



REQUEST FOR PROPOSALS (RFP)

Recovery Program Management Services

Request for Proposals Date

January 24, 2019

Request for Information (RFI)

Submit in writing to Contact identified below on or before January 30, 2019, by 5:00 p.m.

Responses will be posted to Paradise Irrigation District (PID) website as an Addendum no later than February 4, 2019

Proposal Submittal Due Date

February 15, 2019 by 3:00p.m.

Contract Term

The initial contract term will be for three years and shall be effective on or about March 8, 2019, through March 7, 2022, unless terminated pursuant to the agreement between the parties.

PID retains the right to exercise the optional renewal at its sole discretion. Actual option year pricing shall be negotiated with the successful Consultant prior to exercising the optional renewal. Option years shall become effective only upon issuance by PID of a duly authorized Purchase Order.

Point of Contact (POC) Information

Any questions/RFI's regarding the RFP must be directed to the Point of Contact:

Kevin Phillips

District Manager

Paradise Irrigation District

6332 Clark Road

Paradise, CA 95969-4146

(530) 518-6696

kphillips@paradiseirrigation.com

REQUEST FOR PROPOSALS

SECTION I. INTRODUCTION

On November 8, 2018, the most destructive wildfire in California history began in Butte County, California and quickly spread to the Town of Paradise, California. After burning for over three weeks,

the fire ultimately destroyed nearly 14,000 residential units and over 500 commercial structures with an estimated property loss of over \$3.5 billion. The Paradise Irrigation District (PID) was fortunate that the water treatment facilities only received minor damage, but nearly the entire PID distribution system was destroyed. PID is seeking proposals from responsible, qualified, and experienced firms to provide post-fire disaster recovery program management services described in Section II.

SECTION II. PROPOSED SERVICES

PID desires to enter into a contract with an engineering firm with experience and ability to manage the entire scope of post-disaster recovery planning and coordination. The purpose of the effort will be to develop and implement a strategic plan to restore water services.

The engineering firm must exhibit extensive experience managing capital Projects. The selected firm must also demonstrate the capacity to work with district staff, Cal OES, FEMA, and other town and county representatives, professional service consultants, designers and engineers, and construction companies.

The firm should demonstrate proficiency in:

- Technical expertise and knowledge related to public water systems, including infrastructure, operations, and administrative systems;
- Ability to work in coordination with PID staff, expectations of work and duties to be performed;
- Ability to increase and decrease assigned support staff and expertise quickly and efficiently in accordance to the needs and approval of the PID;
- Ability to secure and manage contractors, consultants, and other resources as needed to conceptualize, design, and construct water infrastructure projects;
- Technical expertise and knowledge related to the Federal Stafford Act, the 44 CFR, FEMA PA Policy Procedures, and CDAA requirements including the ability to provide expert programmatic and policy advice on Federal and State disaster relief programs; and
- Effective communications with FEMA, CAL OES, and other grant providers.

Task 1: Program Management

Develop, coordinate, and provide overall management support of planning, design, and construction projects that contribute to the long-term recovery strategy for the PID water system. This will include coordinating the supporting resources for individual projects according to the strategic recovery vision.

- A. Develop a framework for delivering capital recovery projects for PID efficiently and sustainably in keeping with strategic planning efforts;
- B. Under the direction of the PID District Manager, coordinate water system recovery planning,

design, and construction projects. Define project scope, goals and deliverables that support PID's goals in collaboration with senior management and stakeholders. Lead the development of resulting project work packages including RFP preparation and solicitation, management of requests for information, and assisting in the selection process;

- C. Determine and assess the need for staff and/or consultants and secure appropriate proposals and contracts;
- D. Develop project prioritization criteria and manage risks through robust implementation planning and execution;
- E. Develop a master program controls system, including scheduling, budgeting, and reporting norms;
- F. Provide procurement management including for the bidding process;
- G. Support the development and upkeep, and use of data systems that are appropriate for planning and operations;
- H. Develop an approach and standards for public outreach and provide oversight on a project-by-project basis; and
- I. Coach, mentor, and direct team members and contractors by influencing them to take positive action and accountability for their assigned work.

