input type="checkbox"/> Subconsultant <input type="checkbox"/> Amount of Contract: \$ Work to be Performed:	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Name, Address & Phone
Subcontractor/Joint Venture <input type="checkbox"/> Supplier/Service Broker <input type="checkbox"/> Subconsultant <input type="checkbox"/> Amount of Contract: \$ Work to be Performed:	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Name, Address & Phone
Subcontractor/Joint Venture <input type="checkbox"/> Supplier/Service Broker <input type="checkbox"/> Subconsultant <input type="checkbox"/> Amount of Contract: \$ Work to be Performed:	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Name, Address & Phone
Total MBE Amount: \$	Total WBE Amount \$
Signature of Person Completing Form:	Date:
Title:	Phone:

Failure to complete and submit this form with the bid will cause the bid to be rejected as non-responsive.

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a contractor fails to take the steps outlined below it shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 200.321.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

NOW, THEREFORE, Contractor certifies as follows:

That, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

CONTRACTOR

Dated: _____

By: _____

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CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. 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.

CONTRACTOR

Dated: _____

By: _____

Termination of the Contract for Default - Greenbook Section 6-4

6-4.1 General

If, prior to the acceptance of the Work, the Contractor:

- a) becomes insolvent, assigns its assets for the benefit of its creditors, is unable to pay its debts as they become due, or is otherwise financially unable to complete the Work,
- b) abandons the Work by failing to report the Work site and diligently prosecute the Work to completion,
- c) disregards written instructions from the Engineer or materially violates provisions of the Contract Documents,
- d) fails to prosecute the Work according to the schedule approved by the Engineer,
- e) disregards laws or regulations of any public body having jurisdiction, or
- f) commits continuous or repeated violations of regulatory or statutory safety requirements, then the Agency will consider the Contractor in default of the Contract.

Notices, and other written communications regarding default between the Contractor, the Agency, and the Surety shall be transmitted in accordance with Greenbook Section 2-12, Special Notices.

6-4.2 Notice to Cure

The Agency will issue a written notice to cure the default to the Contractor and its Surety. The Contractor shall commence satisfactory corrective actions within 5 Working Days after receipt.

6-4.3 Notice of Termination for Default

If the Contractor fails to commence satisfactory corrective action within 5 Working Days after receipt of the notice to cure, or to diligently continue satisfactory and timely correction of the default thereafter, then the Agency will recommend to the Board that the Contractor be found in default of the Contract and upon such finding by the Board:

- a) will terminate the Contractor's right to perform under the Contract by issuing a written notice of termination for default to the Contractor and its Surety,
- b) may use any materials, equipment, tools, or other facilities furnished by the Contractor to secure and maintain the Work site, and
- c) may furnish labor, equipment, and materials the Agency deems necessary to secure and maintain the Work site.

The provision of this subsection shall be in addition to all other legal rights and remedies available to the Agency.

6-4.4 Responsibilities of the Surety

Upon receipt of the written notice of termination for default, the Surety shall immediately assume all rights, obligations, and liabilities of the Contractor under the Contract. If the Surety fails to protect and maintain the Work site, the Agency may do so, and may recover all cost incurred. The Surety shall notify the Agency that it is assuming all rights, obligations, and liabilities of the Contractor under the Contract and all money that is due, or would become due, to the Contractor shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.

With in 15 Working days of receipt of the written notice of the termination for default, the Surety shall submit to the Agency a written plan detailing the course of action it intends to take to remedy the default. The Agency will review the plan and notify the Surety if the plan is satisfactory. If the Surety fails to submit a satisfactory plan, or if the Surety fails to maintain progress according to the plan accepted by the Agency, the Agency may, upon 48 hours written notice, exclude the Surety from the premises, take possession of all material and equipment, and complete the Work in any way the Agency deems to be expedient. The cost of completing the Work by the Agency shall be charged against the Surety and may be deducted from any monies due, or which would become due, the Surety. If the amounts due under the Contract are insufficient for completion, the Surety shall pay to the Agency, within 30 Days after the Agency Submits an invoice, all costs in excess of the remaining Contract Price.

6-4.5 Payment

The Surety will be paid for completion of the Work in accordance with Greenbook Section 9-3, Payment, less the value of damages caused to the Agency by acts of the Contractor.

Termination of the Contract for Convenience - Greenbook Section 6-5

The Board may terminate the Contract if it becomes impossible or impracticable to proceed, or because of conditions or events beyond the control of the Agency.

The Agency will issue a written notice of termination for convenience in accordance with Green Book Section 2-12, Special Notices. Upon receipt, the Contractor shall immediately cease work, except work the Contractor is directed to complete by the Engineer or required to complete for public safety and convenience. The Contractor shall immediately notify Subcontractors and suppliers to immediately cease their work.

The Contractor will be paid without duplication for:

- a) work completed in accordance with the Contract Documents prior to the effective date of termination for convenience;
- b) reasonable costs incurred in settlement of terminated contracts with Subcontractors, suppliers, and others; and
- c) reasonable expenses directly attributable to termination.

The Contractor shall submit a final termination settlement proposal to the Agency no later than 90 days from the effective date of termination, unless extended, in writing, by the Agency upon written request by the Contractor.

