LARIMER COUNTY, COLORADO

Professional Services Agreement
(P19-##)

THIS AGREEMENT is made by and between the Board of County Commissioners of Larimer County, Colorado, located at 200 W. Oak, Fort Collins, Colorado 80521 ("County"), and _____, located at _____, ("Contractor"). County and Contractor agree to the following terms and conditions:

1. TERM

a. Initial Term. The initial term of this Agreement shall be from _____ through and including _____ ("Initial Term"), unless sooner terminated as provided for in this Agreement.

b. Extension Terms. County may, at its sole option, extend the term of this Agreement beyond the Initial Term for up to ___ additional one-year terms at the same rates and under the same terms provided for herein (each such period being an "Extension Term"). County shall notify Contractor of its election for an Extension Term(s) as provided for in §6.

c. Early Termination for Convenience of County. County may, at its sole option, terminate this Agreement at any time for its convenience and without cause. Upon receipt of such notice, Contractor shall be subject to this subsection and §5(a)(i).

   i. County shall provide Contractor written notice of such termination in accordance with §6, and such notice shall specify the effective date of the termination.

   ii. If County terminates for convenience, Contractor will be paid for Work completed and unpaid prior to the effective date of termination as follows:
      1. Lump Sum Contracts: The percentage of the total lump sum fee that represents the ratio of Work completed to the total amount of Work;
      2. Cost Plus Fixed Fee Contracts: Incurred cost of actual Work performed plus a percentage of the fixed fee that represents the ratio of Work completed to the total amount of Work;
      3. Specific Rate of Compensation Contract: Incurred cost of actual Work performed;
      4. Per Unit of Work Contract: The cost of each completed unit of Work and/or a percentage of each partially completed unit of Work.

   iii. In no event shall County be liable for costs incurred by Contractor after the specified termination date, including but not limited to anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or post-termination overhead or unabsorbed overhead.

2. STATEMENT OF WORK

a. Contractor shall perform all the services, including delivery of any goods and services relating to such goods, as described in **Exhibit A** attached hereto (the "Work") and in accordance with the provisions of this Agreement.

3. PAYMENT

a. All charges, prices, fees, and discounts related to the Work are set forth in the price schedule attached hereto as **Exhibit B** (the "Price Schedule").

b. The total maximum cost to County under this Agreement is $_____. In no event shall County be liable to pay any money more than this total maximum cost unless County agrees otherwise in writing.

c. Contractor shall initiate payment requests by invoice to County in the amounts, form and manner stated on **Exhibit B**.

d. Within ___ days of its receipt of a complete and proper invoice, County shall pay the invoice so long as the amount invoiced correctly represents Work completed by Contractor in compliance with the terms of this Agreement. Payment of any invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement. Prior to payment, County reserves the right to require such additional documentation that it reasonably deems necessary to support invoices and payments to Contractor. In such event, payment deadlines shall be tolled and non-payment pending receipt and review of such additional documentation shall not constitute a breach by County.

e. Contractor agrees that all invoices shall be exclusive of all excise, sale, use and other taxes for which County is exempt. Upon request, County shall provide Contractor a tax-exempt certificate or other similar form demonstrating its tax-exempt status.

f. Larimer County is a Colorado public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated therefore. Termination of this agreement due to future non-appropriation shall not be considered a breach or default by County.

4. BREACH

a. The failure of either party to perform any of its obligations in accordance with this Agreement, in whole or in part, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

b. In the event of a breach, the non-breaching party shall give written notice of the breach to the other party in accordance with §6. If the notified party does not cure the breach within 30 days after the effective date of the notice pursuant to §6, the non-breaching party may exercise any of the remedies as described in §5 for that party. Notwithstanding any provision of this Agreement to the contrary, County may immediately terminate this Agreement for convenience and without cause as provided in §1(c) without prior written notice and without a cure period.

5. REMEDIES FOR BREACH

a. <u>County Remedies.</u> If Contractor is in breach under any provision of this Agreement and fails to cure such breach following notice and 30 days to cure as provided in §4 above, County may terminate this Agreement or any portion of this Agreement, or in its sole

discretion choose one or more of the following remedies: Withhold payment to Contractor until Contractor cures its breach; or Suspend Contractor's performance, pending corrective action by Contractor, with respect to all or any portion of the Work, which may include immediate removal from the Work of any Contractor's employees, agents or subcontractors whom County deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable with respect to the Work.

i. If County terminates this Agreement, Contractor shall take all actions necessary to carry-out the termination on the date specified in the termination notice and to minimize the liability of Contractor and County to third parties. All such actions shall be subject to prior approval of County and shall include, without limitation, the following:

1. Halting performance of all services and other work under the Agreement on the date(s) and in the manner specified by County;
2. Not placing any further orders or subcontracts for materials, services, equipment, or other items;
3. Terminating all existing orders and subcontracts in a manner that minimizes liability to the greatest extent feasible under the circumstances;
4. At County's direction, assigning to County any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Subject to County's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts;
6. Completing performance of any services or work that County designates to be completed prior to the date of termination specified by County;
7. Taking such action as may be necessary, or as County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which County has or may acquire an interest.

ii. Contractor shall be liable to County for any damages sustained by County in connection with any breach by Contractor, and County may withhold payment to Contractor for purposes of mitigating damages and losses sustained by County in connection with any breach by Contractor.

b. Contractor Remedies. If County is in breach under any provision of this Agreement and fails to cure such breach following notice and 30 days to cure as provided in §4 above, Contractor may terminate this Agreement and shall have all remedies available by law and equity.

c. No Binding Arbitration. Larimer County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement, whether expressly stated or by incorporation, shall be null and void. Any provision rendered null and void by this provision shall not invalidate the reminder of this Agreement.

6. NOTICE & REPRESENTATIVES

a. All notices required or permitted under this Agreement shall be in writing and delivered in person, by certified or registered mail, or via email with read-receipt requested to the following designated party representatives ("Contract Administrator"):

   i. If to County: _____

   ii. If to Contractor: _____

b. County's Contract Administrator does not have the authority to alter or modify the terms of this Agreement.

c. Notices delivered in person or by certified or registered mail are effective upon delivery. Notices sent via email are effective upon receipt as evidenced by read receipt.

7. LIABILITY

a. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of the monetary limits, notice requirements, immunities, rights, benefits, defenses, limitations and protections available to County under any applicable law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et. seq.*, as currently written or hereafter amended or implemented.

b. General Liability & Intellectual Property Indemnification.

   i. Contractor shall be responsible for and hold harmless County, its employees, officials, and agents for any losses and liabilities incurred by County, its employees, officials, and/or agents, that are attributable to the negligence or fault of Contractor, its employees, agents, subcontractors, or assignees in connection with this Agreement; and

   ii. Contractor shall indemnify and hold harmless County, it's employees, officials, and agents for any losses and liabilities incurred by County, it's employees, officials, and/or agents, in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

c. Duty to Defend. Contractor shall defend the County, it's employees, officials, and agents, by attorneys and other professionals reasonably approved by them against any claims, suits, actions or proceedings related to the losses, liabilities, and indemnity set forth in §7(b)(i) and (ii) above. In no event shall any matter be settled without prior approval by the County.

d. Insurance. Contractor shall obtain, and maintain continuously for the term of this Agreement, at its expense, the insurance types and amounts set forth in **Exhibit C** attached hereto. Contractor is not relieved of any liability or other obligations due to its failure to obtain or maintain insurance in sufficient amounts, durations, or types.

e. No Pledge of Credit or Aid to Corporations. Pursuant to Colorado Constitution Article XI, §1 and 2, and Article X, §20, County shall not indemnify or hold harmless Contractor or any party related to or operating under this Agreement. No provision of this Agreement shall limit or set the amount of damages available to County to any amount other than the actual direct and indirect damages to County, regardless of the theory or basis for such

damages. Any provision included or incorporated in this Agreement by reference which purports to negate this provision in whole or in part, or which conflicts with its terms, shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of this Agreement.

8. GENERAL PROVISIONS

a. Independent Contractor. Contractor is an independent contractor and under no circumstance will Contractor or any agent or employee of Contractor be deemed an employee of County. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through County, and Contractor is solely responsible to provide such benefits at its sole cost.

b. No Assignment. All rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior written consent by the other party, and any such transfer or assignment shall subject the transferee/assignee to all provisions of this Agreement.

c. Standard and Manner of Performance. Contractor shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

d. Not Exclusive. Contractor is not guaranteed any work except as expressly stated herein, and this Agreement does not create an exclusive contract for the Work.

e. Choice of Law, Jurisdiction and Venue. Colorado law shall be applied in the interpretation, execution and enforcement of this Agreement. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and venue shall be in Larimer County, Colorado.

f. Contractor's Records. Contractor shall maintain a file of all documents, records, communications, notes, accounting records and other materials relating to the Work, including documents, records, communications, notes, and other materials related to the Work performed by subcontractors or agents (collectively the "Contractor's Records"), for a minimum of three (3) years from the date of final payment to Contractor under this Agreement. During performance of the Work and for the required record retention period, Contractor shall permit duly authorized agents and employees of County to enter Contractor's offices to inspect, review, copy, examine, and/or audit Contractor's Records at all reasonable times with a minimum of two (2) business days' notice from County.

g. Debarment. Contractor certifies by signing this Agreement that neither Contractor, the organization, nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal government and do not appear on the System for Award Management (SAM) exclusions list maintained by the General Services Administration (GSA).

h. Authority. Each party represents and warrants that the execution and delivery of this Agreement and the performance of such party's obligations have been duly authorized.