Task 2: Provide Project Engineering Assistance

Plan, coordinate and provide technical support for water system recovery projects from inception to completion. The role includes either providing or securing resources and coordinating the efforts of team members and third-party contractors or consultants in order to deliver projects according to established deadlines, within budget, and according to appropriate quality standards.

- A. Perform the engineering and planning studies including water quality testing, hydraulic and water quality modeling, master planning, and conceptual design;
- B. Develop detail design packages for construction projects;
- C. Develop, and manage project schedules for design and construction projects. Devise the project work plans and revisions as required. Use project management checklists to identify project requirements and track completion of milestones;
- D. Review cost estimates and specifications for recovery projects;
- E. Manage project budget and minimize exposure to excessive risk in a project;
- F. Respond to data requests as needed;
- G. Coordinate the design submittal review process;
- H. Coordinate permitting and environmental requirements;

- I. Effectively communicate project expectations to team members and stakeholders. Conduct update meetings as necessary. Coordinate with other agencies and utilities as necessary;
- J. Maintain and control project documents;
- K. Review and comment on project deliverables; and
- L. Monitor and manage scope changes and change order review and processing.

Task 3: Grant Coordination and Administration

Plan, coordinate and provide overall support for grants development and administration. Develop and implement strategies and technical advice to secure and maximize funding from Federal and State programs and any needed special legislation in order for PID to continue providing water to the Town of Paradise both short and long term.

- A. Assist with the management of FEMA and/or other Federal grants and Cal OES coordination on behalf of PID, arranging for routine status/action planning meetings, establishing priorities, scope changes, and updates at meetings.
- B. Work with PID to resolve disputes with FEMA, Cal OES, or other agencies as may be necessary, including but not limited to the preparation of appeals.
- C. Assist PID with establishing programmatic document control, establishing a file retention system, and data management processes to ensure disaster records are complete and ready for audit.
- D. Assist PID to develop grant funding strategies for water service recovery projects and application submissions
- E. Assist and/or represent PID with project formulation and damage assessments and project worksheet (PW) or Disaster Survey Report (DSR) formulation
- F. Coordinate and manage the development of deliverables for grant-funded projects and activities in accordance with donor standards and requirements including appropriate internal financial accounting and documentation systems.
- G. Manage the change process for grants including time extension requests and project amendment requests
- H. Assist PID with the closeout of all projects, both large and small for FEMA/Cal OES, including the review and preparation of final closeout packages for completed work.

SECTION III. PROPOSALS

Firm's Investigation.

Before submitting a proposal, each firm shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the proposed agreement and to verify any representations made by PID upon which the firm may rely. If a firm receives an award as a result of its proposal, failure to have made such investigations and examinations will in no way relieve the firm from its obligation to comply in every detail with all provisions and requirements of the agreement, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the firm for additional compensation.

Submission of a proposal will serve as prima facie evidence that the Proposer has examined this RFP, the proposed agreement and all attachments thereto and is fully aware of all conditions affecting the provision of services.

Proposal Submission.

No oral interpretations will be made by PID to any firm as to the requirements of this RFP. ***Emailed PDF proposals*** titled in Subject as PROPOSAL FOR DISASTER RECOVERY MANAGEMENT SERVICES will be accepted on or before 3:00 p.m. PST on February 15, 2019 (Deadline) *at the email address below*. Proposals tendered after the deadline will be rejected.

Kevin Phillips

District Manager

kphillips@paradisairrigation.com

PID 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.

Timelines

The following information is provided as a general timeline which may be amended by PID as necessary.

ESTIMATED TIMELINES

January 25, 2019, RFP Issued

January 30, 2019 by 5:00p.m. Last Day to Submit RFI's

February 4, 2019 by 5:00p.m. Addendum Posted to RFI's

February 15, 2019 by 5:00p.m. Proposals Due

March 8, 2019 Award of Agreement

Rights to Submitted Material

All proposals, responses, inquiries, or correspondence relating to this RFP, and all reports, charts, and other documentation submitted by Proposers (other than materials submitted as and qualifying as trade secrets under California Law) shall become the property of PID when received and the entire proposal shall be subject to the public records laws of the State of California except where a

proper trade secrets exception has been made by the Proposer in accordance with the procedures allowed by California and Federal Law and marked in bold **“Confidential.”**