If the Contractor fails to submit a proposal, the Agency may determine the amount, if any, due the Contractor as a result of the termination. The Agency will pay the Contractor the amount it determines to be reasonable. If the Contractor disagrees with the amount determined by the Agency as being reasonable, Contractor shall provide notice to the Agency within 30 Days of receipt of payment. Any amount due shall be as later determined by arbitration, if the Agency and the Contractor agree thereto, or as fixed in a court of law.

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CEQA Exemptions – Emergency

CEQA Guideline 15269 exempts emergency projects in the following categories from CEQA. (See full text of the section for details, 14 Cal.Code.Regs, section 15269.) See also, Public Resources Code sections 21080(b)(3) and 21080(b)(4).

- Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor.
- Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.
- Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.
- Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway within the existing right of way of that highway... initiated within one year of the damage, but not official state scenic highways or projects to expand or widen a disaster-damaged highway.
- Neither the Governor's Proclamation of a State of Emergency (10/9/17) nor his Executive Order B-43-17 (10/18/17) suspends or modifies any CEQA provision.

CITY OF REDDING, CALIFORNIA

REQUEST FOR PROPOSALS GENERAL CONDITIONS

1. PUBLIC INFORMATION

All submitted proposals and information included therein or attached thereto shall become public record upon their delivery to the City. Proposals may be reviewed by outside interested parties after all proposals received for a particular project have been reviewed and the intended awardee has been selected.

By submission of a proposal, Consultant understands and agrees that the City of Redding is subject to the California Public Records Act (Cal. Gov. Code section 62500 et seq.), and that all or part of the proposal submitted by Consultant may be subject to disclosure therein regardless of whether the proposal or part thereof is marked as proprietary. The City reserves sole discretion to determine whether disclosure is necessary under State law, and Consultant hereby releases City from all liability relating to such disclosure. City shall have no obligation to litigate the issue of disclosure under the Act on behalf of Consultant.

2. RFP ADDENDA

The City of Redding reserves the right to amend, alter, or revoke this RFP in any manner at any time. At the City's sole discretion, modifications, clarifications, or additions will be distributed as an addendum to all known proposers. It is the responsibility of all interested parties to verify the existence of addenda (check Purchasing's website at www.cityofredding.org/PurchasingBids or call/ email the stated City contact).

3. PROPOSAL PREPARATION COSTS

All costs incurred in the preparation and presentation of this proposal shall be wholly absorbed by the vendor.

4. PROPOSALS

All proposals will be firm for a period of ninety (90) calendar days following the required date of submission unless an alternate time frame is stated in the Request for Proposal.

5. WITHDRAWAL OF PROPOSAL

Any proposer may withdraw their proposal, either personally or by written request at any time prior to the scheduled closing time for the receipt of proposals. Such requests are to be directed to the City Clerk

6. SELECTION PROCEDURES

Proposals submitted will be subject to the City's selection procedures for technical and/or professional consultants. Accordingly, final selection will be based upon overall capability to perform services and not exclusively upon cost of services.

The City may make any investigation it deems necessary to determine the ability of a Proposer to carry out the obligations indicated in the Request for Proposal and the submitted Proposal. At the City's sole discretion, the Proposer shall furnish to the City all information and data for this purpose if materials submitted by, or investigation of, any Proposer fails to satisfy the City that the Proposer is properly qualified to carry out the stated obligations.

7. RIGHT TO REJECT PROPOSALS

The City reserves the right to reject any and all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any combination of items.

8. CITY OF REDDING BUSINESS LICENSE

Any individual or firm chosen for an award as the result of the City's Request for Proposal process must have a current City of Redding Business License on file with the office of the City Clerk prior to the release of the award.

The selected firm shall execute an agreement with the City within ten (10) working days after notification of selection, unless the time for execution has been extended for good cause at the sole discretion of the City. Failure of the selected firm to meet contract submission requirements (e.g. insurance) or failure to timely execute an agreement with the City may result, in the sole discretion of the City, a decision to select from the remaining proposers or to call for new proposals.

**CONSULTING AND PROFESSIONAL SERVICES CONTRACT
WITH FHWA FUNDING/ASSISTANCE**

THIS CONTRACT is made at Redding, California, by and between the City of Redding (“City”), a municipal corporation, and xxxxxx (“Consultant”) for Environmental Services for the City of Redding Fire/Flood Recovery Projects.

WHEREAS, a source of funding for payment for professional services provided under this Agreement is federal funds from the United States Department of Transportation.

WHEREAS, Consultant desires to perform and assume responsibility for the provision of certain professional services required by City on the terms and conditions set forth in this Contract.