i. No Third-Party Beneficiaries. This Agreement is for the sole benefit of County and Contractor and nothing herein shall be construed as giving any benefits, rights, remedies, or claims to any other person or entity. Enforcement of this Agreement and all rights and

obligations hereunder are reserved solely to County and Contractor. Any services or benefits which third parties receive as a result of this Agreement are incidental.

j. Public Records. County is subject to the Colorado's Open Records Act ("CORA") and Contractor acknowledges that this Agreement is disclosable to the public pursuant to CORA. Additionally, Contractor understands that other records and information related to this Agreement may be subject to public disclosure pursuant to CORA, and County will release any such records per the requirements of CORA. County shall not be responsible for any damages or claims related to its disclosure of records or information it determines must be disclosed pursuant to CORA or any other applicable law.

k. Laws and Regulations. Contractor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, Title II of the Americans with Disabilities Act of 1990, as amended, as well as laws applicable to discrimination and unfair employment practices.

l. Public Contracts for Services. [*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the Department program established pursuant to C.R.S. §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and County within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to County a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-102 et seq., County may terminate this Agreement for breach and, if so terminated, Contractor shall be liable for damages.

m. Ownership of Work Product. The tangible and intangible products of the Work performed under this Agreement, including but not limited to documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, pictures, negatives, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work ("Work Product"), are intended to be works made for hire and shall be solely owned by County. Contractor assigns to County all right, title, and interest to all Work Product, and agrees to cooperate and execute any documents in furtherance of County securing and/or protecting its intellectual property rights related to the Work Product. Work Product does not include

any material developed by Contractor prior to the effective date of this Agreement that is used, without modification, in performance of the Work.

n. Counterparts and Signatures. This Agreement may be executed in several identical counterparts, all of which taken together shall constitute one single agreement between the parties. Facsimile signatures and signatures transmitted via portable document format (PDF) shall be considered as original signatures.

o. Use of Federal Money. Federal monies are being used to fund all or a portion of the Work, and therefore all contract provisions set forth in Exhibit D, attached hereto, are fully incorporated into this Agreement.

9. ADDITIONAL PROVISIONS

a.

BOARD OF COUNTY COMMISSIONERS
OF LARIMER COUNTY

By:_____
Chair DATE

Attest:_____

Deputy Clerk

CONTRACTOR

By:_____
Signature DATE

Printed Name:_____

EXHIBIT A

Scope of Work

The scope of work should include at a minimum:

- ***Description of the goods to be delivered, services to be performed, and any other obligations of the parties. The description needs enough detail for a 3rd party without prior knowledge of the project to easily understand and determine what each party is obligated to do and if they have successfully done it.***
- ***Description of the performance standards the contract is required to meet, if any***
- ***Timetable for when performance and/or goods are due, including any milestone deadlines***
- ***Description of operational requirements of the Contractor's work, such as location (if location is material), personnel requirements, testing and acceptance criteria if applicable, and other general requirements of Contractor***
- ***Description of any contingencies on the Contractor's performance***

The County's Proposal/Solicitation and the Contractor's Response should NOT serve as the Scope of Work by reference. The Proposal and Response likely will include a significant amount of excess information, so incorporating the entire Proposal and Response creates duplication and inconsistencies. The best practice is to pull from the Proposal and Response the specific obligations and requirements that form the Scope of Work.

EXHIBIT B

Price Schedule and Payment Terms

EXHIBIT C

Insurance Requirements

Exhibit D

FEMA PUBLIC ASSISTANCE GRANT FUNDED PROJECTS

For Disasters declared on or after December 26, 2014

This attachment is expressly incorporated into the foregoing Agreement ("Agreement") between Larimer County ("County") and _____, ("Contractor"). The parties acknowledge that the Agreement is subject to the provisions of 2 C.F.R. Part 200 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). Nothing in the Agreement shall be construed as making it contingent upon FEMA's approval or obligation of funds.

The following provisions are incorporated into the Agreement:

A. **Default and Remedies.**

1. Contractor's failure to fulfill in a timely and proper manner its obligations under this Agreement, or Contractor's violation of any of the covenants, agreements, or stipulations of the Agreement, shall constitute an Event of Default under this Agreement. The following shall also constitute an Event of Default:
    i. Contractor (a) is generally not paying its debts as they become due; (b) files or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (c) makes an assignment for the benefit of its creditors; (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (e) takes action for the purpose of any of the foregoing.
    ii. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property; (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (c) ordering the dissolution, winding-up or liquidation of Contractor.
2. On or after any Event of Default, County shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate the Agreement or seek specific performance of all or any part of the Agreement. In addition, County shall have the right, but no obligation, to cure or cause to be cured any Event of Default on behalf of the Contractor; and in such event Contractor shall pay to County on demand all costs and expenses incurred by County in effecting such cure. County shall have the right to offset from any amounts due to Contractor under the Agreement or any other agreement between County and Contractor all damages, losses, costs and expenses incurred by County as a result of such Event of Default, including reasonable attorney fees and costs.
3. In the event County elects to terminate the Contact on or after any Event of Default, any such termination will be made by giving Contractor notice in writing. Termination will be effective immediately unless otherwise specified in the notice of termination. In such an event, all finished or unfinished work, documents, data, studies, and reports by Contractor under the Agreement shall, at the option of County become its property. Subject to offset as set forth above, Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of termination.
4. If, after termination for any Event of Default, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for convenience of County as set forth below.