The fact that a Proposer marks information in its proposal as “Confidential” does not necessarily mean that the information is exempt from public disclosure. Upon the receipt of a request for public records under the California Public Records Act (Government Code sections 6250, *et seq.*), PID will make an independent determination regarding the applicability of exemptions that have been asserted in properly marked proposals. Proposers are cautioned that improperly marked proposals are subject to disclosure in their entirety, without any independent review by PID and without notice to the Proposer. If a Proposer fails to identify information in a proposal that the Proposer believes is exempt from disclosure, the Proposer waives any future claim that such information is exempt from public disclosure.

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

Proposal Format

Proposals must be clear, succinct, and not to exceed 20 pages, excluding cover letter and resumes, on 8 1/2” x 11” paper of no less than 12-point font. Responses must follow the format outlined herein. PID may reject as non-responsive, at its sole discretion, any proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner. Sections should be **tabbed** to identify the location of the required information.

A. Cover Letter/Letter of Intent

B. Executive Summary

C. Project Understanding, Approach, and Schedule

- A statement concerning the ability of the firm to meet required time schedules
- A detailed outline describing how proposed individuals would conduct the project

D. Firm Qualifications, Team Organization, Experience and Certifications/Qualifications

- Previous experience
- Present workload (ability to respond)
- Previous projects and present relationship with PID
- Ability to perform the scope of services (all or a portion of the work as described)
- Stability of firm

E. Staff Qualifications

- Program Manager (12 yrs.)
- Project Manager/Engineer (10 yrs.) – Licensed in California
- Senior Grants Coordinator (12 yrs.)
- Other key proposed roles

F. Subcontractor Qualifications

- The extent of subcontracting of work – Firms will need to be approved by PID post contract award

G. References

H. Cost Proposal

I. Additional Requirements

Proposal Content

Proposals must contain the following information in the specified order:

A. Cover Letter/Letter of Intent

The cover letter shall be addressed to Kevin Phillips and must contain the following:

- I. Identification of the firm, including name, address and telephone number.
- II. Name, title, address, and telephone number of contact person during the period of proposal evaluation.
- III. Whether the firm qualifies as a Minority Business Enterprise (MBE) or a Women Business Enterprise (WBE) or is within a Labor Surplus Area (SLA). (PID may request copies of the identified MBE or WBE firm certifications).
- IV. A statement to the effect that the proposal shall remain valid for a period of not less than 90 calendar days from the date of submittal.
- V. Signature of a person or persons authorized to bind the firm to the terms of the proposal.

B. Executive Summary

In a brief narrative, describe the overall approach and plans to meet the requirements of the RFP and provide the scope of services in Section II.

C. Project Understanding, Approach, and Schedule

Proposer shall provide a statement demonstrating the firm's understanding of the proposed scope of services and describe its approach in detail in a narrative, outline, and/or graph form to accomplishing the scope of services in Section II. A description of each task and deliverable and the schedule for accomplishing each shall be included. The intent of this narrative is to convey to PID that the Proposer understands the nature of the work and the level of effort necessary to successfully provide the defined services.

D. Firm Qualifications, Team Organization, Experience and Certifications/Qualifications

Proposer shall provide information demonstrating the qualifications of the firm and key staff to perform the services identified in Section II. Including previous experience, present workload (ability to respond), previous projects, present relationship with PID, ability to perform the scope of services (all or a portion of work) and overall stability of the firm. Provide evidence of the firm's financial stability, such as current financial statements, and clarify the extent to which the firm intends to provide all or part of the proposed scope of services.

Proposer shall provide the following: Contact information from three jurisdictions that the proposer, or proposer's staff, has worked for, or is working with related to grant-funded recovery projects for water systems. Describe the work performed for the three jurisdictions, including staff that performed work on the projects that are anticipated to be assigned to the PID project. Further information required is supplied in G that follows.