NOW, THEREFORE, the Parties covenant and agree, for good consideration hereby acknowledged, as follows:

SECTION 1. CONSULTANT SERVICES

- A. Subject to the terms and conditions set forth in this Contract, Consultant shall provide to City the services described in Exhibit A, attached and incorporated herein. Consultant shall provide the services at the time, place and in the manner specified in Exhibit A. All Consultant personnel listed as members of the project team in the attached exhibits shall remain on project unless prior approval for the change in personnel has been granted by City’s Contract Administrator.
- B. Consultant shall comply with the Federal Provisions set forth in Exhibit C, attached and incorporated herein, and shall further execute and deliver the certifications set forth therein to the City.
- C. Consultant shall submit progress reports at least once a month. Each progress report should be sufficiently detailed for the Contract Administrator, as noted in Section 10.A, to: 1) determine if Consultant is performing to expectations and is on schedule; 2) provide communication of interim findings, and 3) sufficiently address any difficulties or special problems encountered.
- D. Consultant’s Project Manager, as noted in Section 10.B., shall meet with City’s Contract Administrator as needed to discuss progress on the scope of work.
- E. Nothing contained in this Contract or otherwise shall create any contractual relation between City and any subconsultant, and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to City for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. Consultant’s obligation to pay its subconsultants is an independent obligation from the City’s obligation to make payments to Consultant.

- F. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- G. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by City.
- H. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- I. Any substitution of subconsultants must be approved in writing by City's Contract Administrator prior to the start of work by the subconsultant.
- J. Consultant and any subconsultant shall permit City, the State of California, and the Federal Emergency Management Agency ("FEMA"), if federal participating funds are used in this Contract, to review and inspect the project activities and files at all reasonable times during the performance period of this Contract including review and inspection on a daily basis.

SECTION 2. COMPENSATION AND REIMBURSEMENT OF COSTS

- A. The method of payment for this contract will be based on the actual cost. City will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant's Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds City's approved overhead rate set forth in the Cost Proposal. In the event, that City determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by City shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" shall not be exceeded, unless authorized by contract amendment.
- B. In addition to the allowable incurred costs City will pay the Consultant a fixed fee of \$xxxxx. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, Consultant

shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rate portion of Consultant's fixed fee will be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set for in the Statement of Work, City shall have the right to delay payment or terminate this Contract in accordance with the provisions of Section 3 "Term and Termination".
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. No retainage will be held by City from progress payments due Consultant. Any retainage held by Consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within thirty (30) calendar days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR26.29) requires that any delay or postponement of payment over the thirty (30) days may take place only for good cause and with City's prior written approval. Any violation of this provision shall subject the violating Consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subconsultant performance, or noncompliance by a subconsultant.
- H. Consultant will be reimbursed as promptly as fiscal procedures will permit upon receipt by City's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due City including any equipment purchased under the provisions of Section 4 "Equipment Purchase" of this contract. The final invoice should be submitted within 60 calendar days after completion of consultant's work. Invoices shall be mailed to City's Contract Administrator at the following address:

Amber Kelley, Environmental Compliance Manager
City of Redding
777 Cypress Avenue
Redding, CA 96001
- I. In accordance with Exhibit B, attached and incorporated herein, the total amount payable by City including the fixed fee shall not exceed \$xxxxxx
- J. Salary increases will be reimbursable if the new salary is within the salary range

identified in the approved Cost Proposal and is approved by City's Contract Administrator.

For personnel subject to prevailing wage rates, as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

- K. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- L. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- M. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.
- N. All subcontracts in excess of \$25,000 shall contain the above provisions.

SECTION 3. TERM AND TERMINATION

- A. This contract shall go into effect on xxxx, 2018, contingent upon approval by City, and Consultant shall commence work after notification to proceed by City's Contract Administrator. The contract shall end on xxxxx, 2019, unless extended by contract amendment.
- B. Consultant is advised that any recommendation for contract award is not binding on City until the contract is fully executed and approved by City.
- C. City reserves the right to terminate this contract upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.
- D. City may terminate this contract with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, City may proceed with the work in any manner deemed proper by City. If City terminates this contract with Consultant, City shall pay Consultant the sum due to consultant under this contract prior to termination, unless the cost of completion to City exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due consultant under this contract and the balance, if any, shall be paid to Consultant upon demand.
- E. The maximum amount for which the City shall be liable if this contract is terminated is xxxxxxxxxxxx.

- F. It is mutually understood between the Parties that this Contract may have been written before ascertaining the availability of funds or appropriation of funds, or for the mutual benefit of both Parties, or in order to avoid program and fiscal delays that would occur if the Contract were executed after that determination was made. This Contract is valid and enforceable only if sufficient funds are made available to the City for the purpose of this Contract. In addition, this Contract is subject to any additional restrictions, limitations, conditions, or any statute, ordinance or regulation enacted by the Congress, State Legislatures, or City Council that may affect the provisions, terms, or funding of this Contract in any manner. Consistent with Article 16, Section 18, of the California Constitution, it is mutually agreed that if sufficient funds are not appropriated, this Contract shall be amended to reflect any reduction in funds. City may likewise void the Contract under Section 3.C.
- G. In the event that City gives notice of termination, Consultant shall promptly provide to City any and all finished and unfinished reports, data, studies, photographs, charts or other work product prepared by Consultant pursuant to this Contract.
- H. In the event that City terminates the Contract, City shall pay Consultant the reasonable value of services rendered by Consultant pursuant to this Contract; provided, however, that City shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Contract. Consultant shall, not later than ten (10) calendar days after termination of this Contract by City, furnish to City such financial information as in the judgment of the City's Contract Administrator is necessary to determine the reasonable value of the services rendered by Consultant.
- I. In no event shall the termination or expiration of this Contract be construed as a waiver of any right to seek remedies in law, equity or otherwise for a Party's failure to perform each obligation required by this Contract.