B. **Termination for Convenience.** *(applicable if the Agreement is in excess of $10,000)*

1. The County may terminate this Agreement in its sole discretion at any time and for convenience and without cause. Any such termination will be made by giving Contractor notice in writing and specifying the specific date on which termination is effective. Upon receipt of written notice of termination, Contractor shall take all actions necessary to effect the termination of this Agreement on the date specified in the termination notice and to minimize the liability of Contractor and County to third parties. All such actions shall be subject to prior approval of the County and shall include, without limitation, the following:
    i. Halting the performance of all services and other work under the Agreement on the date(s) and in the manner specified by County;
    ii. Not placing any further orders or subcontracts for materials, services, equipment, or other items;
    iii. Terminating all existing orders and subcontracts;
    iv. At County's direction, assigning to County any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
    v. Subject to County's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts;
    vi. Completing performance of any services or work that County designates to be completed prior to the date of termination specified by County;
    vii. Taking such action as may be necessary, or as the County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which the County has or may acquire an interest.
2. In the event of termination for convenience, Contractor will be paid for work completed pursuant to the Agreement prior to such termination. The amount of such compensation shall be the proportion of work completed and unpaid prior to the effective date of termination in relation to the total compensation provided for in the Agreement. Contractor shall also, within 30 days after the termination date, submit to County an invoice for reasonable actual expenses incurred by Contractor for its actions taken, with prior approval from County, pursuant to section 2(a) above.
3. In no event shall County be liable for costs incurred by Consultant or any of its subcontractors after the termination date specified by County, except for those costs specifically enumerated and described in the Sections 2 (A) and (B) above. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable and authorized under such Sections 2 (A) and (B) above.
4. In arriving at the amount due to Consultant under this Section, County may deduct:
    i. All payments previously made by County for work or other services covered by Consultant's final invoice;
    ii. Any claim which County may have against Consultant in connection with this Agreement;
    iii. Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (C); and
    iv. In instances in which, in the opinion of the County, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and County's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

C. **Equal Employment Opportunity.** *(applicable if the Agreement is a "federally assisted construction project" in excess of $10,000)*

During the performance of this Agreement, 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.
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 Agreement or with any of the said rules, regulations, or orders, this Agreement 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 (a) 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.

D. **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 Agreement.
2. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above, and such other such 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. Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with these clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12.

E. **Contract Work Hours and Safety Standards Act.** *(applicable if the Agreement is in excess of $100,000 and involves the employment of mechanics or laborers)*

The Contractor shall comply with the following:

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 (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
3. Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

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

compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

5. Work Conditions. The requirements of 40 U.S.C. 3704 are applicable to construction work. 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.

F. **Clean Air Act and Clean Water Act.** *(applicable if the Agreement is in excess of $150,000l)*

1. Clean Air Act.
    i. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act at 42 U.S.C. § 7401 et. seq.
    ii. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Colorado, FEMA, and the appropriate Environmental Protection Agency Regional Office.
    iii. The Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.
2. Federal Water Pollution Control Act.
    i. 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.
    ii. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Colorado, FEMA, and the appropriate Environmental Protection Agency Regional Office.
    iii. The Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

G. **Debarment and Suspension.**

1. Contractor affirms that neither it nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal Government and do not appear in the SAM Exclusions, which is a list maintained by the General Services Administration.
2. If the Agreement is for $25,000 or more, it is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000, and the following apply:
    i. 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).
    ii. The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
    iii. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the State of Colorado and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
    iv. Throughout the period of this Agreement, Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C. The Contractor agrees to include a provision requiring such compliance in its lower tiered covered transactions.

H. **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 set forth in CERTIFICATION REGARDING LOBBYING, 44 C.F.R. Part 18, Appendix A. 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 an 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.

I. **Procurement of Recovered Materials.**

1. In the performance of this Agreement, where the purchase price of a product exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000, 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 Agreement performance schedule;
    ii. Meeting Agreement performance requirements; or
    iii. At a reasonable price.
2. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. The list of EPA-designated items is available at https://www.epa.gov/sites/production/files/2016-02/documents/cpg-fs.pdf.

J. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

1. If subcontracts are to be let, Contractor must take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are use when possible:
    i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
    iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
    v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

K. **Access to Records.**

1. Access to Records. The following access to records requirements apply to this Agreement:
    i. The Contractor agrees to provide the County, State of Colorado, Federal Emergency Management Agency, Comptroller General of the United States, or any of their authorized representatives, access to any books, documents, papers, and records of Contactor which are

directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

ii. 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.

iii. The Contractor agrees to provide the FEMA Administrator or his/her authorized representative access to construction or other work sites pertaining to the work being completed under this Agreement.

L. **Department of Homeland Security Seal, Logo, and Flags.**
The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of Department of Homeland Security agency officials without specific FEMA pre-approval.

M. **Retention of Records.**
Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case contractor agrees to maintain same until the County, State of Colorado, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

N. **Compliance with Federal Law, Regulations, and Executive Orders.**
Contractor acknowledges that funding for the Agreement includes federal, state, and/or local money, and that FEMA financial assistance will be used to fund the Agreement only. The Contractor agrees to comply with all applicable law, rule, regulation, executive order, FEMA policy, procedure, and directive

O. **No Obligation by Federal Government**.
The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, contractor, or any other party pertaining to any matter resulting from the Agreement.

P. **Program Fraud and False or Fraudulent Statements or Related Acts**.
The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

Q. **Energy Efficiency.**
The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201). The Contractor agrees to include this clause in each third-party subcontract financed in whole or in part with federal assistance provided by FEMA.

R. **FEMA Reporting Requirements and Regulations.**

1. General. The County is using Public Assistance grant funding awarded by FEMA to the State of Colorado to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding, FEMA requires the State of Colorado to provide various financial and performance reporting. It is important that the Contractor is aware of these reporting requirements,

as the County may require the Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of Colorado which, in turn, will enable the State of Colorado to satisfy reporting requirements to FEMA. Failure of the State of Colorado to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of federal financial assistance awarded to fund this Agreement. Contractor agrees to provide County with any information and documentation the County deems necessary to satisfy the reporting requirements herein. Further, Contractor agrees to include this FEMA Reporting Requirements and Regulations provision, in its entirety, in each third-party subcontract financed in whole or in part with federal assistance provided by FEMA.

2. Applicable Regulations and Policy. The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:
    i. 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
    ii. 44 C.F.R. § 13.41 (Financial Reporting)
    iii. 44 C.F.R § 13.50(b) (Reports)
    iv. 44 C.F.R. § 206.204(f) (Progress Reports)
    v. FEMA Standard Operating Procedure No. 9570.14, Public Assistance Program Management and Grant Closeout Standard Operating Procedure (Dec. 2013)
    vi. FEMA-State (or Tribal) Agreement
3. Financial Reporting. The State of Colorado is required to submit to the following financial reports to FEMA:
    i. Initial Report. An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project.
    ii. Quarterly Reports. Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
    iii. Final Report. A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.
4. Performance Reporting. The State of Colorado is required to submit to the following financial reports to FEMA:
    i. Initial Report. An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project.
    ii. Quarterly Reports. Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
    iii. Final Report. A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

EXHIBIT D

FEDERALLY-FUNDED PROJECTS

For Funds awarded after December 26, 2014

This attachment is expressly incorporated into the foregoing agreement ("Agreement") between Larimer County ("County") and _____ ("Consultant"). The parties acknowledge that the Agreement is subject to the provisions of 2 C.F.R. Part 200.

The following provisions are incorporated into the Agreement:

A. **Default and Remedies.**

1. Consultant's failure to fulfill in a timely and proper manner its obligations under this Agreement, or Consultant's violation of any of the covenants, agreements, or stipulations of the Agreement, shall constitute an Event of Default under this Agreement. The following shall also constitute an Event of Default:
    i. Consultant (a) is generally not paying its debts as they become due; (b) files or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (c) makes an assignment for the benefit of its creditors; (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Consultant or of any substantial part of Consultant's property; or (e) takes action for the purpose of any of the foregoing.
    ii. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Consultant or with respect to any substantial part of Consultant's property; (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (c) ordering the dissolution, winding-up or liquidation of Consultant.
2. On or after any Event of Default, County shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate the Agreement or seek specific performance of all or any part of the Agreement. In addition, County shall have the right, but no obligation, to cure or cause to be cured any Event of Default on behalf of the Consultant; and in such event Consultant shall pay to County on demand all costs and expenses incurred by County in effecting such cure. County shall have the right to offset from any amounts due to Consultant under the Agreement or any other agreement between County and Consultant all damages, losses, costs and expenses incurred by County as a result of such Event of Default, including reasonable attorney fees and costs.
3. In the event County elects to terminate the Contact on or after any Event of Default, any such termination will be made by giving Consultant notice in writing. Termination will be effective immediately unless otherwise specified in the notice of termination. In such an event, all finished or unfinished work, documents, data, studies, and reports by Consultant under the Agreement shall, at the option of County become its property. Subject to offset as set forth above, Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of termination.
4. If, after termination for any Event of Default, it is determined that Consultant was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for convenience of County as set forth below.