E. Staff Qualifications

Proposers should submit an organizational chart illustrating team members and relationships for individuals who will be providing services to PID. Included with the organizational chart should be resumes stating the qualifications (including education and years of experience with disaster recovery operations) of the proposed staff members and the organizational structure that the Proposer believes would best serve the PID and accomplish the scope of work described in the Approach section of the proposal. Additional staff may be added with the approval of PID after the contract award.

F. Subcontractor Qualifications

PID desires to enter into an agreement with one Proposer that will be responsible for all defined services. If the Proposer plans on using subcontractors as part of its implementation plan, then provide each subcontractor's profile, name, address, telephone number, and email address. Define the responsibilities and give a description of the services to be provided by each subcontractor. Describe the firm's business and reporting relationship with each subcontractor. Identify certified Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) firms, if any. Include references and resumes for all third-party subcontractors in the proposal.

PID has the right to accept or reject any changes made to the proposed project team members, including the use of subcontractors. PID may request copies of the identified MBE or WBE firm certifications.

G. References

Provide a list of municipalities/counties for which your firm has provided similar services in the last 3 years. Any reference on the list may be contacted as part of the evaluation process. A minimum of three references is required. Each reference should include the following information.

- Name of Organization and Contact
- Title of Contact
- Email Address
- Telephone Numbers

H. Cost Proposal

Proposer should submit a proposal setting forth the defined costs for the services described in the Approach section of the proposal. Proposed costs must include hourly rates as set forth in the Cost Proposal Form with a not to exceed amount for the entire contract attached hereto as Attachment B.

I. Additional Requirements

- Attachment A, Proposal Certification, must be completed and submitted with the firm's proposal.
- Attachment C, Debarment and Suspension Certification, must be completed and submitted with the firm's proposal.
- Attachment D, Anti-Lobbying Certification, must be completed and submitted with the

firm's proposal.

- Proposer shall provide a statement indicating the firm has reviewed PID's proposed Professional Services Agreement, (Attachment E), and all attachments thereto, and is able to meet the agreement's requirements. The statement shall also identify any exceptions to the terms of the agreement, and if no exceptions taken, state none.

IV. SELECTION

Selection Criteria

The following selection criteria will be used to evaluate and select a responsible firm(s) possessing the ability to successfully perform the desired services under the terms and conditions of the proposed agreement. The criteria will include, among others, firm integrity, compliance with public policy, a record of past performance, and financial and technical resources to provide the requested services, and include:

1. Qualifications of Firm - 10%

- Strength and stability of the firm;
- Technical competence and experience of firm and sub-consultants in general providing similar services; and
- Adequacy of staff to provide the required services.

2. Qualifications of Personnel - 30%

- Qualifications, education, technical competence, and experience of staff; and
- Key personnel's anticipated level of involvement in performing related work. Provide a Consultant team organization diagram, including the main contact person for the contract and sub-consultants. Identify the geographic location of the firm, each team member, and each sub-consultant. Describe the qualifications and experience of each of the proposed Consultant team members, including sub-consultants. Identify key areas of expertise of each team member, including sub-consultants, as well as their anticipated level of participation for the proposed type of service. Describe the anticipated level of participation as primary or supportive. PID desires to know who would be reasonably expected to perform the bulk of the work on a project, and who would perform primarily oversight, QA/QC, and other supportive roles.

3. Related Experience - 30%

- Experience in providing services similar to those requested herein;
- Experience working with the relevant public agencies; and
- Assessment by client references.

4. Completeness of Response - 10%

- Completeness of response in accordance with RFP instructions;
- Exceptions to or deviations from the RFP requirements; and
- The inclusion of required licenses and certifications.

5. Feasibility of Oversight – 10%

- Proximity and accessibility to PID staff and project sites, ability to respond to PID requests.

6. Reasonableness of Cost and Price - 10%

- Reasonableness of the individual firm hourly rates, and competitiveness of quoted rates with other proposals received. Provide adequacy of the data in support of figures quoted. The value will be judged based on the reasonableness of the Consultant's hourly rates required to perform the work in relation to the scope of work, technical expertise, experience in responsible charge of projects, and experience with using the systems and methods utilized by PID.