SECTION 4. EQUIPMENT PURCHASE

- A. Prior authorization in writing by City's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000, prior authorization by City's Contract Administrator is required. Three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified and accepted by City's Contract Administrator.
- C. Pursuant to 49 CFR, Part 18 and for any equipment purchased as a result of this Contract, Consultant shall maintain an inventory of all non-expendable property. Non-expendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and

is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Contract, or if the Contract is terminated, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with City's established purchasing procedures and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to City and Consultant. The terms and conditions of such sale must be approved in advance by City.

D. All subcontracts in excess \$25,000 shall contain the above provisions.

SECTION 5. INSURANCE

A. Unless modified in writing by City's Risk Manager, Consultant shall maintain the following noted insurance during the duration of the Contract:

<u>Coverage</u>	<u>Required</u>	<u>Not Required</u>
Commercial General Liability	X	
Comprehensive Vehicle Liability	X	
Workers' Compensation and Employers' Liability	X	
Professional Liability (Errors and Omissions)	X	

(Place an "x" in the appropriate box)

B. Coverage shall be at least as broad as:

1. Insurance Services Office form number CG-0001, Commercial General Liability Insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage;
2. Insurance Services Office form number CA-0001 (Ed. 1/87), Comprehensive Automobile Liability Insurance, which provides for total limits of not less than \$1,000,000 combined single limits per accident applicable to all owned, non-owned and hired vehicles;
3. Statutory Workers' Compensation required by the Labor Code of the State of California and Employers' Liability Insurance in an amount not less than \$1,000,000 per occurrence. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents and volunteers;
4. Professional Liability (Errors and Omissions) Insurance, appropriate to

Consultant's profession, against loss due to error or omission or malpractice in an amount not less than \$1,000,000.

5. The City does not accept insurance certificates or endorsements with the wording "but only in the event of a named insured's sole negligence" or any other verbiage limiting the insured's insurance responsibility.
- C. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.
- D. The General Liability shall contain or be endorsed to contain the following provisions:
1. City, its elected officials, officers, employees, and agents are to be covered as additional insured as respects liability arising out of work or operations performed by or on behalf of Consultant; premises owned, leased or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its elected officials, officers, employees, agents and volunteers.
 2. The insurance coverage of Consultant shall be primary insurance as respects City, its elected officials, officers, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its elected officials, officers, employees, agents and volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
 3. Coverage shall state that the insurance of Consultant shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 4. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled except after thirty (30) calendar days' prior written notice has been given to City. In addition, Consultant agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) calendar days' prior written notice has been given to City.
- E. Insurance is to be placed with insurers with a current A.M.Best's rating of no less than A-VII.
- F. Consultant shall designate the City of Redding as a Certificate Holder of the insurance. Consultant shall furnish City with certificates of insurance and original endorsements effecting the coverages required by this clause. Certificates and endorsements shall be furnished to: Risk Management Department, City of Redding, 777 Cypress Avenue, Redding, CA 96001. The certificates and endorsements for each insurance policy are

to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City's Risk Manager prior to the commencement of contracted services. City may withhold payments to Consultant if adequate certificates of insurance and endorsements required have not been provided, or not been provided in a timely manner.

- G. The requirements as to the types and limits of insurance coverage to be maintained by Consultant as required by Section 5 of this Contract, and any approval of said insurance by City, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Contract, including, without limitation, provisions concerning indemnification.
- H. If any policy of insurance required by this Section is a "claims made" policy, pursuant to Code of Civil Procedure § 342 and Government Code § 945.6, Consultant shall keep said insurance in effect for a period of eighteen (18) months after the termination of this Contract.
- I. If any damage, including death, personal injury or property damage, occurs in connection with the performance of this Contract, Consultant shall immediately notify City's Risk Manager by telephone at (530) 225-4068. No later than three (3) calendar days after the event, Consultant shall submit a written report to City's Risk Manager containing the following information, as applicable: 1) name and address of injured or deceased person(s); 2) name and address of witnesses; 3) name and address of Consultant's insurance company; and 4) a detailed description of the damage and whether any City property was involved.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS

- A. Consistent with California Civil Code § 2782.8, when the services to be provided under this Contract are design professional services to be performed by a design professional, as that term is defined under Section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify protect, defend and hold harmless, City, its elected officials, officers, employees, and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, penalties and expenses (including, but not limited to, reasonable attorney's fees of the City Attorney or legal counsel retained by City, expert fees, litigation costs, and investigation costs) of every type and description to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, the negligence, recklessness, or willful misconduct of Consultant, its officers, employees or agents in the performance of professional services under this Contract, except when liability arises due to the sole negligence, active negligence or misconduct of the City.
- B. Other than in the performance of professional services by a design professional, which is addressed solely by subdivision (A) of this Section, and to the fullest extent permitted by law, Consultant shall indemnify protect, defend and hold harmless, City, its elected officials, officers, employees, and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, penalties and

expenses (including, but not limited to, reasonable attorney's fees of the City Attorney or legal counsel retained by City, expert fees, litigation costs, and investigation costs) of every type and description to which any or all of them may be subjected by reason of the performance of the services required under this Contract by Consultant its officers, employees or agents in the performance of professional services under this Contract, except when liability arises due to the sole negligence, active negligence or misconduct of the City.