B. **Termination for Convenience.** *(applicable if the Agreement is in excess of $10,000)*

1. The County may terminate this Agreement in its sole discretion at any time and for convenience and without cause. Any such termination will be made by giving Contractor notice in writing and specifying the specific date on which termination is effective. Upon receipt of written notice of termination, Contractor shall take all actions necessary to effect the termination of this Agreement on the date specified in the termination notice and to minimize the liability of Contractor and County to third parties. All such actions shall be subject to prior approval of the County and shall include, without limitation, the following:
    i. Halting the performance of all services and other work under the Agreement on the date(s) and in the manner specified by County;
    ii. Not placing any further orders or subcontracts for materials, services, equipment, or other items;
    iii. Terminating all existing orders and subcontracts;
    iv. At County's direction, assigning to County any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
    v. Subject to County's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts;
    vi. Completing performance of any services or work that County designates to be completed prior to the date of termination specified by County;
    vii. Taking such action as may be necessary, or as the County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which the County has or may acquire an interest.
2. In the event of termination for convenience, Contractor will be paid for work completed pursuant to the Agreement prior to such termination. The amount of such compensation shall be the proportion of work completed and unpaid prior to the effective date of termination in relation to the total compensation provided for in the Agreement. Contractor shall also, within 30 days after the termination date, submit to County an invoice for reasonable actual expenses incurred by Contractor for its actions taken, with prior approval from County, pursuant to section B(1) above.
3. In no event shall County be liable for costs incurred by Consultant or any of its subcontractors after the termination date specified by County, except for those costs specifically enumerated and described in the Sections B (1) and (2) above. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable and authorized under such Sections B (1) and (2) above.
4. In arriving at the amount due to Consultant under this Section, County may deduct:
    i. All payments previously made by County for work or other services covered by Consultant's final invoice;
    ii. Any claim which County may have against Consultant in connection with this Agreement;
    iii. Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (3); and
    iv. In instances in which, in the opinion of the County, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and County's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

C. **Equal Employment Opportunity.** *(applicable if the Agreement is a "federally assisted construction project" in excess of $10,000)*

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

1. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant 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 Consultant 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 Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Consultant 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 Consultant's legal duty to furnish information.
4. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Consultant 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 Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant 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 Consultant will include the portion of the sentence immediately preceding paragraph (a) 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 Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

D. **Compliance with the Copeland "Anti-Kickback" Act.**
   1. Consultant. The Consultant 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 Agreement.
   2. Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clause above, and any other such clauses as may, by appropriate instructions, be required, and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. Consultant shall be responsible for compliance by any subcontractor or lower-tier subcontractor with these clauses.
   3. Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a Consultant and subcontractor as provided in 29 C.F.R. §5.12.

E. **Compliance with Davis-Bacon Act.** *(applies to prime construction Agreements in excess of $2,000)*
   1. The Consultant shall comply with 40 U.S.C. 3141-3144 and 40 U.S.C. 3146-3148, as supplemented by 29 C.F.R. pt. 5.
   2. All laborers and mechanics employed by Consultant or subcontractors on construction work assisted under this Work Authorization, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

F. **Contract Work Hours and Safety Standards Act.** *(applicable if the Agreement is in excess of $100,000 and involves the employment of mechanics or laborers)*
   The Consultant shall comply with the following:
   1. Overtime requirements. No Consultant 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 (a) of this section the Consultant and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the

standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

3. Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
4. Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.
5. Work Conditions. The requirements of 40 U.S.C. 3704 are applicable to construction work. 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.

G. **Clean Air Act and Clean Water Act.** *(applicable if the Agreement is in excess of $150,000)*

1. Clean Air Act.
    i. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act at 42 U.S.C. § 7401 et. seq.
    ii. The Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Colorado, Federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
    iii. The Consultant agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with a Federal award.
2. Federal Water Pollution Control Act.
    i. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq.
    ii. The Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Colorado, Federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
    iii. The Consultant agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with a Federal award.

H. **Debarment and Suspension.**

1. Consultant affirms that neither it nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal Government and do not appear in the SAM Exclusions, which is a list maintained by the General Services Administration.
2. If the Agreement is for $25,000 or more, it is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000, and the following apply:

i. The Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
ii. The Consultant must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
iii. This certification is a material representation of fact relied upon by the County. If it is later determined that the Consultant did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the State of Colorado and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
iv. Throughout the period of this Agreement, Consultant agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C. The Consultant agrees to include a provision requiring such compliance in its lower tiered covered transactions.

I. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).**
Consultants who apply or bid for an award of $100,000 or more shall file the required certification set forth in CERTIFICATION REGARDING LOBBYING, 44 C.F.R. Part 18, Appendix A. 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 an 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.

