

Emergency Professional Services Agreement General Terms and Conditions

This **Professional Services Agreement** ("Agreement") is dated October 12, 2023, by and between **Tidal Basin Government Consulting, LLC** ("Consultant" or "Contractor"), with offices at **126 Business Park Drive, Utica, NY**, and the undersigned **City of Sanibel** (referred to herein as the "Client"), with offices located at **800 Dunlop Road, Sanibel, Florida 33957**. In consideration of the mutual covenants to be performed by the parties pursuant to this Agreement, each party hereby represents, warrants, and agrees as follows:

1. TERM & APPLICABILITY

The term of this Agreement shall commence on October 12, 2023, and be valid until November 12, 2023. This Agreement shall apply to all work performed at the request of the Client or for the benefit of the Client during the term hereof (the "Work") unless both parties agree in writing that the terms and conditions hereof shall not apply.

2. SCOPE OF WORK

Consultant shall perform such Work as the Client may direct from time to time during the term hereof and in accordance with Exhibit A attached hereto.

3. INDEPENDENT CONTRACTOR

The parties intend and agree that Consultant and any subcontractor ("personnel") hired by Consultant are independent contractors and not employees or agents of the Client. Subject to the terms and conditions of this Agreement, Consultant alone will control the manner and means by which the Work is performed, and the Services are provided to the Client. As neither Consultant nor its personnel hired are the Client's employees, the Client will not take any action or provide Consultant or its personnel with any benefits or commitments, including, without limitation, withholding of FICA (social security) from Consultant's payments; making state or federal unemployment insurance contributions on behalf of Consultant or its personnel; withholding of state and federal income tax from payments to Consultant; making disability insurance contributions on behalf of Consultant or its personnel; and obtaining worker's compensation insurance on behalf of Consultant or its personnel.

4. STANDARD OF CARE

Consultant will perform services under this Agreement with the degree of skill and diligence normally practiced by professional consultants performing the same or similar services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.

5. CHANGES/AMENDMENTS

This Agreement and its exhibits constitute the entire agreement between the Parties and together with its exhibits supersede any prior written or oral agreements. This Agreement may not be changed except by written amendment signed by both Parties. Consultant shall promptly notify Client if changes to the Scope of Services affect the schedule, level of effort, or payment to Consultant and the schedule and payment shall be equitably adjusted.

6. FEE FOR SERVICES

The fee for the services under this Agreement will be based on the actual hours of services furnished multiplied by Consultant's Billing Rates as set forth in Exhibit B, plus all reasonable expenses directly related to the services furnished under this Agreement. The total not-to-exceed for this Agreement shall be \$88,660.00.

7. PAYMENT

Client shall pay Consultant for services furnished under this Agreement upon submission of monthly invoices in an amount equal to actual hours of services furnished multiplied by the billing rates attached as Exhibit B, and all reasonable expenses directly related to services. Client shall pay Consultant within thirty (30) days of receipt of invoices less any disputed amounts. If Client disputes any portion of the invoice, Client shall pay the undisputed portion. Client shall notify Consultant in writing, within ten (10) days of receipt of the invoice of any exceptions taken. If Consultant and Client do not reach resolve any payment dispute within sixty (60) days of receipt of invoice, the matter will be resolved in accordance with the disputes provisions of this Agreement. Additional charges for interest shall become due and payable at a rate of one and one-half percent (1-1/2%) per month (or the maximum percentage allowed by law) on any unpaid, undisputed invoiced amounts. Any interest charges due from Client on past due invoices are outside any amounts otherwise due under this Agreement. Client's failure to pay undisputed invoiced amounts within sixty (60) days after receipt of invoice shall constitute a material breach of this Agreement. Consultant, at its sole discretion, may suspend services hereunder or may initiate collections proceedings, including mandatory binding arbitration, without incurring any liability or waiving any right established hereunder or by law.

8. INDEMNITY

To the extent permitted by law, Consultant agrees to indemnify, defend and hold harmless Client from and against any and loss, damage, claim or liability (including, without limitation reasonable attorney's fees) incurred by or imposed on the Client by reason of or in connection with Consultant's performance of the Scope of Services under this Agreement; provided,

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however, that Consultant shall not, and shall not be obligated to, indemnify, defend or hold harmless Client from or against any loss to the extent the loss arises from or is related to the Client's actions or inactions, including negligence and willful misconduct. Upon notice from Client of any action or proceeding subject to the indemnification in this section, Consultant agrees to defend the Client in the action or proceeding, subject to a reservation of rights.