- C. The Consultant's obligation to defend, indemnify and hold harmless shall not be excused because of the Consultant's inability to evaluate liability. The Consultant shall respond within thirty (30) calendar days to the tender of any claim for defense and indemnity by the City, unless this time has been extended in writing by the City. If the Consultant fails to accept or reject a tender of defense and indemnity in writing delivered to City within thirty (30) calendar days, in addition to any other remedy authorized by law, the City may withhold such funds the City reasonably considers necessary for its defense and indemnity until disposition has been made of the claim or until the Consultant accepts or rejects the tender of defense in writing delivered to the City, whichever occurs first. This subdivision shall not be construed to excuse the prompt and continued performance of the duties required of Consultant herein.
- D. The obligation to indemnify, protect, defend, and hold harmless set forth in this Section applies to all claims and liability regardless of whether any insurance policies are applicable. The policy limits of said insurance policies do not act as a limitation upon the amount of indemnification to be provided by Contractor.
- E. City shall have the right to approve or disapprove the legal counsel retained by Consultant pursuant to this Section to represent City's interests. City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing the obligations set forth in this Section.

SECTION 7. MISCELLANEOUS TERMS AND CONDITIONS

- A. This Contract shall be deemed to have been entered into in Redding, California. All questions regarding the validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Contract shall be governed by California law. If any claim, at law or otherwise, is made by either party to this Contract, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.
- B. This document, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding each may have had prior to the execution of this Contract. This Contract shall not be altered, amended or modified except by a writing signed by City and Consultant. No verbal agreement or conversation with any official, officer, agent or employee of City, either before, during or after the execution of this Contract, shall affect or modify any of the terms or conditions contained in this Contract, nor shall any such verbal agreement or conversation entitle Consultant to any additional payment whatsoever under the terms

of this Contract.

- C. No covenant or condition to be performed by Consultant under this Contract can be waived except by the written consent of City. Forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until performance by Consultant of said covenant or condition is complete, City shall be entitled to invoke any remedy available to City under this Contract or by law or in equity despite said forbearance or indulgence.
- D. If any portion of this Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Contract shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- E. The headings in this Contract are inserted for convenience only and shall not constitute a part hereof. A waiver of any party of any provision or a breach of this Contract must be provided in writing, and shall not be construed as a waiver of any other provision or any succeeding breach of the same or any other provisions herein.
- F. Each Party hereto declares and represents that in entering into this Contract, it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each Party further declares and represents that this Contract is made without reliance upon any statement or representation not contained herein of any other Party or any representative, agent or attorney of the other Party. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Contract and that the decision of whether or not to seek the advice of counsel with respect to this Contract is a decision which is the sole responsibility of each of the Parties. Accordingly, no party shall be deemed to have been the drafter hereof, and the principle of law set forth in Civil Code § 1654 that contracts are construed against the drafter shall not apply.
- G. Each of the Parties hereto hereby irrevocably waives any and all right to trial by jury in any action, proceeding, claim or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Agreement or the transactions contemplated hereby. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.
- H. In the event of a conflict between the term and conditions of the body of this Contract and those of any exhibit or attachment hereto, the terms and conditions set forth in the body of this Contract shall prevail. In the event of a conflict between the terms and conditions of any two or more exhibits or attachments hereto, those prepared by City shall prevail over those prepared by Consultant.
- I. Pursuant to the City's business license ordinance, Consultant shall obtain a City business license prior to commencing work.

- J. Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of any nature whatsoever that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits and approvals that are legally required for Consultant to practice its profession.
- K. Consultant shall, during the entire term of this Contract, be construed to be an independent contractor and nothing in this Contract is intended, nor shall it be construed, to create an employer/employee relationship, association, joint venture relationship, trust or partnership or to allow City to exercise discretion or control over the professional manner in which Consultant performs under this Contract. Any and all taxes imposed on Consultant's income, imposed or assessed by reason of this Contract or its performance, including but not limited to sales or use taxes, shall be paid by Consultant. Consultant shall be responsible for any taxes or penalties assessed by reason of any claims that Consultant is an employee of City. Consultant shall not be eligible for coverage under City's workers' compensation insurance plan, benefits under the Public Employee Retirement System or be eligible for any other City benefit.
- L. No provision of this Contract is intended to, or shall be for the benefit of, or construed to create rights in, or grant remedies to, any person or entity not a party hereto.
- M. No portion of the work or services to be performed under this Contract shall be assigned, transferred, conveyed or subcontracted without the prior written approval of City. Consultant may use the services of independent contractors and subcontractors to perform a portion of its obligations under this Contract with the prior written approval of City. Independent contractors and subcontractors shall be provided with a copy of this Contract and Consultant shall have an affirmative duty to assure that said independent contractors and subcontractors comply with the same and agree to be bound by its terms. Consultant shall be the responsible party with respect to all actions of its independent contractors and subcontractors, and shall obtain such insurance and indemnity provisions from its contractors and subcontractors as City's Risk Manager shall determine to be necessary.
- N. Consultant shall perform all services required pursuant to this Contract in the manner and according to the standards observed by a competent practitioner of Consultant's profession. All products of whatsoever nature which Consultant delivers to City pursuant to this Contract shall be prepared in a professional manner and conform to the standards of quality normally observed by a person practicing the profession of Consultant and its agents, employees and subcontractors assigned to perform the services contemplated by this Contract.