J. **Procurement of Recovered Materials.**
1. In the performance of this Agreement, where the purchase price of a product exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
   i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
   ii. Meeting Agreement performance requirements; or
   iii. At a reasonable price.
2. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. The list of EPA-designated items is available at https://www.epa.gov/sites/production/files/2016-02/documents/cpg-fs.pdf.

K. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**
1. If subcontracts are to be let, Consultant must take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:
   i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
   ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

L. **No Obligation by Federal Government**.
The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Consultant, or any other party pertaining to any matter resulting from the Agreement.

M. **Energy Efficiency.**
The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201). The Consultant agrees to include this clause in each third-party subcontract financed in whole or in part with federal assistance.

EXHIBIT D

CDBG-DR FUNDED PROJECTS

For Funds awarded after December 26, 2014

This attachment is expressly incorporated into the foregoing agreement ("Agreement") between Larimer County ("County") and _____ ("Consultant"). The parties acknowledge that the Agreement is subject to the provisions of 2 C.F.R. Part 200 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). Nothing in the Agreement shall be construed as making it contingent upon the approval or obligation of funds by CDBG-DR.

The following provisions are incorporated into the Agreement:

A. **Default and Remedies.**

1. Consultant's failure to fulfill in a timely and proper manner its obligations under this Agreement, or Consultant's violation of any of the covenants, agreements, or stipulations of the Agreement, shall constitute an Event of Default under this Agreement. The following shall also constitute an Event of Default:
    i. Consultant (a) is generally not paying its debts as they become due; (b) files or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (c) makes an assignment for the benefit of its creditors; (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Consultant or of any substantial part of Consultant's property; or (e) takes action for the purpose of any of the foregoing.
    ii. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Consultant or with respect to any substantial part of Consultant's property; (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (c) ordering the dissolution, winding-up or liquidation of Consultant.
2. On or after any Event of Default, County shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate the Agreement or seek specific performance of all or any part of the Agreement. In addition, County shall have the right, but no obligation, to cure or cause to be cured any Event of Default on behalf of the Consultant; and in such event Consultant shall pay to County on demand all costs and expenses incurred by County in effecting such cure. County shall have the right to offset from any amounts due to Consultant under the Agreement or any other agreement between County and Consultant all damages, losses, costs and expenses incurred by County as a result of such Event of Default, including reasonable attorney fees and costs.
3. In the event County elects to terminate the Contact on or after any Event of Default, any such termination will be made by giving Consultant notice in writing. Termination will be effective immediately unless otherwise specified in the notice of termination. In such an event, all finished or unfinished work, documents, data, studies, and reports by Consultant under the Agreement shall, at the option of County become its property. Subject to offset as set forth

above, Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of termination.

4. If, after termination for any Event of Default, it is determined that Consultant was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for convenience of County as set forth below.

B. **Termination for Convenience.** *(applicable if the Agreement is in excess of $10,000)*

1. The County may terminate this Agreement in its sole discretion at any time and for convenience and without cause. Any such termination will be made by giving Contractor notice in writing and specifying the specific date on which termination is effective. Upon receipt of written notice of termination, Contractor shall take all actions necessary to effect the termination of this Agreement on the date specified in the termination notice and to minimize the liability of Contractor and County to third parties. All such actions shall be subject to prior approval of the County and shall include, without limitation, the following:
    i. Halting the performance of all services and other work under the Agreement on the date(s) and in the manner specified by County;
    ii. Not placing any further orders or subcontracts for materials, services, equipment, or other items;
    iii. Terminating all existing orders and subcontracts;
    iv. At County's direction, assigning to County any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
    v. Subject to County's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts;
    vi. Completing performance of any services or work that County designates to be completed prior to the date of termination specified by County;
    vii. Taking such action as may be necessary, or as the County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which the County has or may acquire an interest.
2. In the event of termination for convenience, Contractor will be paid for work completed pursuant to the Agreement prior to such termination. The amount of such compensation shall be the proportion of work completed and unpaid prior to the effective date of termination in relation to the total compensation provided for in the Agreement. Contractor shall also, within 30 days after the termination date, submit to County an invoice for reasonable actual expenses incurred by Contractor for its actions taken, with prior approval from County, pursuant to section B(1) above.
3. In no event shall County be liable for costs incurred by Consultant or any of its subcontractors after the termination date specified by County, except for those costs specifically enumerated and described in the Sections B (1) and (2) above. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable and authorized under such Sections B (1) and (2) above.