Panel Review

A panel of PID staff members will conduct an initial "Pass/Fail" review of all proposals to check for completeness and compliance with RFP requirements. Proposals that have been determined to be complete and in compliance with the RFP requirements will undergo further evaluation by the Panel. Proposals that are not complete or are not in compliance with RFP requirements will be disqualified from further evaluation and will be returned to the Proposer along with the reason the firm is no longer being considered.

The Panel will review all proposals from firms that have not been disqualified, using the criteria above. The Panel may consider additional sub-criteria beyond those listed that are discovered during the review of the various proposals. The Panel may elect to identify the top proposals and invite the top tier of Proposers to an interview. The number of Proposers selected for a Panel interview will be at the sole discretion of the Panel. Based on the initial proposals and the Panel interview (if performed), the Panel will select the proposal which best fulfills PID's requirements and is deemed to offer the best value to PID.

Evaluation of the proposals is expected to be completed within 30 days after receipt. PID reserves the right to make an award based on a proposal alone without an interview of Proposers. PID shall not be bound or in any way obligated until both parties have executed an agreement. PID also reserves the right to delay the award of an agreement or not award an agreement. The RFP may be awarded by individual task or total proposal, and more than one Proposal may be selected for individual tasks, as is most advantageous to the PID. However, PID prefers to make one award for all tasks described.

ATTACHMENT A

PROPOSAL CERTIFICATION

Proposers Signature: _____

Date:

By signing above, I Certify that I have carefully read and fully understand the information contained in this RFP and any addenda thereto; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Proposal being submitted and have the authority to sign the proposal on behalf of my firm.

ATTACHMENT C

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Orders 12549 and 12689, 2 C.F.R part 180, Debarment and Suspension, and 2 C.F.R. § 200.213.

Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGES TWO AND THREE BELOW)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Firm Name:

Name and Title of Authorized Representative:

Signature of Authorized Representative:

Date:

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out on page one.
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 which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has 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 meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. 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 proposal 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 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 the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," 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 is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction 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 System for Award Management (SAM) database.
8. Nothing contained in the foregoing shall be construed to require the 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 are 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 suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, 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.

ATTACHMENT D

CERTIFICATION REGARDING LOBBYING

The undersigned [insert name] certifies, to the best of his or her knowledge, that: 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.

1. 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.
2. The undersigned shall require that the language of this certification is included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Signature of Contractor's Authorized Official:

Name and Title of contractor's Authorized Official:

Date: _____

ATTACHMENT E

SAMPLE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of ____2019, by and between Paradise Irrigation District, an irrigation district formed and existing under Division 11 of the California Water Code ("District"), and _____(Consultant). District and Consultant are collectively referred to as "parties" or either individually as "party".

WITNESSETH:

- A. District desires to [enter a brief description of the task or project that is intended to be completed through this Agreement].
- B. The aforementioned work to be performed by Consultant is further described in the Scope of Work attached hereto as Exhibit "A" and incorporated herein by this reference and is collectively referred to as the "Project".
- C. Consultant desires to undertake the Project on behalf of District pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby stipulated, the parties agree as follows:

I. SCOPE OF WORK

The Consultant shall be responsible for timely and satisfactory completion of the work on the Project in accordance with the terms of this Agreement and Exhibit "A".

II. SCHEDULE

The Project will be completed upon a mutually agreed schedule after execution of this Agreement and Consultant's receipt of written Notice to Proceed on the Project from the District. The parties agree to establish this schedule within five days of receipt of written notice to proceed. Failure to do so may result in termination of the Agreement without cost to the District. Time is of the essence.

III. RESPONSIBILITIES

A. District. The District's duties and rights in connection with this Project are as follows:

- 1) The District shall make staff available to the Consultant for purposes of conference discussion, reviewing submissions from the Consultant, providing background or other available factual information and/or suggestions relating to the work in a manner such that the Consultant may meet the Project completion schedule.

- 2) The District shall provide access to all District facilities upon request by the Consultant at a time and in the manner mutually agreed upon as required to accommodate the work of Consultant.
- 3) The District shall tender payment in accordance with the provisions of Section VI(B).