SECTION 8. SURVIVAL

The provisions set forth in Sections 4, 5, 6, 7.A, 7.D, 7.G, 7.L, 15, 18, 19, and 20 of this Contract shall survive termination of the Contract.

SECTION 9. COMPLIANCE WITH LAWS - NONDISCRIMINATION

- A. Consultant shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments.
- B. Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- C. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- D. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation - Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- E. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis or race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

SECTION 10. REPRESENTATIVES

- A. City’s representative for this Contract is Amber Kelley, email akelley@cityofredding.org, telephone number (530) 225-4046. All of Consultant’s questions pertaining to this Contract shall be referred to the above-named person, or to the representative's designee.
- B. Consultant’s representative for this Contract is XXX, email XXX telephone number (530) XXX-XXXX. All of City’s questions pertaining to this Contract shall be referred to the above-named person.
- C. The representatives set forth herein shall have authority to give all notices required herein.

SECTION 11. NOTICES

- A. All notices, requests, demands and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender (may be other than the representatives referred to in Section 10) and delivered by facsimile, with a hard copy mailed first class, postage prepaid; or when sent by a courier or an express service guaranteeing overnight delivery to the receiving party, addressed to the respective parties as follows:

To City: Mrs. Amber Kelley City of Redding Engineering Division 777 Cypress Avenue Redding, CA 96001	To Consultant: TBD
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- B. Either party may change its address for the purposes of this paragraph by giving written notice of such change to the other party in the manner provided in this Section.
- C. Notice shall be deemed effective upon: 1) personal service; 2) two calendar days after mailing or transmission by facsimile, whichever is earlier.

SECTION 12. AUTHORITY TO CONTRACT

- A. Each of the undersigned signatories hereby represents and warrants that they are authorized to execute this Contract on behalf of the respective parties to this Contract; that they have full right, power and lawful authority to undertake all obligations as provided in this Contract; and that the execution, performance and delivery of this Contract by said signatories has been fully authorized by all requisite actions on the part of the respective parties to this Contract.
- B. When the Mayor is signatory to this Contract, the City Manager and/or the Department Director having direct responsibility for managing the services provided herein shall have authority to execute any amendment to this Contract which does not increase the amount of compensation allowable to Consultant or otherwise substantially change the

scope of the services provided herein.

SECTION 13. DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION

- A. This Contract is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. Consultant shall be guided by, and comply with, Exhibit 10-I of the Local Assistance Procedures Manual (“LAPM”), attached and incorporated herein.
- B. Consultant must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR, Part 26. If the contract has a DBE goal, Consultant must meet the goal by using DBE’s as subconsultants or document a good faith effort to have met the goal. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant if the goal is not otherwise met.
- C. A DBE may be terminated only with written approval of City and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting City’s consent for the proposed termination, Consultant must meet the procedural requirements specified in 29 CFR 26.53(f).
- D. Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBE’s. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- E. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, “Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants,” CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by Consultant or Consultant’s authorized representative and shall be furnished to City’s Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25 percent of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants” is submitted to City’s Contract Administrator.
- F. If a DBE subconsultant is decertified during the life of this Contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to the Agency’s Contract Administrator within 30 days.
- G. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Section.

SECTION 14. CONFLICTS OF INTEREST / UNLAWFUL CONSIDERATION

- A. Consultant, including its employees, agents, and subconsultants, shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Contract. Consultant shall comply with all requirements of the Political Reform Act (Government Code § 8100 et seq.) and other laws relating to conflicts of interest, including the following: 1) Consultant shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and 2) if required by the City Attorney, Consultant shall file financial disclosure forms with the City Clerk.
- B. Consultant warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, City has the right: 1) to terminate this Contract without liability; 2) pay only for the value of the work actually performed; and 3) to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
- C. Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this Contract, or any ensuing City construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.
- D. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Contract.
- E. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Section A through E.
- F. Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- G. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.
- H. Consultant warrants that this contract was not obtained or secured through rebates

kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its sole discretion: 1) to terminate the contract without liability; 2) to pay only for the value of the work actually performed; 3) to deduct from the contract price; or 4) to otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

SECTION 15. RETENTION OF RECORDS/AUDIT

- A. For the purpose of determining compliance with Public Contract Code § 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code § 8546.7; Consultant, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.
- B. Any dispute concerning a question of fact arising under an interim or post audit of this Contract that is not disposed of by agreement, shall be reviewed by City's Director of Finance or her designee. Not later than thirty (30) days after issuance of the final audit report, Consultant may request a review by City's Director of Finance or her designee of unresolved audit issues. All requests for review shall be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- D. In cases where the maximum compensation under this Contract exceeds \$150,000, Consultant and subconsultant contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instance of a CPA ICR Audit Workpaper Review, it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by City's Contract Administrator to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review

recommendations, or to ensure that the federal, state, or local governments have access to CPA workpapers, will be considered a breach of Contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

SECTION 16. DISPUTES

- A. Any dispute, other than audit, concerning a question of fact arising under this Contract that is not disposed of by agreement shall be submitted in writing and decided by City's Director of Public Works, who may consider written or verbal information submitted by Consultant.
- B. Neither the pendency of a dispute, nor its consideration pursuant to this Section will excuse Consultant from full and timely performance in accordance with the terms of this Contract.