4. In arriving at the amount due to Consultant under this Section, County may deduct:
    i. All payments previously made by County for work or other services covered by Consultant's final invoice;
    ii. Any claim which County may have against Consultant in connection with this Agreement;
    iii. Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (3); and
    iv. In instances in which, in the opinion of the County, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and County's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

C. **Equal Employment Opportunity.** *(applicable if the Agreement is a "federally assisted construction project" in excess of $10,000)*

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

1. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant 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 Consultant 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 Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Consultant 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 Consultant's legal duty to furnish information.
4. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Consultant 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 Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant 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 Consultant 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 Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

D. **Compliance with the Copeland “Anti-Kickback" Act.**
1. Consultant. The Consultant 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 Agreement.
2. Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clause above, and any other such clauses as CDBR-DR may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. Consultant shall be responsible for compliance by any subcontractor or lower-tier subcontractor with these clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a Consultant and subcontractor as provided in 29 C.F.R. §5.12.

E. **Compliance with Davis-Bacon Act.** *(applies to prime construction Agreements in excess of $2,000)*
1. The Consultant shall comply with 40 U.S.C. 3141-3144 and 40 U.S.C. 3146-3148, as supplemented by 29 C.F.R. pt. 3.
2. All laborers and mechanics employed by Consultant or subcontractors on construction work assisted under this Work Authorization, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing

on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

F. **Contract Work Hours and Safety Standards Act.** *(applicable if the Agreement is in excess of $100,000 and involves the employment of mechanics or laborers)*
The Consultant shall comply with the following:

1. Overtime requirements. No Consultant 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 Consultant and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Consultant 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 County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The Consultant 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 Consultant 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.
5. Work Conditions. The requirements of 40 U.S.C. 3704 are applicable to construction work. 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.

G. **Rights to Inventions Made.** (*applicable if the Agreement relates to experimental, research, or development projects funded in whole or in party by the Federal government, and the award of Federal funds meets the definition of a "funding agreement" under 37 C.F.R. §401.2(a))*

1. If the Federal award providing funding for this Agreement meets the definition of "funding agreement" under 37 C.F.R. §401.2(a) and this Agreement is between the County and a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement, the County and Contractor shall comply with and be bound by 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 Cooperating Agreements," and any implementing regulations issued by the awarding agency.

H. **Clean Air Act and Clean Water Act.** *(applicable if the Agreement is in excess of $150,000)*

1. Clean Air Act.
    i. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act at 42 U.S.C. § 7401 et. seq.
    ii. The Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Colorado, CDBG-DR, and the appropriate Environmental Protection Agency Regional Office.
    iii. The Consultant agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with a Federal award.

2. Federal Water Pollution Control Act.
    i. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq.
    ii. The Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Colorado, CDBG-DR, and the appropriate Environmental Protection Agency Regional Office.
    iii. The Consultant agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with a Federal award.

I. **Debarment and Suspension.**

1. Consultant affirms that neither it nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal Government and do not appear in the SAM Exclusions, which is a list maintained by the General Services Administration.
2. If the Agreement is for $25,000 or more, it is a covered transaction for purposes of 2 C.F.R. Parts 180 and 2424, and the following apply:
    i. The Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
    ii. The Consultant must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 2424, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
    iii. This certification is a material representation of fact relied upon by the County. If it is later determined that the Consultant did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 2424, subpart C, in addition to remedies available to the State of

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

iv. Throughout the period of this Agreement, Consultant agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 2424, subpart C. The Consultant agrees to include a provision requiring such compliance in its lower tiered covered transactions.

J. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).**
Consultants who apply or bid for an award of $100,000 or more shall file the required certification set forth in CERTIFICATION REGARDING LOBBYING, 44 C.F.R. Part 87, Appendix A. 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 an 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.

K. **Procurement of Recovered Materials.**

1. In the performance of this Agreement, where the purchase price of a product exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
    i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
    ii. Meeting Agreement performance requirements; or
    iii. At a reasonable price.
2. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. The list of EPA-designated items is available at https://www.epa.gov/sites/production/files/2016-02/documents/cpg-fs.pdf.

L. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

1. If subcontracts are to be let, Consultant must take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:
    i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
    iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

M. **No Obligation by Federal Government**.
The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Consultant, or any other party pertaining to any matter resulting from the Agreement.

N. **Energy Efficiency.**
The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201). The Consultant agrees to include this clause in each third-party subcontract financed in whole or in part with federal assistance provided by FEMA.

O. **Section 3 of the Housing and Community Development Act.** *(Applicable if Consultant/Subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds $200,000 and the contract or subcontract exceeds $100,000 AND when portion(s) of covered funding are used for project/activities involving housing construction, rehabilitation, demolition, or other public construction)*

1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly person who are recipients of HUD assistance for housing.
2. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
3. The Consultant agrees to send to each labor organization or representative or workers with which the Consultant has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Consultant's commitments under the Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The Consultant agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Consultant will not subcontract with any subcontractor where the Consultant has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135

5. The Consultant will certify that any vacant employment positions, including training positions, that are filled (1) after the Consultant is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Consultant's obligations under 24 CFR part 135.
6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act. (25 U.S.C 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extend feasible, but in derogation of compliance with section 7(b).