B. Consultant. Consultant's duties and rights in connection with this Project are as follows:

- 1) Consultant shall be solely responsible for satisfactorily completing the Project, including those tasks described in Exhibit "A". Consultant shall supervise and direct the work and give all attention for such proper supervision and direction;
- 2) If Consultant furnishes labor or materials, or if Consultant incurs any expense on behalf of District, Consultant shall provide and pay for all labor, materials, equipment (including tools, construction equipment and machinery), utilities, transportation, and all other facilities and services necessary for the completion of the work on the Project;
- 3) If this Agreement or any of the Exhibits hereto are ambiguous or at variance with each other, Consultant shall notify District promptly upon discovery of any such ambiguity or variance. The District may reply in writing resolving the ambiguity or variance and Consultant agrees to comply with the District's written interpretation. No claims or demands of Consultant for extra compensation as a result of changes in the work shall be authorized unless done in conformance with section IX, below.
- 4) Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.
- 5) All work performed by Consultant for District pursuant to this Agreement shall be performed by qualified persons, and shall be performed in accordance with standards of performance generally applicable to qualified and licensed professionals in the field for which Consultants services are retained. The standard of care and performance shall be equal to or greater than the standard of care and performance of other consultants engaging in the same or similar work.
- 6) Consultant shall be entitled to rely upon the accuracy of data and information provided by the authorized staff of the District in writing; provided such reliance is consistent with the professional standard of care.

- 7) Consultant agrees that it will conduct its work on the Project and perform its services in compliance with all applicable Federal, State, and local laws, regulations and ordinances.

IV. WORK PRODUCT

The District, or its designee, shall at all times have access to the work product of the Consultant while Project is under preparation or in progress. Upon completion or termination of the Project, all drawings, documents, files and notes both in written and electronic format shall become property of the District, including without limitation all renderings, slides, sketches, plans, specifications, drafts, records, documents and other correspondence generated for or relied upon in connection with the Project. Any reuse of Consultant prepared documents, except for the specific purpose intended hereunder, will be at District's sole risk and without liability or legal exposure to Consultant or its subconsultants.

V. DESIGNATED REPRESENTATIVES

The Project shall be under direct control of *[insert name]*, to whom all questions may be directed. The District's representative will be its District Manager, Kevin Phillips, or his designee who will facilitate communication between the District's staff and Consultant.

VI. COMPENSATION

- A. Payment: Consultant will be paid on a time and materials basis in an amount "not to exceed" \$_____ (if authorized by District), and the work to be performed in Exhibit "A". No work in addition to the work described in this Agreement, including Exhibits, shall be performed by Consultant without prior written authorization by District as provided for in section IX, below. Progress payments shall be made monthly for work completed based upon the billing rates contained in the Schedule of Rates/Fees attached hereto in Exhibit "B" and incorporated herein by this reference.
- B. Time of Payment: District shall make payment to Consultant within thirty (30) days from the date of receipt of Consultant's invoice for undisputed amounts. Claims for payment of disputed amounts shall be handled in accordance with sections IX and XX, below. Consultant shall continue with work on the Project notwithstanding disputes as to payment. Acceptance of the Project, or some portion thereof, or payment to Consultant by District does not in any manner relieve Consultant of its obligations under this Agreement.

VII. TERM AND TIME FOR COMPLETION

This Agreement shall become effective on the date first written above and shall remain in effect until the Project has been completed in accordance with the terms of this Agreement unless sooner terminated in accordance with Article XII - Termination. The consultant will begin work upon receipt of written Notice to Proceed and will work diligently and continuously until completed in accordance with the terms of this Agreement.

VIII. TIME OF THE ESSENCE

Time is of the essence with respect to all provisions of this Agreement.