SECTION 17. SAFETY

- A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by City. Consultant's personnel shall wear hard hats and safety vests at all times while working on a construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, and when applicable, Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

SECTION 18. OWNERSHIP OF DATA

- A. Upon completion of all work under this Contract or termination of this Contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this Contract will automatically be vested in City, and no further agreement will be necessary to transfer ownership to City. Consultant shall furnish City all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this Contract has been entered into.
- C. Consultant is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by City of the machine-readable information and data

provided by Consultant under this contract. Further, Consultant is not liable for claims, liabilities, or losses arising out of, or connected with any use by City of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by Consultant.

- D. Except as noted above, City may permit Consultant to copyright reports or other contract-related product. If copyrights are permitted, the City and the FHWA shall have a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work and to authorize others to use the work for government purposes.
- E. Any subcontract in excess of \$25,000 entered into as a result of this Contract shall contain all of the provisions of this Section.

SECTION 19. CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by City's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims, Consultant agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Consultant's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.
- C. Services of Consultant's personnel in connection with City's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all of the provisions of this Section.

SECTION 20. CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to Consultant in order to carry out this Contract, shall be protected by Consultant from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by City relating to the Contract, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.

- C. Consultant shall not comment publicly to the press or any other media regarding the contract or City's actions on the same, except to City's staff, Consultant's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by City and receipt of City's written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Section.

SECTION 21. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, and by signature on this Contract, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

SECTION 22. DEBARMENT AND SUSPENSION CERTIFICATION

- A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to City prior to execution of this Contract.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the FHWA.

SECTION 23. PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING

- A. In cases where federal funding exceeds \$150,000, Consultant certifies by signature on this Contract that, to the best of his or her knowledge and belief:
1. No state, federal or local agency 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 any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 federal 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. 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, US. 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.
- C. Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

SECTION 24. STATE PREVAILING WAGE RATES (if applicable)

- A. Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

SECTION 25. EFFECTIVE DATE OF CONTRACT

The effective date of this Contract shall be the date it is signed by City.

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IN WITNESS WHEREOF, City and Consultant have executed this Contract on the days and year set forth below:

**CITY OF REDDING,
A Municipal Corporation**

Dated: _____, 2018

By: **BARRY TIPPIN, City Manager**

ATTEST:

APPROVED AS TO FORM:

**BARRY E. DeWALT
City Attorney**

PAMELA MIZE, City Clerk

By:

CONSULTANT

Dated: _____, 2018

By:

Tax ID No.: _____

Attachments:

- Exhibit A (Scope of Work)
- Exhibit B (Cost Proposal)
- Exhibit C (Federal Provisions)

Exhibit C

FEDERAL PROVISIONS

This Exhibit is hereby incorporated into the (**Consulting and Professional Services Contract OR Public Works Contract**) (“Agreement”) between the Parties. If any ambiguity, inconsistency, or conflict exists or arises between the provisions set forth in the main body of the Agreement and this Exhibit, the provisions of this Exhibit shall control. Failure to comply with any of the provisions set forth in this Exhibit is a material breach of the Agreement.

SECTION 1. DEFINITIONS.

- A. **“Contractor”** shall have the same meaning as “Consultant” in the Agreement.
- B. **“Government”** means the United States of America and any executive department or agency thereof.
- C. **“FEMA”** means the Federal Emergency Management Agency.
- D. **“Third Party Subcontract”** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

SECTION 2. REMEDIES.

- A. Contractor shall pay to the City of Redding the replacement cost of any equipment or repair cost of any facilities or equipment provided by the City of Redding for Contractor’s use in performance of services that are lost or damaged by Contractor or Contractor’s officers, employees, agents or subcontractors.
- B. The measure of damages for breach of contract shall be governed by California Civil Code section 3300 et seq. The measure of damages is that amount which will compensate the Party aggrieved for the detriment proximately caused thereby, or which, in the ordinary course of business would be likely to result therefrom. Notwithstanding the preceding and pursuant to California Civil Code section 3358, the measure of damages shall not exceed that which the party would have received if the contract had been fully performed on both sides.
- C. Neither Party will be liable for breach of contract damages that the breaching party could not reasonably have foreseen upon entry into this Agreement.
- D. In addition to the remedies set forth in this section, the City of Redding shall be entitled to its costs to procure any services which Contractor has failed to perform or performed in a manner which is less than the standard of care and skill generally accepted in Contractor’s industry.

- E. In the case of a contract for public works of improvement, the remedies set forth in California Civil Code section 3320 shall also be applicable.