To the extent permitted by law, Client agrees to indemnify, defend and hold harmless Consultant and its directors, officers, shareholders, employees and sub-consultants (each an 'Indemnified Party') from and against any and all loss, damage, claim or liability (including, without limitation reasonable attorney's fees) incurred by or imposed on the Indemnified Party by reason of or in connection with the appointment of Consultant to perform the Scope of Services under this Agreement; provided, however, that Client shall not, and shall not be obligated to, indemnify, defend or hold harmless any Indemnified Party from or against any loss to the extent the loss arises from the negligence or willful misconduct of the Indemnified Party. Upon notice from any Indemnified Party of any action or proceeding subject to the indemnification in this section, Client agrees to defend the Indemnified Party in the action or proceeding, subject to a reservation of rights.

9. INSURANCE

Consultant shall maintain insurance with the following required coverage and minimum limits and upon request, will provide insurance certificates to Client:

Worker's Compensation:	Statutory;
Commercial General Liability:	\$1,000,000 per occurrence \$2,000,000 aggregate
Comprehensive General Automobile:	\$1,000,000 combined single limit, including hired and non-owned coverages
Professional Liability:	\$1,000,000 per occurrence \$3,000,000 aggregate
Umbrella/Excess Liability	\$5,000,000

Description: Certificate holder is additional insured on a primary non-contributory basis. Waiver of subrogation applies. Umbrella/excess liability is written on a follow form coverage.

10. WORK PRODUCT

Client shall have the unrestricted right to use the documents, analyses and other data prepared by Consultant under this Agreement ("Work Product"); provided, however Client shall not rely on or use the Work Products for any purpose other than the purposes under this Agreement and the Work Products shall not be changed without the prior written approval of Consultant. If Client releases the Work Products to a third party without Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) Client does so at its sole risk and discretion, (b) Consultant shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products and (c) Client shall indemnify, defend and hold Consultant harmless from any and all claims or damages related to the release, change or reuse.

11. LIMITATION OF LIABILITY

No employee of Consultant shall have individual liability to Client. To the extent permitted by law, the total liability of Consultant, its officers, directors, shareholders, employees and sub-consultants for any and all claims arising out of this Agreement, including attorneys' fees, and whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed the revenue received by Consultant under this Agreement.

12. NO CONSEQUENTIAL DAMAGES

In no event and under no circumstances shall Consultant be liable to Client for any principal, interest, loss of anticipated revenues, earnings, profits, increased expense of operation or construction, loss by reason of shutdown or non-operation due to late completion or otherwise or for any other economic, consequential, indirect or special damages.

13. INFORMATION PROVIDED BY OTHERS

Client shall provide to Consultant in a timely manner any information Consultant indicates is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by Client and its representatives.

14. SAFETY AND SECURITY

Consultant has established and maintains programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, Consultant specifically disclaims any authority or responsibility for job site safety and safety of persons other than Consultant's employees. Consultant shall not provide any such services and disclaims any responsibility under this Agreement related to

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site security or the assessment, evaluation, review, testing, maintenance, operation or safety practices or procedures related to security.

15. TERMINATION

A. Termination for Convenience. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Client shall pay Consultant for all services rendered to the date of termination plus all costs arising from or related to the termination.

B. Termination for Default. If either party breaches or defaults in its obligations hereunder, the non-defaulting party, after giving seven (7) days written notice of its intention to terminate or suspend performance under this Agreement, may, if cure of the default is not commenced and diligently continued, terminate this Agreement or suspend performance under this Agreement.

16. DISPUTE RESOLUTION

Consultant and Client shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner. Upon mutual agreement of the parties, disputes shall be resolved through mediation by a professional mediator. If either party objects to mediation, or if mediation does not resolve any dispute or that arises under this Agreement, within ninety (90) days after either party requests mediation, the dispute or conflict shall be resolved through arbitration. Mediation and arbitration under this section shall be governed by the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures.

17. COOPERATIVE PURCHASING

It is the intent of Client to allow other governments and other governmental agencies utilize this contract by entering into a Cooperative Purchasing Agreement to the extent permissible by local and state law. The Cooperative Purchasing Agreement will stipulate that any modifications or changes to this document and resulting contract(s) including but not limited to Consultant requirements, scope, or price shall be submitted to Client in writing for acceptance and approval as the originator of the contract.