IX. EXTRA WORK

- A. Although work on the Project is intended and expected to adhere to the scope of work, the District reserves the right at any time during the term of this Agreement to order Consultant to perform extra work or to make changes altering, adding, or deducting from the Project. Changes shall not be binding upon either District or Consultant unless made in compliance with this section.
- B. Changes may originate from the District or the Consultant. The District will transmit a written request for a proposal covering the requested change, setting forth the work in detail. Upon receipt of such request, Consultant shall promptly submit in writing to District a proposal offering to perform such change, a request for any required extension of time caused by such change, and an itemized statement of the cost or credit for the proposed change. Failure of Consultant to include a request for an extension of time in the proposal shall constitute conclusive evidence that such extra work or revisions will entail no delay and that no extension will be required.
- C. If the Consultant's proposal is accepted and authorized by District, a written Change Order will be issued by District stating the extra work or change authorized and granting any required adjustments in contract price and time for completion.
- D. If an agreement is not reached, District may order the Consultant, by written change order, to perform such extra work or to make changes on a time and materials basis. Such change order shall specify the estimated amount of payment to be made and the time extension allowed for such work or changes. The Consultant shall perform such work and shall furnish the District with itemized bills only for the actual time spent and materials utilized.
- E. The performance of extra work or changes pursuant to any Change Order shall be in accordance with this Agreement. No extra work shall be performed and no change shall be made unless pursuant to such written Change Order and no claim for addition to the contract price shall be valid unless so ordered.

X. INDEMNIFICATION

Consultant agrees to indemnify, defend, and hold harmless the District, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therein) (collectively "Claims") to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, excepting such injury or harm caused by District's sole or active negligence or willful misconduct, to the extent caused thereby. Consultant's indemnity obligation shall extend to Claims occurring after completion of the Project, as well as during the Project's progress.

Consultant specifically agrees that this indemnification agreement provides indemnity to District for any claims, damages or liability for injuries (including death) incurred or sustained by Consultant's own employees and those of Consultant's subconsultants, except to the extent such claims, damages, or liability for injuries (including death) was caused by the District's sole or active negligence or willful misconduct.

Neither the termination of this Agreement nor the completion or end of the Project shall release the Consultant from its obligations to indemnify as set forth above. Consultant's obligation to indemnify and its obligation to maintain liability and other insurance are separate and distinct. Consultant's obligation to indemnify is not restricted to insurance proceeds, if any, received by District or its directors, officers, employees, or authorized representatives.

XI. INSURANCE

Consultant agrees to provide insurance coverage as set forth in Exhibit "C".

XII. TERMINATION

The District may terminate this Agreement with Consultant at any time without cause. The District shall so notify Consultant in writing. Upon written notification, this Agreement shall be terminated and the Consultant shall immediately stop the Consultant's work on the Project, follow all District instructions, and mitigate all costs and damages. Provided Consultant is not in breach, District shall be responsible for all costs incurred by Consultant up to the date of termination without cause.

XIII. ENTIRE AGREEMENT

This writing, including Exhibits "A", "B" and "C" constitutes the entire Agreement between the parties relative to the services specified herein, and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement.

There are no understandings, agreements, conditions, representations, warranties or promises with respect to the subject matter of this Agreement except those contained in or referred to in this writing.

XIV. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties that Consultant's relationship to District is that of an independent contractor. All persons hired by Consultant and performing the work shall be Consultant's employees or agents. District shall not be obligated in any way to pay any wages or other claims by any such employees or agents or any other person by reason of this Agreement. Consultant shall be solely liable to such employees and agents for losses, costs, damage or injuries by said employees or agents during the course of the work.

XV. SUCCESSORS AND ASSIGNMENT

This Agreement shall be binding on the heirs, successors, executors, administrator and assigns of the parties; and each party agrees that it will not assign, transfer, convey or otherwise dispose of this Agreement or any part thereof, or its rights, title or interest therein, or its power to execute the same without the prior written consent of the other party, which shall not be unreasonable, delayed or conditioned.

XVI. REMEDIES NOT EXCLUSIVE

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of any other remedy provided by law.

XVII. NOTICES

All notices, statements, reports, approvals or requests or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally, or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in the U.S. post office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses shown below:

Paradise Irrigation District	Consultant
Attention: Kevin Phillips	Name
6332 Clark Road	Address
Paradise, CA 95969	City, State Zip

XVIII. SUBCONSULTANTS

Except for the sub-consultants listed in Exhibit "A", no other subcontract shall be awarded or another outside consultant engaged by Consultant unless prior written approval is obtained from District, which may be withheld for any reason, in District's sole discretion. Payment to Consultant as provided in Exhibit "B" includes full payment for services to sub-consultants.