SECTION 3. TERMINATION

- A. Contractor is advised that the City may terminate this Agreement for any breach of the Agreement. Contractor's failure to perform or observe any term, covenant, or condition of this Agreement shall constitute a default under the Agreement. All provisions of the Agreement are agreed between the Parties to be material.
 - 1. Termination due to breach of contract is set forth in Section 3 of the Agreement.
- B. Contractor is advised that the City may terminate this Agreement without cause or for its convenience.
 - 1. Termination due to the convenience of the City is set forth in Section 3 of the Agreement.

SECTION 4. FEDERAL CONTRACT REQUIREMENTS

- A. Contractor hereby acknowledges that FEMA financial assistance will be used to fund the Agreement only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.
- B. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives, as they may be amended or promulgated from time to time, during the term of this Agreement, including, but not limited to, those requirements of 2 CFR 200.317 through 200.326 as more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is incorporated herein by reference. Contractor's failure to so comply shall constitute a material breach of this contract.
- C. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- D. Whether or not expressly set forth herein, all contractual provisions required by FEMA are hereby incorporated herein by this reference. In the event of any conflict between any provision of this Agreement or any FEMA term, condition, or requirement, the stricter standard shall apply. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause City to be in violation of any FEMA term, condition, or requirement.

- E. The provisions set forth herein include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act that would cause City to be in violation of the FEMA terms and conditions. Further, Contractor shall not fail to perform any act or refuse to comply with any request by the City which, in its sole discretion, City determines is necessary to remedy any breach or anticipated breach of FEMA terms and conditions.

SECTION 5. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City, FEMA, the Comptroller General of the United States, and the State of California or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. 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.
- C. The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain the same until the City, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D. 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.
- E. The requirements set for in this Section shall be considered in addition to, and not in lieu of, any right set forth in the Agreement regarding access to records and record retention.

SECTION 6. DEBARMENT AND SUSPENSION

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

2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- B. By signature of this Agreement, Contractor represents, certifies, and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.
1. As a condition precedent to the Agreement, Contractor shall execute and deliver to City the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion attached herein.
- C. Contractor is hereby advised that it may check the debarment status of any contractor by means of access to the System for Award Management ("SAM") at www.sam.gov.
- D. 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. Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and the Certification set forth below, Contractor is the "prospective lower tier participant."
- E. The Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- F. This certification is a material representation of fact relied upon by City. 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 herein, the State of California, the City, and the Federal Government may pursue available remedies, whether administrative, legal or equitable, including but not limited to suspension and/or debarment.
- G. 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 Contractor, bidder or

proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SECTION 7. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 8. EQUAL OPPORTUNITY COMPLIANCE

During the performance of this Agreement, Contractor agrees as follows:

- A. Contractor agrees to 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 C.F.R. Part 60). 41 C.F.R. 60-1.4 is hereby incorporated by reference.
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - 2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The Contractor will 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.
4. 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.
5. 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.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (A)(1) through (A)(7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 9. CONTRACT WORK HOURS AND SAFETY STANDARDS

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanics receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. Withholding for unpaid wages and liquidated damages. The City shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (C) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (C) of this section.

SECTION 10. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

- A. 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.
- B. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- C. The Contractor agrees to report each violation of the Clean Water Act and Federal Water Pollution Control Act to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
- D. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

SECTION 11. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

- A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
 - 1. The copyright in any work developed with the assistance of funds provided under this Agreement;
 - 2. Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.
- B. The Contractor agrees to include paragraph (A), above, in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 12. ENERGY CONSERVATION REQUIREMENTS

- A. The 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 USC 6201).
- B. The Contractor agrees to include paragraph (A), above, in each third party subcontract financed in whole or in part with Federal assistance provided by

FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 13. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this Agreement, 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 time frame providing for compliance with the Agreement performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.

SECTION 14. DHS SEAL, LOGO, AND FLAGS

Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logo(s), crest(s), or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

SECTION 15. PROGRAM FRAUD, FALSE OR FRAUDULENT ACTIONS

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

SECTION 16. MBE/WBE REQUIREMENTS

- A. The City intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the Contractor shall make every effort to procure Minority and Women's Business Enterprises (collectively, "DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit all documentation, which in City's sole discretion, it deems necessary to confirm Contractor's good faith efforts shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.
- B. Prime contractor responsibilities. All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported to the City.

- C. Good faith effort process. Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a contractor fails to take the steps outlined below it shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.
1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
 2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
 5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- D. If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 200.321.

SECTION 17. BYRD ANTI-LOBBYING

- A. It is a condition precedent to this Agreement that, for the award of \$100,000, by the Federal government, that Contractor execute the attached certification relating to anti-lobbying.
- B. Contractor shall not use or pay any funds received under this Agreement to influence or attempt 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 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.

- C. Contractor agrees to the provisions of the Certification Regarding Lobbying, attached hereto and incorporated herein.
- D. Contractor agrees to include paragraphs (B), above, in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The

knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

NOW, THEREFORE, Contractor certifies as follows:

That, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

CONTRACTOR

Dated: _____

By: _____

infostores

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. 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.

CONTRACTOR

Dated: _____

By: _____