18. ASSIGNMENT

This Agreement is binding upon and will inure to the benefit of Client and Consultant and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

19. NOTICES

Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first-class, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

Client:	City of Sanibel
Attention:	Steve C. Chaipel
Address:	800 Dunlop Road
	Sanibel, Florida 33957
Consultant:	Tidal Basin Government Consulting, LLC
Attention:	William Slater
Address:	126 Business Park Drive
	Utica, NY 13502

With a copy via email to:

Daylen Docampo Perez, Esq. at
ddocampoperez@tidalbasin.rphc.com

Maria E. Suppa, CPA CFF at
MSuppa@rphc.com

20. NO THIRD-PARTY BENEFICIARY

Services performed by Consultant under this Agreement are solely for the benefit of Client. Nothing contained in this Agreement creates any duties on the part of Consultant towards any person who is not a party to this Agreement. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any third party. It is expressly understood and agreed that the enforcement of these items and conditions shall be reserved to Client and the Consultant. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person. IT IS THE EXPRESS INTENT OF THE PARTIES THAT ANY SUCH PERSON OR ENTITY, OTHER THAN CLIENT AND THE CONSULTANT, RECEIVING SERVICES OR BENEFITS UNDER THIS AGREEMENT SHALL BE DEEMED AN INCIDENTAL BENEFICIARY.

21. MISCELLANEOUS

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A. Client expressly agrees that all provisions of the Agreement, including the clause limiting the liability of Consultant, were mutually negotiated and that but for the inclusion of the limitation of liability clause in the Agreement, Consultant's compensation for services would otherwise be greater and/or Consultant would not have entered into the Agreement.

B. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.

C. This Agreement shall be governed by, and construed in accordance with, the laws of the State of **Florida** and the body of federal procurement law, as applicable.

D. Consultant shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least three (3) years after completion of the contract. Client shall have access to records, documents and information collected and/or maintained by Consultant in the course of the administration of the Agreement. Upon reasonable notice, and at reasonable times, Consultant shall make this information accessible to Client at Consultant's place of business for purposes of inspection, reproduction and audit.

E. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover, as part of its judgment, reasonable attorneys' fees and costs from the other party.

F. Notwithstanding any statute to the contrary, the Parties agree that any action to enforce or interpret this Agreement shall be initiated within two (2) years from the time the party knew or should have known of the fact giving rise to its action, and shall not in any case be initiated later than six (6) years after Consultant completes its Scope of Services under this Agreement.

G. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.

H. Any failure to enforce performance of any provision of this Agreement by any party will not constitute a waiver of its right to subsequently enforce such provision or any other provision. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

I. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. All pronouns shall be interpreted to refer to gender neutrally. The term "including" shall be deemed to mean "including but not limited to."

J. This Agreement is in compliance with current federal contracting requirements as outlined within 2 C.F.R. § 200.326 and 2 C.F.R. Part 200 and as stated within Appendix 1 "2 C.F.R. § 200.327 Required Clauses" if applicable.

[This space was left intentionally blank. Signature page follows]



**Emergency Professional Services Agreement
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

City of Sanibel

Tidal Basin Government Consulting, LLC

By: _____
As its: _____
Date: _____

By: _____
As its: _____
Date: _____

SCHEDULE A – “Scope of Work”

SCOPE OF SERVICES

Tidal Basin will assist the City of Sanibel in managing the claim development and administration under Federal and State Disaster Programs, and any proceeding disasters during the term of this contract. Such Federal Programs may include but are not limited to: FEMA Public Assistance (PA), FEMA 404 Hazard Mitigation Grant Program (HMGP), HUD Community Development Block Grant Disaster Recovery, Federal Highway Emergency Relief Program, Federal Transit Administration, and Small Business Administration. Examples of Disaster Recovery services that may be required, include:

Project Worksheet Development Phase:

- Ensure all eligible costs/damages have been identified and reported to FEMA
- categorize the City losses: FEMA categories A-G, insured/uninsured, responsibility of OFA, and special considerations.
- Identify any circumstances that may require special reviews and support the City with these efforts (Insurance, environmental, historical, hazard mitigation, etc.)
- Work with the City to Identify any possible alternate or Improved projects
- Support overall PW formulation efforts to include development of damage descriptions, scopes of work, and valid cost estimates
- Assist with project formulation, grant strategy development and implementation
- Assist In preparing support documentation for presentation to FEMA and the State
- Provide general insurance support/guidance to ensure appropriate anticipated Insurance deductions by FEMA and fully Integrate your insurance claim with your FEMA recovery
- Provide QA/QC support and general eligibility guidance

Expedite FEMA Funding:

- Ensure PW's for work completed and/or costs Incurred to date are prioritized and written In advance of other projects
- Support cost documentation collection for costs incurred/work completed to date
- Assist In developing approach to filing and tracking costs
- Assist In capturing and summarizing eligible costs for selected departments
- Conduct "**integrity audits**" for all costs incurred to date and identify any areas of concern that may jeopardize funding, to include a review of any existing contracts procured to support the response and recovery efforts to date. This would Include a review contracts, vendor qualification process, and purchasing documentation against FEMA's Field Procurement Manual
- Develop a funding approach and identify other possible funding avenues for work possibly not covered by FEMA (HUD, USDA, FHWA, etc.)

General Recovery Support, Grant Management and Close Out:

- Provide guidance regarding FEMA's obtain and maintain Insurance requirement

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- Support the City with their roles and responsibilities outlined in FEMA's Public Assistance new delivery model process
- Assist in identifying and prioritizing City needs including potential State, HUD, or other agency funding that may be available
- Maximize hazard mitigation opportunities to help reduce or eliminate future damages from similar events
- Review eligibility issues and work with the City to develop justifications for presentation to FEMA, State, and other involved agencies
- Provide program guidance with respect to eligibility, options, contracting, change orders, documentation and tracking
- Prepare draft correspondence to State, FEMA and other relevant agencies as necessary
- Attend meetings with management, State and FEMA
- Work to resolve disputes that may arise
- If management disagrees with FEMA determinations, assist to strategize and write appeals
- When all projects are completed and drawn down reimbursement for all eligible costs, assist with finalizing preparations for State/FEMA final inspections and audits, and participate in exit conferences with State/FEMA
- Provide overall grant management support through project closeout activities

Training Support:

- Support efforts to train internal staff on FEMA documentation requirements
- Support training related to the overall recovery process and FEMA Public Assistance program



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SCHEDULE B – “Fee Structure”

Pricing			
Position	Hours	Hourly Rate	Total
Senior Consultant	220	\$255.00	\$56,100.00
Consultant	176	\$185.00	\$32,560.00
			Total NTE: \$88,660.00

The total cost of work performed under this Agreement shall not exceed \$88,660.00.

Travel expenses will be billed to the client at cost, without mark-up and in accordance with local GSA guidelines.

Appendix 1

2 C.F.R. § 200.327 and 2 CFR Part 200, Appendix II, Required Contract Clauses [If applicable]

I. During the performance of this Agreement and any subsequent Task Order, the contractor agrees as follows:

(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 not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the 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.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan,

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insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.”

II. 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 (b)(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 (b)(1) of this section, in the sum of \$27 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 (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The Client 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)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.

III. Clean Air Act



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- (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 Client and understands and agrees that the Client will, in turn, report each violation as required to assure notification to the 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.

IV. 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 Client and understands and agrees that the Client will, in turn, report each violation as required to assure notification to the 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.

V. Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the Client. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Client, 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

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may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally 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 who in turn will forward the certification(s) to the federal awarding agency.

VII. Procurement of Recovered Materials

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

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

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

VIII. Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –

(b) Prohibitions.

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- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

- (1) This clause does not prohibit contractors from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - i. Are *not used* as a substantial or essential component of any system; *and*
 - ii. Are *not used* as critical technology of any system.

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(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

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

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

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

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

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

IX. Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

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Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

X. Access to Records

- (1) The contractor agrees to provide to Client, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (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.
- (4) In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Client and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

XI. 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. The contractor shall include this provision in any subcontracts.

XII. Compliance with Federal Law, Regulations, Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

XIII. No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

XIV. Program Fraud and False or Fraudulent Statements 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.



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Appendix 2

CERTIFICATION REGARDING LOBBYING

The undersigned 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 section 1352, Title 31, U.S.C. 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. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Tidal Basin Government Consulting, LLC

By: _____
As
its: _____
Date: _____