XIX. INTERPRETATION

Unless the context otherwise clearly requires, the terms in the body of this Agreement shall prevail over any inconsistent terms that may be found in the Exhibits hereto. The parties have had a full and fair opportunity to negotiate and review the terms of this agreement with their respective legal counsel and, as a result, the normal rule of interpreting ambiguities against the drafting party shall not apply.

XX. DISPUTE RESOLUTION; JURISDICTION AND VENUE

In the event of a dispute regarding interpretation or implementation of this Agreement, including without limitation disputes concerning payment, a District representative and Consultant representative shall endeavor to resolve the dispute by meeting in person within 30 days after the request of either party. If the dispute remains unresolved and unless the parties otherwise agree, the dispute may be resolved by litigation and any party may at its option pursue any available legal remedy. This Agreement shall be governed by and construed under the laws of the State of California. Jurisdiction and venue for any action brought to enforce or interpret the terms of this Agreement shall be in the Superior Court of the State of California in and for the County of Butte.

XXI. HAZARDOUS MATERIALS

In the event, the Consultant or the District discover Hazardous Materials in any form at District's facilities, the Consultant and the District shall promptly confer with each other of the discovery, and the District and Consultant shall employ reasonable actions ensuring public, employee, and third-party safety.

As used herein, Hazardous Materials means any hazardous or toxic substance, material, or waste, the storage, use, or disposition of which is or becomes regulated by any local governmental authority, the State of California, or the United States government.

IN WITNESS WHEREOF the parties execute this Agreement on the day and year first herein above written.

CONSULTANT

Principal-In-Charge

ATTEST:

TAXPAYER ID _____

Business Type:

Corporation Yes No

Other _____

Printed Name and Title

(Complete W-9 enclosed)

PARADISE IRRIGATION DISTRICT

ATTEST:

District Secretary

District Manager

Attachments:

Exhibit A - Consultant's Proposal

Exhibit B - Consultant's (2018) Schedule of Fees

Exhibit C - Insurance Requirement

EXHIBIT "A"

Proposal

Paradise Irrigation District

EXHIBIT "B"

Fee Schedule

EXHIBIT C

Insurance Requirements

By his/her signature hereunder, Consultant certifies:

- a) That he/she is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this agreement. Consultant and subconsultants will keep workers' compensation insurance for their employees in effect during all work covered by this agreement.

- b) Consultant will file with the Paradise Irrigation District before beginning work, certificates of insurance and policy endorsements satisfactory to the Paradise Irrigation District evidencing general liability coverage, of not less than \$1,000,000 per occurrence (\$2,000,000 general and products-completed operations aggregate (if used)) for bodily injury, personal injury and property damage; auto liability of at least \$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability (\$1,000,000) (if applicable); requiring 30 days (10 days for non-payment of premium) notice of cancellation to the Paradise Irrigation District. Such insurance shall be primary and any insurance, self-insurance or other coverage maintained by the Paradise Irrigation District, its directors, officers, employees, or authorized volunteers shall not contribute to it. The general liability coverage shall give the Paradise Irrigation District, its directors, officers, employees, and authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A-: VII, or equivalent, or as otherwise approved by the Paradise Irrigation District. In the event that the Consultant employs other consultants (sub-consultants) as part of the work covered by this agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above. Consultant agrees to waive subrogation which any insurer may acquire by virtue of payment of any loss. Consultant shall obtain any endorsement necessary to affect this waiver of subrogation.

- c) Consultant shall maintain errors and omissions liability insurance appropriate to the Consultant's profession of no less than \$1,000,000 per claim and aggregate for this project.

- d) Insurance must be maintained for at least five years after completion of contract work.

If any of the required coverages expire during the term of this agreement, the Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the Paradise Irrigation District at least ten (10) days prior to the expiration date.

Signature of Contractor's Authorized Official:

Name and Title of contractor's Authorized Official:

Date: _____

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

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

- (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:
- “During the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (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 considerations for employment without regard to race, color, religion, sex, 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 as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.”** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

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

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

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

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
 - a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (1) The 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.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
 - (2) The contract requires the approval of FEMA, regardless of amount.
 - (3) The contract is for federally-required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

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

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

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

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

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

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

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

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”